

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 91-07
(November 4, 1991)

**Acting as Representative and Trustee of
the Estate of a Close Personal Friend**

Issue

May a judge serve as personal representative of the estate of a close personal friend who was a member of the State Bar of Arizona, and as trustee of a testamentary trust provided for in the last will and testament of such close personal friend?

Answer: No.

Facts

An attorney and close personal friend of a superior court judge passed away in October 1991, having named the judge as personal representative of his estate. The deceased attorney also named the judge as trustee of a testamentary trust provided for in the deceased attorney's last will and testament. The superior court judge would like to serve as personal representative and trustee if possible.

Discussion

Canon 5D specifically provides that "a judge should not serve as the executor, administrator, personal representative, trustee, conservator, guardian, or any other fiduciary, except for the estate, trust or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties."

Canon 5D(1) provides that a judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before him or her, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

Canon 5D(1) would appear to preclude a judge from serving as personal representative or trustee under the facts presented. The decedent was not a member of the judge's family as defined in Canon 5D. In addition, it appears that the judge is precluded from serving as personal representative and trustee by virtue of the provisions of Canon 5D(1) as well. It appears likely that the estate proceeding might ordinarily come before the judge who has been designated personal representative and trustee pursuant to the terms and provisions of the decedent's Last Will and Testament.

Therefore, it would be improper for a judge to serve as personal representative and trustee under the facts presented.

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Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 5D and 5D(1) (1985).