

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 1981-09

**Date of Issue:** October 30, 1981

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Judge Not to Hear Cases Involving Successor Law Firm from Which Judge Receives Referral Payments

Prior to his appointment to X Court in 1971, a judge had referred two pending matters to a local law firm. The fees, when collected, were to be divided equally between the judge and that firm. Since the matters had not been resolved by 1974, the judge asked this Committee whether it was proper for the judge to continue to hear cases in which that law firm participated. [Opinion Request No. 1974-07 (unpublished)] (issued 26 December 1974) stated in part as follows:

“The Committee is of the opinion that this is prohibited by Section 1-203(c) [of the Courts and Judicial Proceedings Article] which provides that a judge may not hear a case in which a partner or employee of his former firm or successor in interest is an attorney of record. The Committee regards the thrust of this prohibition as a continuing one which will require you to disqualify yourself until such time as both matters being handled by that firm have been finally concluded and you have received your share of the fee which was collected.

We are cognizant of the inconvenience involved, but agree that no other interpretation is possible.”

At the present time, one of the two referred matters is still unresolved. Since there are only two judges in the county, this judge’s continued inability to hear any case involving this law firm has caused some administrative problems. Consequently, the Committee has been asked to reconsider its 1974 ruling in light of the continued passage of time.

The fee which is to be paid to the judge is to be a percentage of the sales price of certain properties when the properties are sold. The Committee is of the opinion that the mere lapse of time since the judge has been on the Bench and since the matter has been referred to the law firm does not affect the viability of the 1974 ruling. The rationale remains as valid today as seven years ago that a judge who will be sharing fees with an attorney should not be permitted to hear a case involving that attorney. Disapproval of such conduct arises not only from a reading of Section 1-203(c) of the Courts Article but also from Canon IV of the Canons of Judicial Ethics, which compels a judge’s official conduct to be free even from the “appearance” of impropriety.

While the Committee again recognizes, as it did in 1974, the inconvenience involved, it cannot permit a judge’s professional involvement with an attorney from whom substantial fees will be forthcoming. The Committee would urge the judge and the law firm to attempt to find an alternative solution, so that a fixed sum could be agreed upon and presently paid to the judge in full settlement of the matter.

Parenthetically, it should be noted that this type of problem would not recur. Judicial Ethics Rule 5A requires the Committee to approve the “reasonableness” of the pay-out period to a judge

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for matters pending when he assumes judicial office.\* Unfortunately, that is of small comfort here, since Rule 5A only applies to agreements entered into on and after July 1, 1981.

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\* The requirement for review was deleted from the Maryland Code of Judicial Conduct (2005), per the Report of the Judicial Ethics Committee and 153<sup>rd</sup> Report of the Rules Committee, which read in pertinent part:

The Committees have not included in the list of duties of the Judicial Ethics Committee the duty to review an agreement between a judge-designate and his or her law firm for payments relating to the liquidated value of the judge-designate's interest in the practice. ... The agreements seldom are submitted sufficiently in advance of qualification to allow meaningful review, and the nature of review is ministerial, pertaining only to compliance with a presumptive 5-year period for payout. Thus, the Judicial Ethics Committee is in a position of approving an agreement containing such a period notwithstanding other provisions egregiously in violation of other provisions of the Code of Judicial Conduct. The provisions of Code, Courts Article, §1-203, which allow agreements, and mandate recusal, are not affected.