

Maryland Judicial Ethics Committee

Opinion Request Number: 2012-15¹

Date of Issue: March 4, 2013

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Recusal of Judge Who Serves As a
Hospice Volunteer From Cases
Involving The Hospital
With Which Such Program is Affiliated

and

Recusal of Judge Whose *Spouse* Serves on Hospice Board
From Cases Involving Such Program or
The Hospital With Which Affiliated

Issue: Under what circumstances should a judge recuse him/herself from cases involving a hospice program or the hospital affiliated with such program if: 1) the judge serves as a volunteer for such program, or 2) the judge's *spouse* serves as an unpaid member of such program's board?

Answer: The judge should recuse him/herself from any cases involving the hospice program because of the judge's *spouse's* position as a member of such program's *board of directors*. In addition, the Judge may also be required to recuse him/herself from cases involving *the hospital*, and not implicating the hospice program itself, if surrounding circumstances might cause the "judge's impartiality ... [to] reasonably be questioned."

Facts: The requestor (the "Judge") indicates that a local hospital is owned and operated by a corporation (the "Hospital"). Meanwhile, a separate 501(c)(3) corporation operates a hospice program ("Hospice"²) which utilizes certain staff whose compensation is paid by the Hospital and which operates out of a facility owned by the Hospital, but not on the main Hospital grounds. Although the Hospital and Hospice are separate legal entities with separate governing boards, according to the inquiry, "Hospice *is considered a department of* the [H]ospital [emphasis

¹Judge Kenney did not participate in this opinion.

²The term "hospice" typically refers to *a program* which provides medical care to terminally ill patients in their own residences and does not necessarily refer to a particular place. Thus, unlike the proper noun "hospital," "hospice" is seldom preceded by the article "the." Nevertheless, such programs are increasingly run by separate legal entities administered from of a central facility. For purposes of clarity, while this opinion omits the article "the" when referring to "Hospice," such references are to the legal entity and the place, not merely the program.

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added].”³

Based upon the foregoing facts, the Judge has inquired whether his/her service as a volunteer for Hospice “would disqualify [him/her] or result in [his/her] recusal ... [in] any case *not* including *Hospice* or related to the Hospice operation, but [which] does involve either the corporation or the local *hospital*? [Emphasis added.]” (It thus appears that the Judge already has concluded that it would *not* be appropriate to preside over proceedings involving *Hospice* if the Judge were acting as a volunteer therefor.) The Judge has also inquired whether the Judge’s *spouse*’s membership on Hospice’s unpaid *board of directors* would require the Judge’s recusal from cases involving either Hospice or the Hospital. (In no event would the Judge be associated with fund-raising activities.)

Discussion:

Rule 2.11(a)(1) and (a)(2)(A) of the Code of Judicial Conduct (Md. Rule 16-813) provides:

(a) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, *including* the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party ...

(2) The judge knows that the ... judge’s *spouse* ... :

(A) is a party to the proceeding, or an officer, *director* ... *of a party*.

(Emphasis added.)

In addition, Rule 1.2 states:

³ It is not entirely clear *who* “consider[s] Hospice] a department of the [H]ospital”—the entities themselves, Hospice patients, the general public, or all. It is conceivable that the Hospital might represent to patients referred to Hospice that the relationship is seamless and that the Hospital intends to be accountable for Hospice’s service and performance. On the other hand, the general public may not share this perception. Meanwhile, in other contexts, none of the concerned parties might behave as though any “considered” Hospice to be a department of the Hospital, as when Hospice, acting through its own board and/or officers might contract for equipment or supplies or maintain accounts in its own name.

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(a) A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

(b) A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

Based upon the foregoing provisions, the Committee agrees with the Judge's implicit conclusion that it would be improper for the Judge to participate in proceedings involving Hospice if the Judge is then actively volunteering for that organization. (The Committee considers it doubtful that a judge who volunteers for such an organization would approach proceedings relating thereto from a purely neutral position, and, in any event, the Committee believes that "reasonable minds" among the "public" could perceive such a failure to recuse as improper and inconsistent with the judge's obligation to act impartially.) In addition, it is the Committee's opinion that Rule 2.11(a)(2)(A) expressly requires the Judge to recuse him/herself from proceedings in which Hospice is a party if the Judge's spouse is a director thereof.

The Judge has also inquired whether either the Judge's potential volunteer activities on behalf of Hospice or the Judge's spouse's service on Hospice's board would require the Judge's recusal from proceedings involving the *Hospital* but "*not related to the Hospice operation*" (emphasis added).

On the one hand, that the Hospital and Hospice are separate legal corporations with separate boards of directors suggests that the Judge's ties with Hospice ought not disqualify the Judge from cases involving the Hospital but not involving Hospice. The fact that both operate out of different facilities also makes it less likely that their identities would be perceived as equivalent by the general public, while the financially supportive role of the Hospital may not be commonly known to the public or patients.

On the other hand, inasmuch as the inquiry also indicates that "*Hospice is considered a department of the [H]ospital [emphasis added],*" if this is an accurate depiction of *the public's* perception of the two, then the public may make no distinction between them,⁴ and the Judge's

⁴ It is not uncommon for hospitals to contract with other legal entities for purposes of rendering services in particular departments within the hospital. In most instances (e.g., emergency departments), the public is oblivious to this circumstance and believes that care rendered by a subcontracting entity is being rendered by the hospital itself. This perception of course, carries with it legal implications, not the least of which is liability. However, while most citizens likely have experience with "emergency rooms," most likely do *not* have experience with hospice programs. It is not entirely clear, therefore, whether members of the public *not* involved or acquainted with Hospice would perceive any impropriety in the

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and/or the Judge's spouse's ties with Hospice could create an appearance of impartiality and potentially disqualify the Judge from hearing cases involving the Hospital.

After much consideration, it is the Committee's view that while much of the general public may be unlikely to deem the Judge's or the Judge's spouse's connections with Hospice substantial enough to conclude that the Judge could not impartially hear cases to which the Hospital was a party if such proceedings had nothing to do with Hospice, the Judge would be well advised to nevertheless disclose the circumstances and seek the waiver provided for in Rule 2.11(c). The Committee will also note that the Judge should be mindful of Rule 3.1(b)'s provision that "[a] judge ... shall not ... participate in activities that will lead to frequent disqualification."

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.

Judge's hearing cases involving the Hospital.