

Maryland Judicial Ethics Committee

Opinion Request Number: 2013-12

Date of Issue: November 5, 2013

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Maryland Judge May Serve as Trustee of a New Jersey Non-Profit Addressing Access to Courts For Low Income/Culturally Disadvantaged Persons

Issue: May a sitting judge, or a retired judge recalled on temporary assignment, be a Trustee of a New Jersey non-profit whose goal is to enhance access to the courts for low-income individuals and culturally disadvantaged families?

Answer: Yes.

Facts: The requesting judge (“Requestor”) has asked whether it would be appropriate for him/her to serve as a Trustee of a non-profit organization (the “Center”) organized under the laws of New Jersey to provide social, legal and educational services to families in need in that state. One of the main goals is to enhance access to the courts for low-income individuals and culturally disadvantaged families. As a Trustee, the Requestor would not be required to personally solicit funds for the organization, nor would he/she be remunerated except for reasonable travel and other expenses incurred during the course of performing duties as a Trustee.

Discussion: This request involves the application of Rules 1.2, 3.1, 3.7, and 3.14 of the Maryland Code of Judicial Conduct (“Code”), Maryland Rule 16-813, set forth, in pertinent part, below.

Judges are allowed to participate in extrajudicial activities. Under Rule 3.1 “[a] judge may engage in extrajudicial activities, except as prohibited by law or this Code.” The Rule further states:

When engaging in extrajudicial activities, a judge shall not:

- (a) participate in activities that will interfere with the proper performance of the judge’s judicial duties;
- (b) participate in activities that will lead to frequent disqualification of the judge;
- (c) participate in activities that would appear to a reasonable person to undermine the judge’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.

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Thus, the Code allows judges to participate in extrajudicial activities provided those activities do not detract from the judge's ability to perform his or her judicial duties or from the judge's ability to adhere to the standards for performing such duties.¹

While the Code permits judges to participate in extrajudicial activities, it specifically outlines the types of activities and organizations in which judges may be involved. Pursuant to Rule 3.7, "a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice[.]"² In addition to outlining the types of organizations with which a judge can be associated, the Code also outlines the activities within those organizations in which a judge may take part. In the present inquiry, the judge is requesting guidance on whether he/she can be a Trustee for an organization whose goal is to promote access to the courts for low-income individuals. Not only is his/her involvement with such an organization permissible, but his/her active participation as a Trustee for the organization is permissible as well. Under Rule 3.7(6) judges are permitted to:

[S]erv[e] as an officer, director, trustee, or non-legal advisor of such an organization or entity, unless it is likely that the organization or entity: (A) will be engaged in proceedings that would ordinarily come before the judge; or (B) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Because the organization involved in this request is based in New Jersey and there is no indication that it will carry on active business in Maryland, such that it might be involved in proceedings before the Requestor, his/her participation as a Trustee is not prohibited by the Code.

Our conclusion that the Requestor's participation as a Trustee for this non-profit is permissible is consistent with the Committee's previous opinions. For example, in [Opinion Request Number 2008-25], issued December 30, 2008, after concluding that there was no indication the Good Shepherd Center would regularly be participating in adversary proceedings before the requesting judge, the Committee opined that the judge could sit on the Board of Directors for the Center. Likewise, there is no indication that the Center would regularly be participating in adversarial proceedings before the Requestor.

¹ See also Rule 1.2 which states that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary[.]" and further "[a] judge shall avoid conduct that would create in reasonable minds a perception of impropriety."

² This activity must be conducted subject to the requirements of Rules 3.1 and 3.6. Rule 3.6 prohibits judges from affiliating with discriminatory organizations, which is not at issue here.

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In contrast, the Committee in [Opinion Request Number 2008-12], issued July 22, 2008, concluded that a Juvenile Drug Court judge could not sit on the Board of Directors of a non-profit organization that counsels and treats juvenile offenders because those offenders were referred to the program by the Juvenile Court; thus, the requesting judge's impartiality could be placed at issue. Unlike the situation presented in Opinion 2008-12, there is no reason to suspect that the Requestor's involvement as a Trustee for the Center would place his/her impartiality at issue. The Center operates in a jurisdiction beyond the reach of the Maryland Courts, and as such, it is highly unlikely that the Requestor, in the discharge of his/her duties as a judge, or his/her court for that matter, would have any involvement with the organization that would undermine his/her impartiality.

Furthermore, the Requestor is also permitted to receive reimbursement of expenses associated with the performance of his/her duties as a trustee for the organization. Pursuant to Rule 3.14, "a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses," as long as the reimbursement of such expenses is limited "to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest."³

The Committee thus concludes that the Requestor can accept appointment as a Trustee for the organization because it is concerned with the legal system and the administration of justice, and his/her duties as a Trustee are permitted because the organization is not likely to be subject to any proceedings in Maryland before the judge. The Requestor will not be involved in soliciting funds for the organization.⁴ Moreover, if the Requestor incurs any expenses as a result of performing duties as a Trustee, he/she is allowed to receive reimbursement related to those expenses as such reimbursement is not likely to undermine his/her impartiality or integrity.

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

³ It is important to note that reimbursement is permitted under Rule 3.14, but subject to the requirements of 3.1 and 3.13 (a) of the rules. Rule 3.13(a) prohibits judges from accepting gifts and other items of value that would undermine the judge's independence, integrity and impartiality.

⁴ Comment [4] to Rule 3.7 states that the letterhead of an educational, religious, charitable, fraternal, or civic organization may list a judge's title or judicial office "if comparable designations are used for other persons."

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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.