

Maryland Judicial Ethics Committee

Opinion Request Number: 1979-05

Date of Issue: May 25, 1979

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Serve as Treasurer of Bar Association

You have requested an Advisory Opinion of the Committee on Judicial Ethics concerning the propriety of your serving as Treasurer of the X Bar Association, a position you now hold, and for which you have been nominated to serve another one-year term commencing in June 1979.

This question was posed, at some length, in a signed article by a staff writer of a weekly newspaper of general circulation in your County; and it was based essentially upon Rule 6 of the Rules of Judicial Ethics. It is the considered judgment of this Committee that Rule 6 is not applicable and that no Canon of Judicial Ethics nor any other Rule bars you from serving as Treasurer of the Association.

Rule 6 proscribes the holding of any office or directorship by a full-time judge in certain named types of business organizations or in any other business entity which is "affected with a public interest." The full text of the Rule is as follows:

"6. A full-time judge shall not hold any office or directorship in any public utility, bank, savings and loan association, lending institution, insurance company, or any other business corporation or enterprise or venture which is affected with a public interest. A judge shall not hold an office or directorship in any other business corporation, enterprise, or venture if the holding thereof interferes with the performance of his official duties or permits the exploitation of the prestige of his office or conflicts with the impartial exercise of his official duties." (Emphasis added.)

It is readily apparent that the thrust of the Rule is against participation as an officer or director in business enterprises, either in the specified categories or in any other business venture "affected with a public interest") a phrase which this Committee has previously defined to involve government regulation or licensing, supervision and control ([Opinion Request Nos. 1972-02 and 1973-01], 7/14/72 and [1]/30/73). The X Bar Association is obviously not included in any of the specific organizations identified in the Rule, nor is it a "business corporation, enterprise or venture affected with a public interest." Indeed, it is not a business corporation, enterprise or venture in any sense. Rather, as provided in Article III of the Articles of Incorporation, it is a "nonprofit corporation, no part of the net earnings of which is to inure to the benefit of any member, shareholder or individual." The same Article recites the purpose of the Association:

"THIRD: The purpose of the Corporation is to advance the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to uphold the standard of integrity, honor and courtesy in the legal profession, to encourage legal education, and to cultivate a spirit of cordiality and brotherhood among the members of the Bar."

We deem it abundantly clear, therefore, that Rule 6 has no application to your office as Treasurer of the Association.

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Our response to your inquiry does not end here, however. We recognize that other Canons and Rules may be of possible application. To place the question you present in full perspective, we have ascertained that: (1) the financial operations of the association are overseen by a duly appointed Committee on Budget and Finance, consisting of seven members, of whom the treasurer is a member ex officio; (2) the Association engages a full-time bookkeeper; (3) the Executive Director of the Association or his Assistant signs checks drawn on the account of the Association in connection with its day-to-day operations; (4) a certified public accountant submits a monthly report to the Executive Director concerning the financial status of the Association; (5) the Treasurer neither solicits nor receives dues from members nor is he involved in any other way in the solicitation of funds; and (6) all officers of the Association, including the Treasurer, are entitled to an annual stipend of \$600 for expenses, an allowance which you, however, have declined.

Upon these facts, we find no conflict with Rule 9 of the Rules of Judicial Ethics, which provides:

“9. 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. He shall not personally solicit funds for any purpose, charitable or otherwise.”

Nor do we find in the responsibilities of your office as Treasurer any conflict with Canon XXIII, entitled “Inconsistent Obligations.” This Canon reads as follows:

“A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.”

The Canons and Rules of Judicial Ethics provide guidelines for all members of the judiciary pertaining not only to official conduct but personal behavior as well. Canon IV mandates that a judge’s official conduct should be free from impropriety and the “appearance of impropriety” and requires that his personal behavior “not only upon the Bench and in the performance of official duties, but also in his everyday life, should be beyond reproach.” Canon XXXIII, which contains a reflective “Summary of Judicial Obligation,” reiterates that, “In every particular his conduct should be above reproach” and that, “he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties.” Adherence to these standards is not compromised, in our judgment, by the position of honor in the X Bar Association to which you have been elected.