

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2018- 03

**Date of Issue:** April 3, 2018

■ Published Opinion      □ Unpublished Opinion      □ Unpublished Letter of Advice

### **A Judicial Appointee May Not Engage in the Rideshare Business**

**Issue:** May a District Court Commissioner engage in the rideshare business as an independent contractor driver for Uber, Lyft, Sidecar or similar companies?

**Answer:** No. The Code of Conduct of Judicial Appointees (the “Code”), Title 18, Chapter 200 of the Maryland Rules does not permit a judicial appointee to enter into an independent contractor relationship with a privately-owned business unless the business is owned by the appointee or members of the appointee’s family. Additionally, the ridesharing industry’s business practices create additional problems for judicial appointees.

**Facts:** The Executive Director of Commissioners of the State of Maryland has requested an opinion from this Committee on the above issue. The concern has arisen in the case of a current applicant for a District Court Commissioner position. The Director indicates that the question has come up several times where applicants work as independent contractors for businesses like Uber, Pampered Chef, and Mary Kay.

Ridesharing services arrange transportation via motor vehicle on request through the use of a smartphone application. Combining GPS navigation with social network technology, an app puts riders in touch with a driver, who then comes and furnishes transport. Drivers have some discretion as to who they pick up and where they travel. The Requestor indicates that on occasion merchandise or food, rather than individuals, could be transported at the request of a business.

Uber, Lyft, and Sidecar are the dominant companies in the ridesharing industry. These publicly -owned businesses engage thousands of drivers throughout the United States and internationally. All are independent contractors who pay their own expenses, set their own hours, and are paid on a commission-per-ride basis.

**Analysis:** Rules 18.203.1 through 18.203.15 of the Code address extra-official activities by judicial appointees. These rules must be read as a whole. The general rule is contained in Rule

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18.203.1.<sup>1</sup> It provides that, unless otherwise prohibited by law or the provisions of the Code, judicial appointees may engage in activities outside of their judicial duties as long as the activity in question: (1) does not interfere with the performance of the appointee's official duties; (2) will not lead to frequent disqualifications; (3) will not undermine a reasonable person's confidence in the judicial appointee's independence, integrity, or impartiality; (4) will not appear to be coercive to a reasonable person; and (5) does not make inappropriate use of the Judicial Branch's human or physical resources. The rules that follow encourage,<sup>2</sup> prohibit,<sup>3</sup> or restrict<sup>4</sup> specific activities. Of these, the rule that is the most pertinent to the Requestor's inquiry is Rule 18-203.11, which states in its entirety:

Financial, Business, or Remunerative Activities

(a) A judicial appointee may hold and manage investments of the judicial appointee and members of the judicial appointee's family.

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<sup>1</sup> Rule 18-203.1 states:

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.

<sup>2</sup> See, e.g., Rule 18-203.7 "Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities."

<sup>3</sup> See, e.g., Rule 18-203.6 "Affiliation with Discriminatory Organizations"; Rule 18-203.9 "Service as Arbitrator or Mediator"; and Rule 18-203.10 "Practice of Law."

<sup>4</sup> See, e.g., Rule 18-203.3 "Testifying as a Character Witness"; Rule 18-203.4 "Appointment to Governmental Positions"; and Rule 18-203.8 "Appointments to Fiduciary Positions."

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(b) Except as permitted by Rule 18-203.7, a full-time judicial appointee shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judicial appointee may manage or participate in:

(1) a business closely held by the judicial appointee or members of the judicial appointee's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judicial appointee or members of the judicial appointee's family.

(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 18-203.11 makes it clear that a judicial appointee may not engage in extra-official activity as an officer or employee of a business entity unless that enterprise is owned by the judicial appointee or members of his or her family.<sup>5</sup> Rule 18-203.11 does not explicitly address whether a judicial appointee may hire oneself out as an independent contractor to a private business while serving as a judicial officer. In the Committee's view, there is no reason to distinguish between an extra-official activity that is based upon an independent contractor relationship and one that is based on an employment relationship. To recognize such a distinction would permit judicial appointees to skirt the strict limitations found in Rule 203.11 regarding working for private businesses. The necessity for these restrictions are illustrated by the present inquiry.

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<sup>5</sup> Rule 18-200.3(b) defines "family" as:

a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or individual with whom the judicial appointee maintains a close familial relationship.

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A rideshare driver may be called to any number of locations to pick up a passenger, and the driver will have minimal information about the identity of the passenger. Thus, it is foreseeable that a passenger could turn out to be an individual with whom the District Court Commissioner has had judicial dealings.

For example, the Commissioner may have set bond for, or denied bond to, the passenger. The Commissioner may have denied the passenger's application for a criminal charge, or a protective order, or a peace order. While these encounters would probably would not arise frequently, a single instance could place the driver in a compromised position both with respect to personal safety as well as professional performance. Depending on the nature of the contact and communication between passenger and driver, disqualification might be required in any future contacts between Commissioner and passenger at the District Court.

Another concern is the fact that ridesharing compensation includes gratuities. As discussed above, the nature of ridesharing could generate contacts between Commissioner/driver and individuals who have had prior contact with the Commissioner in a judicial capacity. The driver may not even realize this fact at the beginning of the ride. Pursuant to rideshare technology, after the ride, it is possible for the passenger to "tip" the driver using the rideshare application, so that the driver does not even have the option of refusing payment. Whenever a discretionary exchange of money for services occurs between a judicial appointee and a member of the public, serious issues arise with respect to the appearance of impropriety. This violates Rule 18-201.2, which states:

- (a) A judicial appointee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- (b) A judicial appointee shall avoid conduct that would create in reasonable minds a perception of impropriety.

No matter how innocent the conduct of the judicial appointee, the tipping passenger may believe that the act of giving a gratuity could have some influence on future dealings. This violates Rule 18-202.4(c), which states: "A judicial appointee shall not convey or permit others to convey the impression that any person is in a position to influence the judicial appointee."

In view of the considerations set forth above, the Commission concludes that the Code of Conduct for Judicial Appointees does not permit a judicial appointee to engage in part-time work as a rideshare driver, either as an employee or an independent contractor.

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**Application:** The Maryland 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 amendments 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 Requestor engages in a continuing course of conduct, he or she 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.