

JEAC 1996-3
September 11, 1996

You request an advisory opinion¹ on whether you may serve as successor trustee for trusts that your friends, Ruth and Richard Roe, have created for their three children. The Roes have also asked you to serve as their alternate patient advocate if health care decisions must be made on their behalf.

Canon 5D provides:

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 the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes a spouse, child, grandchild, parent, grandparent, or other relative by blood, adoption, or marriage or person with whom the judge maintains a close familial relationship.

Since you are not related to the Roes, the question is whether they are persons with whom you maintain a close familial relationship. The limitation on fiduciary activity was added because of a concern that private parties might appear to gain some advantage by having a judge act as fiduciary. However, it is recognized that this concern could be outweighed by important countervailing considerations such as a family or close familial relationship. See Jeffrey M. Shaman et al., *Judicial Conduct and Ethics* § 7.24 (2d ed. 1995).

Considering the purpose behind the limitation, we conclude that your relationship with the Roes, as described in your letter, justifies your service in these capacities. Ruth Roe has been your closest friend for many years. You and your husband have designated her in your wills as guardian of your children. It is obvious that the Roes, who live in Arizona, have asked you to serve because of your close relationship and not to gain some advantage by having a judge act as fiduciary.

The only other requirement is that your service not interfere with the proper performance of your judicial duties. Your service is contingent and hopefully will never be needed. If it turns out that you are called upon to serve, it seems unlikely that your duties would interfere with the proper performance of your judicial duties.

FOR THE COMMITTEE:
BERNARD BALICK, Chair

¹ This opinion has been edited to maintain confidentiality in accordance with Ct. Jud. R. 13 (d).