

MARYLAND JUDICIAL ETHICS COMMITTEE

Opinion Request Number: 2018-38

Date of Issue: January 30, 2019

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

A District Court Commissioner may not work as an Independent Contractor to sell Beauty Products with Mary Kay Beauty Products

Issue: Whether a District Court Commissioner may accept employment as a beauty consultant, selling beauty products as an independent contractor for Mary Kay Beauty Products.

Answer: No.

Facts: The Requestor is a District Court Commissioner. The Requestor seeks advice whether he/she may become an independent contractor for Mary Kay Beauty Products. The Requestor would be a beauty consultant, selling beauty products (facial and skin products).

Analysis: District Court Commissioners are subject to the Maryland Code of Conduct for Judicial Appointees (the “Code”), Title 18, Chapter 200 of the Maryland Rules. Rules 18-203.1 through 18-203.15 of the Code address extra-official activities by judicial appointees. The general rule is contained in Rule 18-203.1.¹ It provides that, unless

¹ Rule 18-203.01 states:

Extra-Official Activities in General.

Except as prohibited by law or this Code, a judicial appointee may engage in extra-official activities. 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

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otherwise prohibited by law or the provisions of the Code, judicial appointees may engage in activities outside of their judicial duties as long as the activity in question: (1) does not interfere with the performance of the appointee’s official duties; (2) will not lead to frequent disqualifications; (3) will not undermine a reasonable person’s confidence in the judicial appointee’s independence, integrity, or impartiality; (4) will not appear to be coercive to a reasonable person; and (5) does not make inappropriate use of the Judicial Branch’s human or physical resources. The rules that follow encourage,² prohibit,³ or restrict⁴ specific activities.

Rule 18-203.11 addresses extra-official business activity, as follows:

Financial, Business, or Remunerative Activities

(a) A judicial appointee may hold and manage investments of the judicial appointee and members of the judicial appointee's family.

(b) Except as permitted by Rule 18-203.7, a full-time judicial appointee shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judicial appointee may manage or participate in:

(1) a business closely held by the judicial appointee or members of the judicial appointee's family; or

(e) make inappropriate use of court premises, staff, stationery, equipment, or other resources.

² See, e.g., Rule 18-203.7 “Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities.”

³ See, e.g., Rule 18-203.6 “Affiliation with Discriminatory Organizations”; Rule 18-203.9 “Service as Arbitrator or Mediator”; and Rule 18-203.10 “Practice of Law.”

⁴ See, e.g., Rule 18-203.3 “Testifying as a Character Witness”; Rule 18-203.4 “Appointment to Governmental Positions”; and Rule 18-203.8 “Appointments to Fiduciary Positions.”

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(2) a business entity primarily engaged in investment of the financial resources of the judicial appointee or members of the judicial appointee's family.

(c) A judicial appointee shall not engage in financial activities permitted under sections (a) or (b) of this Rule if they will:

(1) interfere with the proper performance of the judicial appointee's official duties;

(2) lead to frequent disqualification of the judicial appointee;

(3) involve the judicial appointee in frequent transactions or continuing business relationships with attorneys or other persons likely to come before the appointing court; or

(4) result in violation of other provisions of this Code.

Rule 18-203.11 makes clear that a judicial appointee may not engage in extra-official activity as an officer or employee of a business entity unless that enterprise is owned by the judicial appointee or members of his or her family.⁵ The Rule does not explicitly address service as an independent contractor. In the Committee's view, however, there is no reason to distinguish between an extra-official activity that is based upon an independent contractor relationship and one that is based on an employment relationship. To recognize such a distinction would permit judicial appointees to skirt the strict limitations found in Rule 18-203.11 regarding working for private businesses.

There are other concerns involved if a Commissioner works for a private business. This Committee recently opined that a full-time "District Court Commissioner may not engage in the rideshare business as an independent contractor driver for Uber, Lyft, Sidecar, or similar companies." Opinion Request No. 2018-03, issued on April 3, 2018. In reaching that decision, we relied on Rule 18.203.11, as well as other concerns with a Commissioner engaging in extra-judicial employment in a rideshare business.

⁵ Rule 18-200.3(b) defines "family" as:

a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or individual with whom the judicial appointee maintains a close familial relationship.

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We noted that, because the nature of ridesharing could generate contacts between the Commissioner/driver and individuals who have had prior contact with the Commissioner in a judicial capacity, gratuities may generate the appearance of impropriety. We stated that, whenever a discretionary exchange of money for services occurs between a judicial appointee and a member of the public, serious issues arise with respect to the appearance of impropriety. This violates Rule 18-201.2, which states:

(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.

We also noted that a tipping passenger might believe that the act of giving a gratuity could have some influence on future dealings. This violates Rule 18-202.4(c), which states: “A judicial appointee shall not convey or permit others to convey the impression that any person is in a position to influence the judicial appointee.”

The above concerns similarly are present if a Commissioner works as a beauty consultant, selling beauty products for financial gain. A person buying products for which a Commissioner receives a commission has the potential to violate, not only Rule 18-203.11, but also Rules 18-201.2 and 18-202.4(c). Accordingly, the Committee concludes that the Code of Conduct for Judicial Appointees does not permit a judicial appointee to act as a beauty consultant for Mary Kay Beauty Products, either as an employee or an independent contractor.

Application: The Maryland 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 amendments to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If the Requestor engages in a continuing course of conduct, he or she 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.