

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 1978-05

**Date of Issue:** March 23, 1979

**O** Published Opinion    **G** Unpublished Opinion    **G** Unpublished Letter of Advice

### Judge May Serve as Personal Representative in Non-Maryland Estate

The Judicial Ethics Committee has previously rendered an informal opinion in answer to your inquiry regarding your serving as executor in an estate to be administered [outside the State of Maryland].

You state that while in private law practice you prepared a will in which you were named as executor. The surviving heirs of the deceased testator have requested you to qualify as personal representative.

Since the estate is to be administered [outside the State of Maryland], we understand that there is little likelihood that any of the courts in the State of Maryland will be involved in any way. Further, you have assured the Committee that your acting in this capacity will not interfere with the proper performance of your judicial duties.

[Opinion Request No. 1977-10] of this Committee deals with the question of a Judge serving as personal representative, trustee or guardian.

As stated therein, Maryland Canon XXVI provides:

“While a judge is not absolutely disqualified from holding a fiduciary position, he should not accept or continue to hold any such position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially or to be involved in questions of law to be determined by him.”

Under your representation to this Committee we foresee little likelihood that your qualification as executor [outside the State of Maryland] would interfere with the proper performance of your judicial duties, or that any litigation regarding the administration of the estate would be before you. Thus, under Canon XXVI, there is no absolute prohibition against your qualifying.

See: [Opinion Request No. 1975-04].

Both [Opinion Request Nos. 1977-10 and 1975-04] point out that Maryland Code (1974) Estates & Trusts Article, Section 5-105(5)\* prohibits the granting of letters testamentary to a full time judge of a court established under the laws of Maryland or the United States, unless he is the surviving spouse or is related to the decedent within the third degree.

[Opinion Request No. 1975-04] states:

“It may well be that the thrust of § 5-105(5)\* is unclear, but we have always taken the position that the interpretation of statutes is not our function and it may be necessary for you to resolve the question whether the prohibition relates only to the qualification

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\* As of the editing date [July 10, 2006], Maryland Code, Estates and Trusts Article, § 5-105(b)(5).

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Page 2 of 2

of a judge as personal representative in Maryland or extends to his qualification in another state.”

The Committee has now concluded that this statute bars the probate courts and the Registers of Wills in the State of Maryland from granting letters to a full time judge. It has no application to estates to be administered in other jurisdictions. You must satisfy yourself that no statutory bar exists in the jurisdiction where letters are to be granted.

We find that no restriction exists under Canon XXVI or under the Maryland Code which would disqualify you from acting as personal representative in an estate to be administered outside of the State of Maryland.