

Maryland Judicial Ethics Committee

Opinion Request Number: 1984-08

Date of Issue: January 3, 1985

■ Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Continue to Own Real Property Where it Is Necessary to Institute Suit to Quiet Title

A judge ... has asked the Committee for an opinion as to whether the judge may continue to maintain an interest in unimproved real estate within his court's jurisdiction where a suit to quiet title will be necessary.

The judge's interest in the real property is not described beyond that set forth above.

The defect in the title of the real property was brought about by a defective conveyance in 1898. Efforts to locate heirs has proven unsuccessful.

The judge does not intend to take an active participation in the litigation as an owner of the real property and will abstain from any judicial function involving the litigation.

Procedure for bringing an action to quiet title has been simplified by § 14-108 of the Real Property Article and its predecessor statutes. Since the heirs cannot be located, service of process will be by posting or publication. The judgment of the court will be solely to determine that the judge receive absolute ownership of the property. Presumably, the necessary evidence will be by affidavit following a default.

Canon XXVIII states:

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

The judge making the inquiry has already indicated that he will recuse himself from the action to quiet title. Nor does the inquiry in this case implicate the considerations discussed in such opinions as [Opinion Request Nos. 1975-06, 1976-11, 1977-06, 1981-14, and 1982-05], all of which relate to commercial use of property or to some action that would greatly enhance the value of the property. Neither is the judge's proposed action in this case prohibited by the considerations discussed at some length in In Re Foster, 271 Md. 449 (1974).

We are also aware that Canon XXV provides in pertinent part:

A judge should abstain from making personal investments in enterprises which are apt frequently to be involved in litigation in the courts; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

The action the judge desires to take is the institution of a proceeding to quiet title. So far as appears from his inquiry, this will be a single lawsuit. Therefore, his ownership of the property in question cannot be considered an investment in an enterprise which is "apt frequently to be involved in litigation in the court ..." Moreover, his participation in this single lawsuit would not, in our

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Page 2 of 2

opinion, tend to arouse any suspicion as to “his impartial attitude of mind in the administration of his judicial duties.” Since it is not per se improper for a judge to own property, it is not improper per se for him to take action that may be required to perfect the title to that property provided he abstains “from performing or taking part in any judicial act” involved in that procedure.