

Maryland Judicial Ethics Committee

Opinion Request Number: 2007-09

Date of Issue: August 24, 2007

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge's Bailiff Should Not Serve on Liquor Control Board

Issue: Is it a conflict of interest for a person to serve as a judge's bailiff while also serving on the Liquor Control Board in the jurisdiction in which the judge's court is located?

Answer: Yes.

Facts: One of a Circuit Court judge's bailiffs has been appointed by the Governor, pursuant to Article 2B, § 15-201 of the Annotated Code, to the Liquor Control Board in the jurisdiction in which the judge's court is located. One of the functions of the Liquor Control Board is to approve/disapprove and revoke liquor licenses for commercial establishments. Article 2B, § 16-101 states that any appeal from a decision of the Liquor Control Board will be to the Circuit Court.

Discussion: This matter can be looked at two ways – from the perspective of the bailiff and from the perspective of the requesting judge. It is the mission of this Committee to view this matter from the requesting judge's perspective, *i.e.*, what ethical concerns could it raise for the judge. Whether the bailiff may have a conflict of interest or ethical issues under the Maryland Public Ethics Law is beyond the scope of this Committee's mission. (It should also be noted that a bailiff is not subject to the Maryland Code of Conduct for Judicial Appointees. Md. Rule 16-814).

The Maryland Code of Judicial Conduct, Canon 2A, states: "A judge shall avoid impropriety and the appearance of impropriety. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the **impartiality** and integrity of the judiciary." Md. Rule 16-813.

Appeals from the decisions of the Liquor Control Board are heard by the Circuit Court. This is a direct appeal. In the matter before us, the requesting judge would be hearing an appeal from a decision of a Board upon which a Circuit Court employee sits and took part in the decision. Based on this fact, it would be impossible to overcome "the appearance of impropriety," as set forth in Canon 2A, by recusal or any other means. Therefore, this Committee finds employment of a member of the Liquor Control Board as a bailiff to violate Canon 2 of the Code of Judicial Conduct.

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Page 2 of 2

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.