

Maryland Judicial Ethics Committee

Opinion Request Number: 2022-28

Date of Issue: August 11, 2022

Published Opinion Unpublished Opinion Unpublished Letter of Advice

District Court Commissioner Secondary Employment

Issue: May a District Court Commissioner engage in secondary employment in the social media arena for two privately owned and operated businesses?

Answer: Given the circumstances presented, yes.

Facts: Requestor is a District Court Commissioner who seeks guidance as to whether he/she may accept secondary employment with two privately owned and operated companies engaged in the "wedding business." With respect to the first opportunity, Requestor indicates that the company is located outside of his/her home county and primarily hosts weddings, but also is run as a bed and breakfast establishment. According to Requestor, this particular business hosts many different kinds of events, including "rehearsal dinners, wine dinners, small seminars, bridal/baby showers, and memorial services." Requestor indicates that he/she would prepare the company's "monthly newsletter, which provides subscribers with the venue's room of the month special and upcoming events." Requestor explains that the "newsletter would be sent from [the company's] business email" and all correspondence would be conducted "through the business email." The main purpose of the newsletter would be "to inform past guests on current events at the [location] should they want to plan a future visit." Subscribers to the newsletter would not communicate directly with Requestor.

If employed with this particular company, Requestor would also be responsible for sharing "wedding content on Facebook and Instagram," thereby allowing "potential future couples/their families/guests to see" what the establishment has to offer vis-à-vis weddings and similar social events.

Requestor estimates that the time commitment for this particular employment would be "no more than 4-6 hours per week," which, according to Requestor, could "be easily accomplished before/after [his/her] District Court Commissioner shifts, or on [his/her] scheduled off days." Requestor points out that the work would not be deadline driven.

The second employment opportunity is with another business located outside of Requestor's home county. The business at issue "primarily provides wedding and family event photography services," such as engagement and wedding photos, as well as family portraits. With respect to this opportunity, Requestor would be responsible for scheduling "interactive posts/games" for the business Facebook group. Requestor explains that the time commitment required for this particular employment would fluctuate. He/she anticipates that, when help is needed, it would be for approximately two-three hours per week.

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Requestor confirms that neither secondary employment opportunity will "interfere with the proper performance of [his/her] official duties as a District Court Commissioner. . . ." In addition, according to Requestor, he/she is not expected to associate "with anyone likely to come before the appointing court" Requestor adds that his/her anticipated secondary employment responsibilities are "not involved with politics/political campaigning, law enforcement, or any other business that would ethically conflict with [his/her] official duties." He/she further confirms that the anticipated social media employment would not undermine his/her independence, integrity, or impartiality. Requestor adds that he/she would "have no fiduciary responsibility with either company (no company credit card, no handling of/management of money/investments of any kind, no financial duties, etc.)."

In a nutshell, Requestor "would essentially be a ghost-writer, meaning any social media posts/captions created by" him/her would not include Requestor's name or any identifying information associated with the content shared. The public would not know who created the content and all work would be performed remotely. Requestor would focus his/her efforts on promoting the companies "in a true and positive light by showcasing what services each business has to offer their target audience, which is typically engaged/wedding couples and families."

Analysis: The Code of Conduct for Judicial Appointees (the "Code"), Title 18, Chapter 200 of the Maryland Rules, establishes the standards for the applicable conduct of judicial appointees, including District Court Commissioners. *See* Rule 18-200.2(a). Several rules of the Code potentially are implicated in this request.

Rule 18-201.2 directs that "[a] judicial appointee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary" and "avoid conduct that would create in reasonable minds a perception of impropriety."

Rule 18-201.3 provides that "[a] judicial appointee shall not lend the prestige of the judicial appointee's position to advance the personal or economic interests of the judicial appointee or others, or allow others to do so."

Rule 18-202.1 directs that "[t]he duties of the judicial appointee's position, as prescribed by law and by the conditions and requirements imposed by the appointing authority, shall take precedence over a judicial appointee's personal and extra-official activities."

Rule 18-202.4 mandates, in pertinent part, that "[a] judicial appointee shall not permit family, social, political, financial, or other interests or relationships to influence the judicial appointee's official conduct or judgment." Nor shall a judicial appointee "convey or permit

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others to convey the impression that any person is in a position to influence the judicial appointee."

