

Maryland Judicial Ethics Committee

Opinion Request Number: 2019-26

Date of Issue: October 15, 2019

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A District Court Commissioner may work as a substitute school teacher.

Issue: May a District Court Commissioner work as a substitute school teacher?

Answer: Yes.

Facts: The requestor, a District Court Commissioner, seeks an opinion whether he/she may be employed by a public-school system as a substitute school teacher for remuneration. The remuneration would be the standard substitute teacher day rate. According to the requestor, the task would be “to perform the instruction and classroom management process for teachers absent for a day.” The duties would include “taking attendance, explaining homework and maintaining classroom cleanliness and order.” The position would be as needed and as the requestor is available. Thus, it would not adversely affect the requestor’s responsibility to the judiciary.

Discussion: 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. It provides:

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

Rule 18-203.11 provides:

Financial, Business, or Remunerative Activities.

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- (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
 - (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.

The requestor has not advised whether he/she is full-time or the number of hours when on duty, but the Committee Note to Rule 18-200.3 provides that District Court Commissioners are regarded as full-time judicial appointees. Thus, this request is governed by Rule 18-203.11 (b). In Opinion 2018-38, filed on January 30, 2019, we opined that a District Court Commissioner could not sell beauty products for Mary Kay Beauty Products. The employer in that situation was a private business entity.

We note that Rule 18-203.7 permits judicial appointees to participate in certain activities for, *inter alia*, educational institutions not conducted for profit. The Rule's focus is on charitable, educational and other activities that are non-remunerative in nature and does not apply to this matter. In contrast, Rule 18-203.11 addresses remunerative activities. The question raised by this matter is whether the hiring entity, a public-school system, is a "business entity" within the meaning of Rule 18-203.11 (b).

The word "business" is very broad and has several meanings. Generally, however, when used to describe an entity, it refers to an entity engaged in commerce. A search of judicial ethics decisions in other jurisdictions has not revealed a decision applying the language

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of Rule 18-203.11 to employment by a public-school system, as distinguished from a private business entity. We observe that the proposed employment does not raise conflict of interest concerns, does not violate the restrictions in either Rule 18-203.1 or Rule 18-203.11(c), and is not inconsistent with the reasons behind those Rules. Although not on point, the Model Board of Education Ethics Regulations are consistent with our conclusion. *Cf.* COMAR 19A.05 Appendix A, section 3(b)(2) (“Business entity” does not include “a governmental entity”).¹

We recognize that the public-school system is part of the State Department of Education, a principal department in the executive branch of government. There is no blanket prohibition against employment of a judicial appointee by executive agencies, however. A substitute teacher is not a “governmental position” within the meaning of Rule 18-203.4 (judicial appointee shall not accept appointment to a governmental position unless it concerns the law, the legal system, or the administration of justice). It does not violate the prohibition against assuming or discharging duties in the legislative or executive branch of government. *See* Maryland Declaration of Rights, Article 8 (no person exercising the functions of one branch shall assume or discharge the duties of any other branch). Also, it is not an “office” within the meaning of Article 33 or 35 of the Maryland Declaration of Rights (judicial appointee may not hold any other “office” under the Constitution or laws of this State). The restrictions imposed by the above authorities are directed at the discretionary exercise of the sovereignty of the State. *See* JEC Opinion No. 2016-11. A substitute teacher does not exercise the sovereignty of the State.

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 you engage in a continuing course of conduct, you should keep

¹ A recent unreported opinion of the Committee analyzed whether a District Court Commissioner could take on secondary employment as a nurse at a public school. In that case, the nurse position was staffed by the school through a business entity, which had a written independent contractor agreement with the prospective employee nurse. The Committee opined that such employment was prohibited by the Code, consistent with our holding here.

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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.