

Maryland Judicial Ethics Committee

Opinion Request Number: 2010-26

Date of Issue: January 6, 2011

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Recalled Judge May Serve on County Governmental Task Force

Issue: A former judge approved for recall under Maryland Constitution, Article IV, § 3A has requested advice as to whether the judge may serve on a county governmental task force.

Answer: Yes.

Facts: As understood by the Committee, the task force is charged with reviewing county oversight mechanisms, researching best practices, and providing specific recommendations to the County Executive of that county. In addressing that charge, the task force will consider the establishment of an inspector general or similar “watchdog” position; review existing oversight mechanisms such as the county ethics board; research best practices utilized in other state and federal jurisdictions; and evaluate compliance of current practices with county policies and applicable law. The Committee further understands that the task force is responsible only for recommendations and will have no role in the adoption or implementation of those recommendations.

Discussion: A recalled judge is subject to the Maryland Code of Judicial Conduct, Maryland Rule 16-813, A-109, subject to certain exceptions not relevant to this request.

Rule 3.4 expressly provides that “[a] judge shall not accept appointment to a governmental committee, board, commission or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.” (Emphasis added). The comments to the Rules “implicitly acknowledge[] the value of judges accepting appointment” to bodies “that concern the law, the legal system, or the administration of justice” because of their “special expertise in [such] matters.” As a member of an advisory body concerned with “the law, the legal system, or the administration of justice” the requesting judge is permitted, from time to time, to appear at a public hearing or consult with an executive or legislative body regarding the work of the task force, pursuant to Rule 3.2. We are thus persuaded that task force’s charge and its responsibilities satisfies the requisite criteria for the judge’s participation.

But, as to any extrajudicial activities, Rule 3.1 provides that the judge must not “participate in activities that will interfere with the proper performance of the judge’s judicial duties;” or “participate in activities that will lead to frequent disqualification[.]” The comment to Rule 3.4 points out “[a] judge may not accept a governmental appointment that could interfere

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with the effectiveness and independence of the judiciary, assume or discharge an executive or legislative power, or hold another ‘office’ under the Constitution or laws of the United States or the State of Maryland.” (Emphasis added). It is the Committee’s opinion that a purely advisory task force does not involve the exercise of either legislative or executive power. On the other hand, opinions requiring dual or incompatible offices traditionally have been rendered by the Attorney General and not the Committee. The judge is cautioned to consider whether, because of service on the task force, the judge’s “impartiality might reasonably be questioned” in cases arising involving that county or its officials and thus, under Rule 2.11, require disqualification or recusal.

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 conclusion 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.