

Maryland Judicial Ethics Committee

Opinion Request Number: 1977-08

Date of Issue: October 21, 1977

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Orphans' Court Judge May Not Act as Auctioneer in Estate Sales

As Chief Judge of the Orphans' Court of your county, you have requested an opinion of this Committee concerning the "occupational activities" of an associate judge of your court. You have advised us that your colleague is a licensed auctioneer and that a question has been raised by a member of the local bar as to whether a judge may function as auctioneer "where estate sales are concerned."

For the reasons set forth below, it is the unanimous conclusion of the Committee that it is not permissible for the judge to participate as auctioneer in such sales.

As we have heretofore had occasion to point out ([Opinion Request No. 1971-01 (unpublished)], 14 September 1971), Rule 13 of the Rules of Judicial Ethics makes it quite clear that the strictures of the Canons of Judicial Ethics and of the Rules are applicable to Orphans' Court judges:

"A judge under these Canons and Rules shall mean a judge of the Court of Appeals, of the Court of Special Appeals, of the Circuit Court for the Counties, of the Supreme Bench of Baltimore City, of the District Court, of the Orphans' Courts and all other judges elected or subject to election, and those appointed if the full term of the particular office is for not less than four years." (Emphasis added.)

Of direct application here are the provisions of Canons IV and XXIV and Rule 9. Canon IV, entitled "Avoidance of Impropriety," proscribes not only actual impropriety in a judge's official conduct but also the appearance of impropriety. Canon XXIV relates in part to business activities and mandates that a judge "avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute to the success of private business ventures." The Canon goes on to admonish that a judge should not "enter into such private business or pursue such a course of conduct as would justify such suspicion." Rule 9 is also concerned with private business activities and prohibits a judge from lending 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 object of these and all the Canons and Rules is to hold the office of judge above suspicion of abuse of power or prestige. An Orphans' Court judge who participates as an auctioneer in estate sales is engaged in private business activity which gives rise to reasonable suspicion that the office is being utilized to persuade or coerce others to patronize him and thus to promote his business interests.

This conclusion inevitably flows from a consideration of the jurisdiction of the Orphans' Court and the duties of the individual judges. The latter involve the appointment of personal representatives, the setting of their bonds, approval of their accounts, their commissions and the allowance of counsel fees. In the performance of such duties, the judges have direct contact with counsel for the personal

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representatives and other fiduciaries, and with the fiduciaries themselves. There is also the genuine possibility of the auctioneer-judge having to consider the ratification of a sale which he himself has conducted and, indirectly at least, the approval of his own commission. To the average person, in our unanimous judgment, this creates an appearance of impropriety.

We find relevant the following statement quoted by the Court of Appeals in the case of In re Foster, 271 Md. 449, 474, 218 A.2d 523 (1974), written by the Reporter for the Special Committee which formulated the Code of Judicial Conduct:

“... A Judge should not exploit his judicial position to gain a business advantage, nor should he engage in business dealings that would involve him in frequent transactions with lawyers or persons likely to appear in his court. The aim is to prevent the appearance to litigants, lawyers, and the public that patronizing the business in which a judge is actively involved will work to the advantage of the litigant, or that failure to patronize the business will work to his disadvantage.” (Emphasis added.)

No actual wrongdoing is suggested in your letter of inquiry. The Canons and Rules make it abundantly clear, however, that even if actual misconduct is not involved, the appearance of impropriety is forbidden.