

Maryland Judicial Ethics Committee

Opinion Request Number: 2021-08

Date of Issue: May 12, 2021

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge may serve on the board of directors of a local non-profit entity that provides mediation services to litigants who may come before the judge's court.

Issue: May a judge serve as a director of a non-profit entity that provides mediation services to individuals whose disputes may come before the judge's court if mediation is not successful?

Answer: Yes.

Facts: A judge inquires whether he/she may serve on the board of directors of a non-profit entity that provides mediation services to the community at large. The Requestor's court often sends a contact letter to litigants recommending mediation and listing the entity as one of a number of resources to provide mediation services. The court hears cases between litigants who received contact letters and whose mediation by the entity did not resolve disputes. It also hears cases that were not resolved in mediation by the entity and were later filed in the Requestor's court.

Discussion: Judges are authorized to engage in extrajudicial activities. Rule 18-103.1 provides:

Except as prohibited by law or this Code, a judge may engage in extrajudicial activities. 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.

Comment [1] to Rule 18-103 adds:

To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in

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extrajudicial activities that concern the law, the legal system, and the administration of justice....

Mediation is an integral component of the administration of justice. Courts exist to resolve disputes; mediation is an alternative means of achieving the same result. Mediation has become part of the legal system.

Years ago, the Court of Appeals created MACRO (Maryland Alternative Conflict and Resolution Center) with the mission to promote the availability, use, and quality of alternative dispute resolution throughout Maryland. MACRO is a division of the Administrative Office of the Courts.

The website for MACRO is embedded in the Maryland Judiciary website. It offers links to mediation services county-by-county and statewide. The entity involved here can be accessed through multiple links on the webpage.

When the Requestor's court makes referrals to mediation entities, including the one at issue here, it is merely promoting the availability and use of mediation as does the judiciary at large through MACRO. The judge does not benefit from the referral any more than does MACRO when a disputant uses its website to choose a mediator.

Rule 18-103.7 (a) provides further relevant guidance to service as a director of an extrajudicial entity:

Subject to the requirements of Rules 18-103.1 and 18-103.6 [Affiliation with Discriminatory Organizations], a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including the following activities:

...

(6) serving as an officer, director, trustee, or nonlegal 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.

The entity at issue is a non-profit organization concerned with the administration of justice. Subsection (a)(6) permits serving as a director of such an entity with two caveats that do not apply: The entity itself will not be engaged in proceedings that come before the Requestor or his/her court, although the disputants themselves may do so if they have been unsuccessful in resolving their dispute in mediation.

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The requesting judge may serve on the board of directors. The Requestor's role as a director of a mediation entity is consistent with the authority of Rule 18-103.1. Referral by the Requestor's court is entirely consistent with referrals made through access to MACRO on the judiciary's website. The Requestor should not be involved in any review of mediations conducted by the entity that identify the parties to avoid any appearance of partiality in cases that may come before him/her.¹ As long as the judge's activities do not interfere with the performance of his /her duties, the judge may serve as a director of the entity.

Application: The Maryland 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.

¹ A judge, other than a senior judge, generally shall not serve as a mediator. Rule 18-103.9