

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2007-18

**Date of Issue:** February 4, 2008

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

Retired Judge, Approved for Recall, May Serve as Personal Representative of an Estate

**Issue:** May a retired judge, approved for recall, serve as personal representative of an estate?

**Answer:** Yes.

**Discussion:** The requesting judge has been named personal representative in the will of the decedent, a long-time friend, for whom the judge held durable powers-of-attorney for health care and financial matters. The judge has retained counsel to represent the judge in carrying out the duties of personal representative.

In general, with certain exceptions, a judge is prohibited from serving as a fiduciary. Rule 16-813, Maryland Code of Judicial Conduct, Canon 4E.<sup>1</sup> Retired judges, approved for recall, are subject to Rule 16-813, with certain exceptions. Canon 6C. Among those exceptions is Canon 4E.

It is conceivable that in the course of administering an estate other ethical issues might arise, *e.g.*, frequent transactions with lawyers likely to come before the court. Canon 4D(1). However, there is nothing evident in the judge's request to suggest that any such issues might arise. Indeed, by retaining counsel, the requesting judge has proactively addressed the question of whether any function of the administration of the estate might entail the practice of law. Canon 4G.

For these reasons, it is the opinion of the Committee that the judge may serve as personal representative of the estate.

**Application:** The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the requestor described in this opinion, to the extent of the requestor's compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this opinion.

Additionally, this opinion should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in

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<sup>1</sup> By definition, the term "fiduciary" includes administrator, attorney-in-fact by power of attorney, executor, guardian, personal representative, and trustee. Rule 16-813, Terminology.

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the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If you engage in a continuing course of conduct, you should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.