

FORMAL OPINION NO. 5\*

Statement of Facts:

A district judge in the State of Idaho in a district where there are two regularly presiding district judges has an opportunity to act as administrator in an estate in a probate court in one of the counties of that judicial district.

Question:

Would it be proper for the district judge to accept such employment, with the distinct understanding that if any question arising in the probate of said estate be appealed to the district court, the judge would immediately resign from his position as administrator, accept no payment or fees for services rendered, and disqualify himself from taking any part whatever in said appeal?

Canon of Judicial Ethics Involved:

Canon 27 of the Judicial Ethics, adopted by the American Bar Association provides as follows:

"EXECUTORSHIPS AND TRUSTEESHIPS. While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any judicial or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented requires investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him."

Opinion:

The opinion of the committee is that a district judge in the State of Idaho in a district where there are two

regularly presiding district judges, may act as administrator or executor in an estate in a probate court in one of the counties of his judicial district, provided that if any question arising in the probate of the estate be appealed to the district court, such district judge would immediately resign from his position as administrator, accept no payment or fees for services rendered, and disqualify himself from taking any part whatever in said appeal.

It is important to remember this arises in a district where there are two district judges, so that upon disqualification of one the other district judge automatically assumes jurisdiction, thus making unnecessary any undue delay in the hearing of such appeal in the estate matter.

The committee believes that the conditions under which the district judge in question is willing to act as administrator are such that it fully conforms to the principles provided in Canon 27 of the Judicial Ethics adopted by the American Bar Association and it is proper for the judge to act as administrator in this case.

DATED this 17th day of June, 1957.

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\*This opinion was written before the adoption of the Code of Judicial Conduct. The opinion was disapproved by the Idaho State Bar at its annual meeting in 1957. See, Resolution at page 88, Annual Proceedings of the Idaho State Bar (1957). Further, questions concerning judicial conduct are subject matter for regulation of the Idaho Judicial Council.