

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2008-40

**Date of Issue:** March 4, 2009

■ Published Opinion    □ Unpublished Opinion    □ Unpublished Letter of Advice

### District Court Commissioner May Serve as Volunteer Firefighter

**Issue:** May a District Court Commissioner be permitted to join, and serve as a volunteer, in an independent, volunteer fire department, with activities contemplated to include training to respond to fires, firefighting, Emergency Medical Services (“EMS”), and other emergency activities?

**Answer:** Yes.

**Facts:** A District Court Commissioner has requested an opinion as to the propriety of serving as a volunteer firefighter, in an independent, volunteer fire department. The activities associated with this position include training to respond to fires and other emergencies, firefighting and EMS. All duties would be undertaken on the Commissioner’s own time, with no financial gain, and would be with a fire company that is not a part of either State or local government.

**Discussion:** A District Court Commissioner is subject to the Maryland Code of Conduct for Judicial Appointees. (Md. Rule 16-814). Canon 4 is controlling in the instant situation, as described by the Commissioner, especially sections 4B and 4C.

Canon 4B states that, subject to the other provisions of the Code, “a judicial appointee may lecture, speak, teach, write, *and otherwise participate in other extra-official activities.*” (Emphasis added). Clearly, this section contemplates that a judicial appointee may take part in extra-official activities and does sanction such activity, as long as it is consistent with the provisions of the Code. Indeed, Canon 4C(4)(a) states that subject to the other provisions of the Code, “a judicial appointee may be a director, member, non legal adviser, officer, or trustee of a charitable, civic, educational, fraternal or sororal, law related, or religious organization.” It is thus contemplated that a judicial appointee may assume a leadership role in a civic or charitable organization.

Volunteer fire departments in Maryland, however, are involved in various fundraising activities such as carnivals, raffles, etc. Although membership in the volunteer fire department and taking part in such activities are permitted, the Commissioner should, at all times, act in his or her capacity as a private citizen, and not use his or her title or position. Before getting involved in fundraising activities, the Commissioner is advised to be fully cognizant of, and in full compliance with, Canon 4C(d)(i), *et seq.* of the Code, which provides, in pertinent part:

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- (d)(i) A judicial appointee shall not participate personally in:
  - (A) solicitation of funds or other fund-raising activities, except that a judicial appointee may solicit funds from other judicial appointees over whom the judicial appointee does not exercise supervisory authority; or
  - (B) a membership solicitation that reasonably might be perceived as coercive or, except as permitted in Canon 4C(d)(i)(A), is essentially a fund-raising mechanism.
- (ii) A judicial appointee shall not participate as a guest of honor or speaker at a fund-raising event.
- (iii) Except as otherwise allowed by Canon 4C(4)(d), a judicial appointee shall not use or lend the prestige of his or her position for fund-raising or membership solicitation.
- (iv) A judicial appointee may:
  - (A) assist an organization in planning fund-raising;
  - (B) participate in the investment and management of an organization's funds; and
  - (C) make recommendations to private and public fund-granting organizations on programs and projects concerning the administration of justice, the legal system, or improvement of the law.

The Committee recognizes that fire companies perform functions of the Executive Branch of government. In prior opinions, the Committee has highlighted the importance of the independence of the Judicial Branch of government. See, e.g., [Opinion Request No. 2007-11], issued on October 14, 2008. The requesting Commissioner, however, would not serve in the volunteer fire department by designation as a judicial appointee or while simultaneously performing the duties of that office. Moreover, the Commissioner would not hold an "office," as proscribed by Article 33 of the Maryland Declaration of Rights. See, e.g., [Opinion Request No. 2007-06], issued on May 30, 2007.

**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

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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.