

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 92-5

Issued February 14, 1992

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

[Not Current-subsequent rule amendments to Canons 1 through 6, Ohio Code of Judicial Conduct, eff. May 1, 1997]

SYLLABUS: A judge serving as administrator or executor for the estate of a family member should not prepare and file the probate documents.

OPINION: The question presented is whether a judge serving as administrator or executor for the estate of a family member may also prepare and file the probate documents.

Under Canon 5D of the Code of Judicial Conduct a judge is given limited permission to serve as a fiduciary. Canon 5D is set forth below.

A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his [her] family, and then only if such service will not interfere with the proper performance of his [her] judicial duties. 'Member of his [her] family' includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

- (1) He [she] should not serve if it is likely that as a fiduciary he [she] will be engaged in proceedings that would ordinarily come before him [her], or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he [she] serves or one under its appellate jurisdiction.
- (2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him [her] in his [her] personal capacity.

Thus, Canon 5D grants a judge limited permission to serve as an executor or administrator for the estate of a "member of his [her] family" if such service will not interfere with the

proper performance of judicial duties. See Bd. of Comm'rs on Grievances and Discipline, Ohio Sup.Ct, Op. 91-21 (1991) (allowing a judge to serve as executor of the estate of a close friend with whom the judge maintained a "close familial relationship").

As to the practice of law by judges, the Code is not permissive. Under Canon 5F "[f]ull-time Judges, including those persons designated as Judges in the Compliance section of this Code, should not practice law." There is also a statutory prohibition on the practice of law by judges.

No judge of any court of record in this state shall engage in the practice of law during his term of office, either by appearing in court, by acting as advisory or consulting counsel for attorneys or others, by accepting employment or acting as an attorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or trust company, or by otherwise engaging in the practice of law in this state, in or out of the courts, except as provided [for part-time judges] in section 1901.11 of the Revised Code.

Ohio Rev. Code Ann. §4705.01 (Baldwin 1991).

Based on Canon 5F, one state has advised that a judge may not represent a relative in processing a small estate since Canon 5F prohibits a judge from practicing law. Pennsylvania Bar Ass'n, Op. 89-20 (undated). However, the Board found no opinions addressing the precise issue of whether a judge who is permitted by the Code to serve as executor or administrator could also prepare and file the probate documents.

The Board is aware that a fiduciary of an estate has discretion as to whether or not to appoint an attorney for an estate and that any person may represent his or her own interest in any estate, matter, action, or proceeding." See Ohio Rev. Code Ann. § 2109.03 (Baldwin 1987). Even so, the preparation and filing of probate documents are activities which constitute the practice of law. In conclusion, based upon the unequivocal prohibition on the practice of law by judges found within Canon 5F of the Code of Judicial Conduct and Section 4705.01 of the Ohio Revised Code, this Board's opinion is that a judge serving as administrator or executor for the estate of a family member should not prepare and file the probate documents.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.