

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-20

Date of Issue: November 13, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A District Court Commissioner may work as an Advocate with the Youth Advocate Program, Inc.

Issue: May a District Court Commissioner accept employment as an Advocate with the Youth Advocate Program, Inc.

Answer: Yes.

Facts: The Requestor is a District Court Commissioner who seeks an opinion as to whether the Commissioner may accept part-time employment as an Advocate for the Youth Advocate Program, Inc., a non-profit agency that provides non-residential, community based programs for youth and families involved in the juvenile justice, child welfare, behavioral health and education systems. The children participating in the program come from various backgrounds and circumstances and the Requestor would be a mentor to a child and would advocate for the child as appropriate. The duties include: ensuring that the youth receive services, advocacy hours, contacts, specified activities and moneys required by the youth's service plan; developing with each young person a set of objectives to be achieved during his/her participation in the program and following graduation; ensuring that the young person is participating in an appropriate educational/vocational program or is maintaining employment; and taking each young person to places of interest and introducing them to new activities and new ways of doing things. Each child in the program is also assigned a case worker and a social worker.

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, which 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;

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-20

Date of Issue: November 13, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 2 of 4

- (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.

The rules that follow encourage,¹ prohibit,² or restrict³ specific activities.

Rule 18-203.11 addresses extra-official business activity:

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

(1) a judicial appointee may manage or participate in:

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

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

(2) a District Court Commissioner may serve as a part-time employee of a business entity if (A) upon full and accurate disclosure by the Commissioner of the nature of the employment, including the time expected to be devoted to it and the expected compensation to be received, the employment is approved by the Chief Judge of the District Court; and (B) the employment is not in conflict with section (c) of this Rule. Approval of part-time employment pursuant to this subject may be revoked by the Chief Judge at any time for good cause.

(c) A judicial appointee shall not engage in financial activities permitted under subsections (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;

¹ See, e.g., Rule 18-203.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities.

² 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.

³ 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.

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-20

Date of Issue: November 13, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 3 of 4

- (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 (b)(2), which became effective on August 1, 2020, added a subsection that specifically provides that District Court Commissioners may work for business entities. Previously, the rule prohibited, with limited exceptions, judicial appointees from working for business entities. Thus, we opined in Opinion 2018-38 that a District Court Commissioner could not sell items for Mary Kay Beauty Products, which was a private business entity. In Opinion 2019-26, we concluded that a District Court Commissioner could work as a substitute teacher because public school systems are not business entities. The current rule permits the Requestor to work for a business entity⁴ as long as the Requestor complies with the disclosure requirements and receives the approval of the Chief Judge of the District Court.

While some of the children involved in the program may have pending juvenile or child welfare cases, we do not believe that fact alone would preclude a District Court Commissioner from serving as an Advocate. Any cases involving the children likely would not be pending in the District Court and the duties as set forth in the Advocate job description do not provide for the employee to represent or be present with the youth in court. The Requestor acknowledges, however, that, in the event the part-time position conflicts in any way with his/her duties as a District Court Commissioner, he/she would resign the part-time position immediately.

Application: The Maryland Judicial Ethics Committee cautions that this Opinion is applicable only prospectively and only to the conduct of the Requestor described herein, 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 conclusion of the Committee. If the request for advice involves a continuing course of conduct, the Requestor should keep abreast of developments in the area of judicial ethics and, in the

⁴ Although the corporation is a nonprofit organization, it would still come under the definition of a business entity. As defined by Investopedia, a business is “an organization or enterprising entity engaged in commercial, industrial, or professional activities. Businesses can be for-profit entities or they can be nonprofit organizations that operate to fulfill a charitable mission or to further a social cause.” *See also* Md Code Ann. General Provisions § 5-101 (e) (“Business entity” means a person engaged in business, whether profit or nonprofit, regardless of form.)

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-20

Date of Issue: November 13, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 4 of 4

event of a change in that area or a change in facts, submit an updated request to the Committee.