

Maryland Judicial Ethics Committee

Opinion Request Number: 1984-05

Date of Issue: November 5, 1984

■ Published Opinion Unpublished Opinion Unpublished Letter of Advice

Disqualification of Judge Who Co-Owns Property with Lawyer Who Appears Before Judge

A judge has asked whether he should disqualify himself from cases where one of the attorneys is a co-owner with the judge and his wife of a 2.02 acre parcel of land. The attorney in question, Attorney A, and the judge never were partners but he did obtain a 1/3 interest in the land in question in lieu of a monetary fee when he and Attorney A jointly represented a client in a matter occurring before the judge was elevated to the bench. The land in question will not pass a Health Department percolation test and, consequently, has a limited resale value at the present time. The judge's only activity with respect to the land is to pay his share of real estate taxes.

Canon XXV, Personal Investments and Relations, provides, in pertinent part, that: "A judge should abstain from making personal investments in enterprises which are apt frequently to be involved in litigation in the court; ... It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse a suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties. ..."

Canon XIII, Kinship or Influence, tells us that a judge "should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by kinship, rank, position, or influence of any party or other person. ..."

The following is taken from Rule 2 of the Rules of Judicial Ethics, "... [A judge] shall not participate in any matter in which he has a significant financial interest or in which he previously acted as a lawyer. ..." The Committee note to Rule 2 observes that:

This ethics rule covers those major conflicts of interest which should automatically disqualify a judge. There will be many lesser situations in which a judge's own sense of propriety may indicate that he disqualify himself. There may also be even lesser situations in which the judge will determine that full disclosure to counsel is adequate.

Canon 5 of the Code of Judicial Conduct of the American Bar Association, although not officially binding in Maryland, is illuminating. The general heading is that "A judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties and Section C says the following:

C. Financial Activities

(1) A judge should refrain from financial and business dealings that 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 lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of Subsection 1, a judge may hold and manage investments, including real estate, and engage in any other remunerative activity, but should not serve as an officer, director, manager, advisor or employee

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of any business [emphasis supplied].

Later Canon 5(C) states:

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment he should divest himself of investments and other financial interests that might require frequent disqualification [emphasis supplied].

Whether or not a judge may preside in cases in which a fellow investor may appear before him as a lawyer first surfaces in [Opinion Request No. 1978-04,] dated June 30, 1978, in which the Committee advised that the judge in question disqualify himself in cases where his fellow investor was State's Attorney "because of the peculiar combination of facts here involved particularly in light of your mutual participation in the joint venture and the State's Attorney's statement quoted in the newspaper article which you enclosed with your letter of inquiry." We are in the dark as to what the newspaper article may have conveyed.

In the case before us, the judge's investment in the property about which he asks appears to be a modest one and his active participation in its management non-existent. Nor is his position that of a judge-landlord vis-a-vis a lawyer tenant ([Opinion Request Nos. 1976-11 and 1979-03]). Unlike the judge in [Opinion Request No. 1978-04], he was never a partner with his co-tenant. His business involvement with him is minimal as was any past legal association with him. We do not think, therefore, that the judge need automatically to disqualify himself in matters in which Attorney A appears before him, provided that the judge's co-ownership of the parcel of land in question is made known to counsel for both sides and their clients so that they may have a chance to object to the judge's participation in the case or waive their objections.

If there is an objection the judge should not sit on the case unless there are compelling circumstances to the contrary.