Maryland Judicial Ethics Committee

Opinion Request Number: 2014-03

Date of Issue: February 5, 2014

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Part-Time Master May Not Accept Appointment as Part-Time State's Attorney in the District Court

Issue: May a part-time, Title IV D child support Circuit Court master accept employment as a part-time State's Attorney in the District Court of the same jurisdiction?

Answer: No.

Facts: A part-time, Circuit Court child support master (the "Requestor") wishes to apply for a position as a part-time prosecutor in the District Court of the same jurisdiction in which he/she serves as a master. The proposed part-time prosecutor position would be strictly in the District Court. The master's IV D child support cases are all in the Circuit Court.

Discussion:

The Code of Conduct for Judicial Appointees ("Code") governs the conduct of a part-time master. *See* "Application" section (b) of Maryland Rule 16-814. The Code provides, in pertinent part:

> Rule 1.2. Promoting Confidence in the Judiciary
>
> (a) A judicial appointee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
> (b) A judicial appointee shall avoid conduct that would create in reasonable minds a perception of impropriety.
>
> Rule 3.1. Extra-Official Activities in General
>
> A judicial appointee may engage in extra-official activities, except as prohibited by law or this Code. When engaging in extra-official activities, a judicial appointee shall not:
> (a) participate in activities that will interfere with the proper performance of the judicial appointee's official duties;
> (b) participate in activities that will lead to frequent disqualification of the judicial appointee;
> (c) participate in activities that would appear to a reasonable person to undermine the judicial appointee's independence, integrity, or impartiality;
> (d) engage in conduct that would appear to a reasonable person to be coercive; or

> (e) make inappropriate use of court premises, staff, stationery, equipment, or other resources.
>
> Rule 3.10. Practice of Law
>
> (a) In General. Except as expressly allowed by this Rule, a judicial appointee shall not practice law.
> (b) Exceptions. (1) A judicial appointee may act self-represented in a matter involving the judicial appointee or the judicial appointee's interest and, if without compensation, may give legal advice to and draft or review documents for a member of the judicial appointee's family.
> (2) To the extent not expressly prohibited by law or by the appointing authority and subject to other applicable provisions of this Code, a part-time judicial appointee who is a lawyer may practice law, provided that:
> (A) the judicial appointee shall not use his or her position to further the judicial appointee's success in the practice of law; and
> (B) the judicial appointee shall not practice or appear as an individual in a matter involving the judicial appointee or the judicial appointee's interest in the appointing court.
> …

It is clear that a part-time master may engage in the practice of law, with certain limitations. As in all extra-official activities, however, a part-time master must also be mindful of the standards for the judicial appointee imposed by the Code.

In the circumstances described, an ethical issue potentially would arise if the Requestor had contact with an individual in both child support court and in District Court, including not only criminal defendants, but also victims of crime, witnesses, and family members of defendants, crime victims, and witnesses. This could lead to frequent disqualification as the child support master, a violation of Rule 3.1. Indeed, it would be difficult, if not impossible, for the Requestor to identify and keep track of the people encountered in each of the two courts.

In addition, there is a potential for public perception of a conflict of interest arising from the dual employment itself. District Court criminal cases are appealed to the Circuit Court. It is conceivable that a defendant would perceive a disadvantage in the Circuit Court if he/she was aware that the attorney who had prosecuted him/her below worked in the same court that would rule on the appeal. Comment [1] to Rule 1.2 of the Code states: "Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety." Thus, even the appearance of a conflict of interest may be sufficient to run afoul of Rule 1.2.

For the Judiciary to be independent, it is important that it maintain a separate identity from the State's Attorney's office. If a citizen encounters the same individual working for both the Judiciary and the State's Attorney, that individual could reasonably question whether the court would be impartial and independent of the State's Attorney in his or her case.

In light of the reasoning set forth above, the Committee advises against concurrent employment with the Judiciary and the State's Attorney's office.

Application: The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the requestor described in this opinion, to the extent of the requestor's compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this opinion.

Additionally, this opinion should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusions of the Committee. If you engage in a continuing course of conduct, you should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.