

Maryland Judicial Ethics Committee

Opinion Request Number: 2024-15

Date of Issue: May 7, 2024

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A District Court Commissioner may not work as a real estate agent as secondary employment.

Issue: May a District Court Commissioner engage in secondary employment as a real estate agent?

Answer: No.

Facts: The Requestor is a District Court Commissioner who seeks guidance as to whether the Requestor may engage in secondary employment as a real estate agent. The company for which the Requestor works is owned by a direct family member. The Requestor's clients are based solely from referrals from family and friends, whom the Requestor advises hold the Requestor's position as a District Court Commissioner with the highest regard.

The Requestor explains that a "real estate agent does not determine if an individual can purchase a home, or the cost of the home purchased." The "individual has to be qualified under the financial guidelines to purchase according to the FHA (Federal Housing Administration)." Any commission earned by the Requestor through the real estate transaction is paid directly to the real estate company, and then the company "distributes payment to each team member involved in the sale." The Requestor advises that this is the "standard practice in the real estate industry."

The Requestor is fully prepared to recuse from any proceeding where the Requestor has interacted with a client in their real estate agent capacity. In addition, according to the Requestor, the structure of the commissioner's office allows for a seamless exchange of cases or assignment of cases to another commissioner, if necessary.

The Requestor advises that there is a strict separation between judicial duties and real estate activities. The Requestor's work hours are from 8:00 a.m. to 4:00 p.m. on a 28--day rotation. Any real estate responsibilities, which constitute approximately five hours a week or less, are performed outside of Commissioner hours. The Requestor states that a majority of the contact with clients is through email, and the Requestor abides by the Real Estate Code of Ethics.

Analysis: The Maryland Code of Conduct for Judicial Appointees (the "Code"), Title 18, Chapter 200 of the Maryland Rules, establishes the standards for the ethical 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

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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 states 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 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, 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

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is not in conflict with section (c) of this Rule. Approval of part-time employment pursuant to this subject may be revoked by the Chief Judge at any time for good cause.

(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."

Judicial appointees are permitted to accept part-time employment provided it does not violate provisions of the Code. See e.g., Opinion 2022-28 (District Court Commissioner may prepare monthly newsletter for wedding event/bed and breakfast venue; Commissioner may schedule interactive posts/games for business's Facebook group); Opinion 2020-20 (District Court Commissioner may work with Youth Advance Program).

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, are factors requiring consideration.

Opinion 2022-28.

In two opinions, we concluded that a Commissioner could not engage in the secondary employment because it would result in the Commissioner engaging in private financial transactions with members of the public who might also have contacts with the Commissioner in the Commissioner's judicial capacity. Opinion 2018-38 (District Court Commissioner may not sell facial and skincare products); Opinion 2018-03 (District Court

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Commissioner may not be employed as rideshare driver). Our particular concern was with the discretionary exchanges of money involved with either commission-based compensation or tipping and the possible perception that those exchanges might influence judicial acts.

In the situation involving a Commissioner having secondary employment as a real estate agent, we have similar concerns. Although the commission may be paid initially to the company, it is well-known that the agent ultimately receives a portion of the commission and therefore receives a benefit based on the sale. This would be a known benefit that would run afoul of the Code, as the Requestor would be identified and deal directly with potential clients. The Committee assumes that any compensation will be within the range of what is considered customary and reasonable but understands that the actual compensation may be somewhat “fluid.” This may lead to the appearance of impropriety. In addition, the Requestor may come in contact with potential clients (buyers and sellers) who may have had prior contact with the Requestor in their role as a Commissioner. Similarly, the Requestor, in the Requestor’s capacity as a real estate agent, may in the future come in contact with individuals who appeared before the Requestor in the role of Commissioner. Disqualification may be required given the nature of the contact between the buyer or seller and the Requestor and/or between the buyer or seller and the appointing court. See Rule 18-203.11(c)(3).

In view of the above, the Committee concludes that the Code of Conduct for Judicial Appointees does not permit a judicial appointee to act as a real estate agent for secondary employment. Acting as a real estate agent could involve the Requestor in a business transaction with someone who may come before the Requestor. That, in turn, could potentially lead to frequent disqualifications and undermine public confidence in the independence and impartiality of the judiciary.

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.