Maryland Judicial Ethics Committee

Opinion Request Number: 1974-06

Date of Issue: October 23, 1974

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Judge May Contract with Successor in Law Practice for Payments of Indefinite Amounts in Contingent-fee or like Matters

This is a formal response to your inquiry of September 20, addressed to me as the Chairman of the Judicial Ethics Advisory Committee.

You state that you took office as [a judge in] 1974; that prior to taking office, you entered into agreements with a member of the bar of _____ County and with a law firm in _____ County under which the individual and the firm respectively undertook to complete the administration of two estates in _____ County and six estates in _____ County, for which you had been acting as counsel for the personal representatives.

The essential thrust of both agreements was that the law firm and the individual practitioner would complete the settlement of the estates and would receive such fees as might be authorized by the Orphans' Courts for _____ County and for _____ County and that the fees so received would be divided with you on the basis of the hours spent by you, on the one hand, and by the new counsel, on the other.

You indicate that because of the uncertainty of the amount of work involved, it is impractical to fix any definite dollar amount which you may be entitled to receive and further that a question was raised by the Secretary of the Judicial Conference as to whether the agreements in the form in which they were prepared comply with the requirements of Section 1-203(b) of the Courts and Judicial Proceedings Article:

> "Prior to qualification for judicial office, a judge may agree with his former law firm, or his successor in practice, that the judge may receive over a reasonable period of time one or more payments representing the reasonable liquidated value of his interest in his former practice as of the date of the termination of practice. The agreement shall be in writing and a copy shall be filed with the secretary of the Maryland Judicial Conference. In determining reasonable liquidated value, the judge's interest in contingent fees with respect to matters then pending in his law office may be taken into account."

This provision, which became effective on July 1, 1974, supplemented Maryland Code (1957, 1973 Repl. Vol.) Art. 26, § 144(b) which dealt only with the practice of law by judges of the District Court. The recodification in 1974 made the prohibition applicable to all judges and the provision was apparently expanded to permit the receipt of the reasonable liquidated value of a judge's interest in his former law practice, including contingent fees later to be paid with respect to matters still pending at the termination of his practice.

From a purely technical standpoint, your inquiry would call for the determination of a question of statutory construction, which is beyond the province of this Committee. As a practical matter, however, if recognition is given to the realities of the situation: that is, to the impossibility of fixing

a dollar amount for services heretofore performed which will be compensated by a fee to be fixed at some future date by an orphans' court, it would seem to this Committee that it is very unlikely that any tribunal having jurisdiction in the premises would insist upon a more rigid compliance with Section 1-203(b) provided (i), that any amounts which you may receive in the future are included in the Financial Disclosure Statements which you will hereafter be required to file; and (ii), that you extend to the firm and to the individual with whom you have entered into agreements the prohibition contained in Section 1-203(c) which stipulates that a judge receiving payments shall not hear a case in which his successor in interest is an attorney of record.