

Maryland Judicial Ethics Committee

Opinion Request Number: 1979-03

Date of Issue: January 4, 1980

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Own Building Leased to Lawyer and Hear Cases Involving Tenant;
May Negotiate Lease and Collect Rents

In 1976, shortly after you became a judge, you inquired of this Committee concerning the propriety of your continuing to own the office building in which your former law office was located, and your leasing the building to a member of the X County Bar who does on occasion appear before you as an attorney. You explained that the building was especially equipped for use as law offices, and that it could not be converted for other purposes without a large expenditure of money. You further informed the Committee that should you be unsuccessful in the election for your judicial office in 1978, you would be required to reoccupy the building for the practice of law. Finally, you asked whether you must relinquish ownership of this building if elected in 1978 to a full term as a ... judge.

This Committee responded to your request by [Opinion Request No. 1976-11]. In that Opinion, we stated that there was no specific provision in the Maryland Canons or Rules of Judicial Ethics prohibiting the ownership of rental property by a judge. We referred to Canon 5C(2) of the American Bar Association's Code of Judicial Ethics providing that a judge may hold and manage investments, including real estate, as long as this does not tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with persons likely to come before him in court. The Committee pointed out that Maryland Canon XXIV is in the same spirit, although real estate is not specifically mentioned. We concluded by stating that your ownership of the building and leasing it to a member of the X County Bar, under the circumstances set forth, would not violate the Maryland Canons or Rules.

In [Opinion Request No. 1976-11], the Committee declined to rule upon your continued ownership and leasing of the building if you were elected to a full judicial term in 1978, pointing out that this was a future factual situation which may not arise.

In 1979, you again wrote to this Committee concerning the ownership and leasing of the office building. You stated that you had been elected to a full term as a ... judge and that you continued to own the building and rent it to the same member of the X County Bar. You also advised us that the lessee had subleased a portion of the building to another member of the X County Bar. You asked whether, considering your election and, consequently, the lack of any necessity for you to reoccupy the building for the practice of law, you could continue to own it and lease it to a member of the X County Bar. You also asked whether you should disqualify yourself from cases in which the lessee appears as an attorney. Additionally, in light of some of the language in [Opinion Request Nos. 1976-11 and 1975-06], a question was raised as to whether you personally could negotiate the lease and collect the rent, or whether you were required to employ a real estate agent for these purposes.

The Committee, by its Secretary, orally responded that your election did not require a different

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Page 2 of 2

conclusion than set forth in [Opinion Request No. 1976-11], and that, therefore, you could continue to own the building, rent it to a member of the X County Bar, and preside over cases in which the lessee appears as an attorney. The Committee also indicated that it was not necessary for you to employ a real estate agent to negotiate the lease or collect the rent.

The purpose of this letter is to formalize in writing the oral advice previously given to you. Furthermore, we believe that some of the language in [Opinion Request Nos. 1976-11 and 1975-06] should be clarified.

Your election to a full term as a ... judge does not, logically, require any change in the Committee's ruling in [Opinion Request No. 1976-11]. It is true that, because of the election, one of your reasons in 1976 for wanting to continue ownership of the property has disappeared. However, the possibility that you might need to reoccupy the building for the practice of law was not the basis of our ruling in [Opinion Request No. 1976-11]. Instead, the reasons for the Committee's position were that the Maryland Canons and Rules of Judicial Ethics do not prohibit the ownership of rental real estate by a judge, that a judge is permitted to invest in real estate as long as it does not reflect adversely on his impartiality, interfere with the performance of judicial duties, exploit his judicial position or involve him in frequent transactions with those coming before him, and that a mere landlord-tenant relationship with an attorney who practices before a judge is not in violation of the Canons and Rules.

Regarding the matter of employing a real estate agent to negotiate a lease for the building and to collect the rent, there is language in [Opinion Request Nos. 1976-11 and 1975-06], which, taken out of context, might appear to require this. [Opinion Request No. 1976-11] states "that a judge should take no active part in the management of real estate in which he has an interest and that this prohibition would extend to his participation in negotiations looking toward a sale or other disposition." [Opinion Request No. 1975-06] contains essentially the same language. However, both opinions go on to cite *In re Foster*, 271 Md. 449, 318 A. 2d 523 (1974). See also [Opinion Request No. 1977-06].

In the *Foster* case, the Court of Appeals did not hold that the Canons and Rules absolutely prohibited any degree of personal participation by a judge in the management of investment real estate or in negotiations for its acquisition or disposition. Rather, the Court upheld a flexible standard, based upon the circumstances and the extent of the judge's involvement. Thus, the Court stated (271 Md. at 475): "In almost every case of this sort, there is no litmus test, but rather an elastic standard based on questions of degree." And the Court pointed out (*id.* at 474): "It would seem that as regards investments in real estate, the critical question is whether a judge can maintain a low profile."

As we understand it, the investment real estate which you own consists of one small office building, presently designed and equipped exclusively for use as a law office, formerly used by you as a law office, and now rented to one lawyer who has subleased a portion to another lawyer. Under these circumstances, we do not believe that your personally negotiating the lease or collecting the rent would constitute anything more than a minimal degree of involvement in the management of real estate. As such, your activity would not violate the Canons or Rules.