

Maryland Judicial Ethics Committee

Opinion Request Number: 1980-10

Date of Issue: November 25, 1980

■ Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Serve as Vestryman of Church;
May Hear Cases in Which Former Law Partner Is Counsel

The Committee has been requested to give an opinion in two unrelated matters affecting the same judge.

First, we are asked whether the judge may continue to serve as a vestryman of his church. It is stated in the letter of inquiry that, as vestryman, he participates in discussions and votes on decisions with respect to raising money for the church but takes no part in any solicitations for funds. Other duties and responsibilities of the office pertain to investing church funds, expenditures for maintenance and improvements, and related matters.

Applicable here are Canons XXIII (“Inconsistent Obligations”) and XXIV (“Business Promotions and Solicitations for Charity”) and Rule 9. Canon XXIII proscribes the acceptance of inconsistent duties and the incurring of obligations, whether pecuniary or not, “which will in any way interfere or appear to interfere with [the judge’s] devotion to the expeditious and proper administration of his official functions.” Canon XXIV requires that a judge avoid affording ground for any “reasonable suspicion” that he is using the power or prestige of his office “to persuade or coerce others to patronize or contribute ... to charitable enterprises.” Under Rule 9, the personal solicitation of funds “for any purpose, charitable or otherwise,” is prohibited; but the Committee Note to Rule 9 expressly states:

“This rule is not intended to prohibit judges from serving without compensation on advisory or other committees, commissions or boards established for charitable, educational or religious purposes or for the purpose of the improvement of judicial administration.”

We do not believe that the time consumed in attendance at meetings and in the performance of duties, if any, outside of such meetings, would be such as to interfere with the performance of the judge’s duties, as proscribed by Canon XXIII. With respect to the standards of Canon XXIV and Rule 9, we have stated that the judge takes no part in the solicitation of funds; but he does participate in fund-raising discussions and decisions. The purpose of the Canon and Rule is to prevent a judge from using his position to induce others to contribute to the charitable enterprise. Therefore, his direct or indirect solicitation of contributions is proscribed. E.g., [Opinion Request Nos. 1971-05, 1975-09, and 1975-10]. However, a judge is expressly permitted to serve on the boards of charitable, educational or religious organizations. An ordinary function of a governing charitable board is to decide whether fund-raising activities should occur. We see no impediment to the judge participating in purely internal discussions and decisions within the confines of the governing board relating to these activities, provided, of course, that the judge’s name is not used, directly or indirectly, in the solicitation of the funds or the promotion of the project.

Second, the judge has informed the Committee that, in 1972, he purchased a one-third investment interest in a limited partnership share of an oil venture, and his then law partner

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purchased the two-thirds interest. The investment has generated no income. It appears, according to the judge's letter, that the oil venture has failed. He is uncertain whether "that entity has dissolved [but] if it exists and has value, then presumably the limited partnership share [owned by himself and his former partner] might have value." There are no other business ties between the judge and his former partner. Under these circumstances, the judge inquires whether he must disqualify himself in cases where his former law partner or the latter's new partner, is counsel of record.

On the facts stated, the Committee is of the opinion that disqualification is not required. In Maryland there is, of course, a statutory interdiction against judges hearing cases involving former partners, Cts. & Jud. Proc. Art. § 1-203; but the statute is not applicable here. (The cited section of the Maryland Code permits a judge, prior to qualification for judicial office, to enter into a written agreement with his former firm that the judge may, over a reasonable period of time, receive payments representing the "reasonable liquidated value" of his interest in his former practice; but the judge may not hear a case in which a partner or employee of his former firm is an attorney of record, during the time the judge is receiving payments under the agreement.)

The Committee does not find any reason under the Maryland Canons and Rules of Judicial Ethics to recommend disqualification. Canon XXV ("Personal Investments and Relations") imposes no ethical strictures under the circumstances related. Furthermore, the investment interest of the judge with the former partner appears, at this stage, to be of minimal, if any, value; and this is not the conduct of a business relationship, involving management, accounting or other functions so as to place the judge and former partner in such frequent contact as to give rise to an "appearance of impropriety," prohibited by Canon IV.