Rule 18-203.1 provides that, "[e]xcept 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, entitled "Financial, Business, or Remunerative Activities," provides as follows:

- (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 18-203.7,¹ 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 the Rule. Approval of part-time employment pursuant to this subject may be revoked by the Chief Judge at any time for good cause.

¹ Rule 18-203.7 deals with participation in educational, religious, charitable, fraternal, and civic organizations and activities and is not relevant to the pending inquiry.

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(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.

Rule 18-203.12 confirms that "[a] judicial appointee may accept 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."

Rule 18-204.2(a) makes clear that "[a] judicial appointee who is not a candidate for election shall not engage in any partisan political activity."

The duties of a District Court Commissioner include (1) receiving applications and determining probable cause for the issuance of charging documents; (2) advising arrested persons of their constitutional rights, setting bond or committing persons to jail in default of bond or releasing them on personal recognizance in the event circumstances warrant; and (3) conducting investigations and inquiries into the circumstances of any matter presented to the commissioner in order to determine if probable cause exists for the issuance of a charging document, warrant, or criminal summons. In addition, a commissioner may issue an interim protective order for a person eligible for relief. In most instances, commissioners must "be adult residents of the county or a county contiguous to the county in which they serve." Md. Cts. & Jud. Proc. Code Ann. Section 2-607(b)(1)(i). (2020 Repl. Vol., 2021 Supp.).

Rule 18-203.11(b)(2), which became effective on August 1, 2020, added the subsection that specifically authorizes District Court Commissioners to work part-time for business entities. Previously, other than the exceptions listed, the Rule prohibited judicial appointees from engaging in secondary employment.

Given the somewhat recent change in the Rule, it is not surprising that the committee often receives inquiries from District Court Commissioners seeking guidance as to secondary employment opportunities. In this particular instance, Requestor clearly has reviewed the relevant rules and provided a thorough, comprehensive explanation of the anticipated responsibilities associated with the contemplated employment.

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When evaluating whether secondary employment is permitted under the Code, a significant concern is whether the employment might call into question or in any way undermine the commissioner's independence, integrity, or impartiality. Additionally, it is important to assess whether the secondary employment will interfere with the commissioner's official duties, lead to frequent disqualification of the commissioner from those duties, involve the commissioner in frequent transactions or continuing business relationships with those likely to appear before the appointing court, or result in a violation of any other Code provision. In that regard, the manner in which the commissioner will be compensated for the secondary employment, and whether there is the potential for direct payment to the commissioner from someone who is likely to appear before him/her in an official capacity, is a factor.

In Opinion No. 2020-20 we concluded that a District Court Commissioner could accept employment as an Advocate with the Youth Advocate Program, Inc. In that matter, the commissioner sought guidance as to whether he/she could accept part-time employment with "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 commissioner explained that he/she would be a mentor to a child and would advocate for the child as appropriate. Anticipated duties included:

ensuring that the youth receive services, advocacy hours, contacts, specified activities and monies 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.

The commissioner explained that each child in the program also was assigned a case worker and a social worker.

We concluded that

[w]hile 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.

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We cautioned that, "in the event the part-time position conflicted in any way with [the Requestor's] duties as a District Court Commissioner, he/she would have to resign the part-time position immediately."

Requestor has made clear that, for all intents and purposes, he/she will serve as a ghost writer for these business entities. For one prospective employer, Requestor will be responsible for drafting and sending an online newsletter to subscribers. For both possible employers, Requestor will post items of interest to the companies' online presence, including to Facebook and Instagram, but will remain completely unidentified and unidentifiable. Requestor will not communicate directly with any subscriber or poster. All communication will be sent from the employers' online platforms. Requestor confirms that the secondary employment time commitment will be minimal and will in no way interfere with his/her commissioner responsibilities. While Requestor did not mention how he/she expects to be compensated for the work performed, we presume that Requestor will be paid an hourly wage. We note that, in accordance with Rule 18-203.12, Requestor may "accept reasonable compensation . . . unless such acceptance would appear to a reasonable person to undermine the [commissioner's] independence, integrity, or impartiality." Based on the information provided, we conclude that both of Requestor's proposed secondary employment opportunities will not run afoul of the relevant rules. That said, to engage in secondary employment, Requestor of course must first obtain permission from the Chief Judge of the District Court of Maryland.

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.