

Maryland Judicial Ethics Committee

Opinion Request Number: 1979-07

Date of Issue: September 13, 1979

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Serve on County Alcoholism Advisory Council;
Not to Lecture on Alcohol and Drug Abuse in Clinics

You have requested an advisory opinion as to the propriety of your serving as a member of the Alcoholism and [sic] Advisory Council for _____ County. In addition thereto, you have expressed some reservations about your continuing, along with your colleagues, as a lecturer for the Department of Health and Mental Hygiene in clinics on alcohol and drug abuse to which probationers have been referred from the District Court.

Under Article 2C, section 502(c)*, of the Annotated Code of Maryland, the duties of the local advisory councils are as follows:

“(c) Duties of Councils) The function of each district alcoholism advisory council shall be to:

- (1) Periodically review with the advice and assistance of the alcoholism coordinator available services and facilities and determine local alcoholism program needs;
- (2) Advise and report annually to the local health officer, the appropriate governing body, and through the alcoholism coordinator to the director of the alcoholism control administration on progress of the local alcoholism control program and of actions needed for further improvements;
- (3) Make recommendations for appropriate allocation of funds in accordance with agreed upon priorities and consideration of financial resources (private, public, and State);
- (4) Assist the local coordinator in the development of the annual alcoholism plan;
- (5) Review and comment on all local new and renewal State grant applications;
- (6) Review and comment on all local federal grant applications for alcoholism programs;
- (7) Provide input to the advisory council on alcoholism control;
- (8) Act as a local advocate for alcoholism programming;

* Provisions for local alcoholism advisory councils were repealed in 1988. Provisions for a State advisory council were repealed in 1997, although, as of the date of editing [July 10, 2006], Maryland Code, Health) General Article, §§ 8-402(f)(4) and 8-1002(a), respectively, provide for an Alcohol and Drug Abuse Treatment Research Advisory Committee and a local drug and alcohol abuse council in each county. The latter include judge-members. *See* Opinion Request No. 2004-24.

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- (9) Participate in program evaluations; and
- (10) Review of the State alcoholism plan.”

Maryland Code (1957, 1976 Repl. Vol., 1978 Cum. Supp.), Art. 2C, § 502(c)*.

The Committee is of the opinion that the enumerated duties are not inconsistent with, nor would they appear to interfere with, the expeditious and proper administration of your official functions.

Members of the advisory council appear to be well insulated from the actual participants in the program and there is little likelihood that any litigation concerning the advisory council would be before you as a judge.

However, your continued participation as a lecturer in clinics presents a situation which is discussed in [Opinion Request No. 1971-05], mentioned in your letter. The paragraph to which you have referred reads as follows:

“A second criticism might be directed at the fact that at least three of the organizations which you mention (...) would appear to be agencies which are closely related to the work of your Court. It may well appear to members of the public that as a Board member you might not be able to act with complete objectivity in an instance where a juvenile offender had been evaluated by one of these agencies prior to a court appearance or is committed to one of these agencies for either care or therapy. It seems to us that this criticism could be minimized if you had no official connection with any agency which appears before your Court or to which juveniles are referred. This should not be taken to mean, however, that you could not have a continuing interest in the work of the agencies.”

[Opinion Request No. 1971-05].

Since many of the persons in the clinics are probationers sent to participate therein as a condition of probation, there may be occasions when these very same people are brought back before the Court on a charge of violation of probation for failure to enroll in or to successfully complete the course in the clinic.

You and your colleagues may be placed in the position cautioned against by [Opinion Request No. 1971-05], i.e., your ability to act with complete objectivity in regard to violations of probation may be questioned. Participation in the clinics makes you an integral part of the rehabilitation process to which it is aimed, and it is the non-compliance with or the failure in this rehabilitative process which triggers the violation of probation.

In effect, you are acting in the dual role as a rehabilitator and as an evaluator of the efficacy of said rehabilitation. As such, you may be in violation of Canon XXIII which prohibits the acceptance of “inconsistent duties.”

In summary, we see no objection to your serving as a member of the local alcoholism advisory council. We do feel that your active participation in the clinics to which probationers have been referred may appear to cloud your objectivity when hearing subsequent violations of probation and you may be subject to criticism.