

Maryland Judicial Ethics Committee

Opinion Request Number: 2017-09

Date of Issue: May 11, 2017

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A Judicial Appointee's Secondary Employment as a Support Specialist for a Sexual Assault Hotline

Issue: May a District Court Commissioner accept secondary employment as a support specialist with a non-profit organization that serves victims of sexual abuse?

Answer: No.

Facts: The Requester is a District Court Commissioner who has asked the Committee's advice as to whether the Commissioner may accept secondary employment as a part-time support specialist with a charitable organization (the "Organization") which, among its other activities, operates a nation-wide hotline for victims of sexual assault. The Organization is the nation's largest anti-sexual violence organization. It assists victims and survivors of sexual assault, educates the public, carries out programs to prevent sexual violence, and ensures that perpetrators are brought to justice.

The Organization also provides crisis intervention and sexual assault victim support services for third parties such as colleges, boarding schools, and sexual assault service providers.

The duties of a support specialist include answering inbound crisis intervention telephone calls and online chats using crisis intervention practices to provide support to hotline users. The Requestor wishes to work as a support specialist for the Organization's national sexual assault hotline on a part-time basis.

Discussion:

District Court Commissioners are "appointed by and serve at the pleasure of the Administrative Judge of the district, subject to the approval of the Chief Judge of the District Court." Md. Constitution Art. IV § 41G(2). Commissioners receive applications for and determine probable cause for the issuance of criminal charging documents. They set bond or commit persons to jail in default of bond or release them on their own recognizance if circumstances warrant. Md. Code, Courts and Judicial Proceedings Article § 2-607. Commissioners also are responsible for the "issuance of civil interim peace orders and civil interim protective orders within the jurisdiction of the District Court when the Office of the Clerk of the District Court is not open." Md. Constitution Art. IV, § 41G(b)2.

District Court Commissioners are "judicial appointees" and, as such, are subject to the Maryland Code of Conduct for Judicial Appointees. Md. Rule 18-200.2(a). Rule 18-203.12 provides that a "judicial appointee may accept a reasonable compensation for extra-official activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judicial appointee's independence, integrity or impartiality."

Although the Committee has, in the past, recognized the propriety of District Court Commissioners pursuing part-time employment, in this instance, several Rules under the Code suggest forbearance on the part of the Commissioner as to the anticipated activity.

We begin with Rule 18-203.1, which states (emphasis added):

RULE 18-203.1. 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.

Further, Rule 18-202.11 states in pertinent part:

- (a) A judicial appointee shall disqualify himself or herself in any proceeding in which the judicial appointee's impartiality might reasonably be questioned. . . .

As laudable as is the Requester's willingness to serve an organization that exists to assist victims of sexual assault, it is the Committee's view that serving as a hotline support specialist creates insurmountable difficulties. The Organization's hotline is nationwide, which, of course, includes Maryland. There is no doubt that the Requester would be required to recuse himself or herself in a criminal case involving anyone whom the Requester has counseled over the hotline. However, there is no way that the Requester will know, in advance, that a particular case brought before the Requester involves a person whom he or she has counseled over the hotline. As a result, the Requester would be subject to disqualification in every criminal case where there is an allegation of sexual assault, every domestic violence protective order case involving sexual violence, or every peace order where there is an allegation of sexual assault.

So endemic is the problem that the Committee believes that the proposed activity would appear to reasonable persons to undermine the Commissioner's independence, integrity, or

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impartiality in violation of Rule 18-203.12, as well as lead to frequent instances of disqualification of the Commissioner in violation of Rule 18-203.11.

Accordingly, the Requester should not engage in the type of employment which would include the activities of a Sexual Assault Hotline Support Specialist.

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