

Maryland Judicial Ethics Committee

Opinion Request Number: 1976-13

Date of Issue: January 17, 1977

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Hold Stock in Businesses,
If Not Frequent Litigators, but Not Hear Matters Affecting Holdings

This Committee has considered your letter dated December 14, 1976, in which you outline your business and professional interests, and the changes you plan to make regarding those interests in light of your becoming [a judge] on [date].

Your letter seeks an advisory opinion from this Committee with reference to certain investments which you desire to continue to hold if their retention "does not violate any canon of Judicial Ethics or give rise to impropriety or the appearance of impropriety."

As we understand it, as of December 14, 1976, the interests and investments involve two corporations and one partnership engaged in various aspects of ownership, sale, and development of real estate, one bank, one construction company, and your individual law practice.

You state that you have resigned as a director of W Bank, that you hold no other office, and that you will retain your ownership of 3.82% of the outstanding stock.

You state that you intend to resign as a director and as Secretary-Treasurer of X Construction Company, Inc., a company engaged in general residential and small commercial construction, and that you will retain your ownership of 33.3% of the outstanding stock, but will discontinue yourself from any management functions of the business.

You were as of December 14, 1976, a director and Secretary-Treasurer of Y Realty, Inc., which conducts a real estate brokerage business, and buys, develops, and sells real estate for its own account. You hold 33.3% of the stock. You held, as of the date of your letter, similar positions, and owned 50% of the stock of Z Inc., which owns land held for sale. You were on December 14 a 50% partner in a real estate investment business which owns an office building in _____ with several tenants, owns farm properties acquired for resale and development, and holds several mortgages. The assets of the partnership, except for the office building and the mortgages, will be acquired by Y Realty, Inc. Z Inc. will be merged into Y Realty, Inc. You will hold no office or directorship in either corporation, and will not participate in any management functions of the corporations or the partnership. You will own 50% of the stock in Y Realty, Inc., and will own a one-half interest in the office building and the several mortgages now held by the partnership.

You advise finally that you will turn your law practice, furniture, furnishings, and library over to A, Esq., who was sharing space with you when you wrote to us, without charge or reimbursement of any kind. He will remain a tenant in the building of which you own a one-half interest, and will pay the same amount of rent as you now pay to the partnership.

To sum up, the interests you will continue to hold, and which should be examined in the light of relevant canons of Judicial Ethics are:

1. You will own a 3.82% stock interest in a local bank.
2. You will own a 50% stock interest in a local real estate ownership, development, and

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sales company.

3. You will own a 33~~a~~% stock interest in a local construction company.
4. You will own a one-half interest in an office building, one of whose tenants will be a member of the local bar, and you will own a one-half interest in several mortgages.
5. You will hold no office, and will not participate in any management functions relating to any of these interests.

The Canons of Judicial Ethics and the Rules of Judicial Ethics, as adopted in Maryland Rule 1231, which govern such situations, are Canons XXIV, XXV, and XXVIII, and Rules 2 and 9.

Canon XXIV and Rule 9 relate to business activities by a judge. Canon XXIV is a general policy statement. The specific provisions of Rule 9 cover the same general area. Rule 9 says:

“A judge shall not, directly or indirectly, lend the influence of his name or the prestige of his office to aid or advance the welfare of any private business or permit others to do so.”

The application of Canon XXIV and Rule 9 to your situation will require that your name not be placed before the public in any way, as an owner or participant in the businesses in which you have an interest.

Canons XXV and XXVIII and Rule 2 relate to judicial action which could affect an investment or business interest of a judge. The relevant part of Rule 2 says:

“He [the judge] shall not participate in any matter in which he has a significant financial interest or in which he previously acted as lawyer.”

The Canons state the principle that a judge should not hold investments in enterprises which are apt to be involved in litigation in his court.

We assume that the three corporations in which you will continue to hold a stock interest, and the real estate and mortgages of which you are part owner, will not be apt to be involved in litigation in your court to any significant degree. Should the contrary be the case, this Committee feels that you may be required to divest yourself of the interests affected.

In any event, the Committee feels that within the spirit of Rule 2, any stock interest or other ownership interest is significant, and that you should not participate as a judge in any case which involves or could affect any of those interests, consent of counsel notwithstanding.

Our general conclusion is that your intended arrangements with respect to all of the interests mentioned in your letter appear to comply with the Canons and Rules of Judicial Ethics, but that you should remain watchful for any future development which may require further consideration.