

Maryland Judicial Ethics Committee

Opinion Request Number: 1981-08

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■ Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge Not to Hear Cases Involving Associate of Successor Law Firm Making Referral Payments Who Has Contract with Public Defender

Two judges have requested the Committee's opinion concerning the application of Md. Code Ann. Courts and Judicial Proceedings, Section 1-203(c). The ethical question presented arises from the following facts.

Before taking the oath of office, the two judges each turned over a portion of their respective practices to two attorneys. As allowed under Section 1-203(b) of the Courts and Judicial Proceedings Article, each judge agreed with his respective successor to receive collections from cases previously pending in his law practice. The two "successor" attorneys later formed a partnership, hiring one associate. Both judges have subsequently disqualified themselves from hearing cases in which any of the three attorneys participate.

The Public Defender Service has recently awarded the partnership's associate a contract to represent indigent criminals in District Court for a fee of up to \$600 per month. The check for these services will be deposited into the partnership account. The associate will continue to receive her usual salary from the partnership. The question here at issue is whether it is proper for the two judges to hear cases in which the partnership associate participates under this contract.

The Committee is of the opinion that both judges would be prohibited from doing so under Section 1-203(c) of the Courts and Judicial Proceedings Article. Section 1-203(c) states that while a judge is receiving payments from a successor in practice that judge "may not hear a case in which a partner or employee of his ... successor in interest is an attorney of record" (emphasis added). [Opinion Request No. 1974-07 (unpublished)], dated December 26, 1974, supports the Committee's conclusion. In [Opinion Request No. 1974-07 (unpublished)], a judge, upon qualifying for the Bench, arranged for referral of matters pending in his law practice to other members of the bar. At the time the Committee was presented with the request, only two cases remained open. Both cases were referred to the same firm, under an arrangement that the fees, when collected, would be equally divided between the judge and the firm. The question presented was whether it was proper for the judge to hear cases in which the successor firm participated. Looking at Section 1-203(c), the Committee held its prohibition to be a continuing one, requiring a judge to disqualify himself until payments from successors have been collected. The Committee recently reaffirmed this holding in [Opinion Request No. 1981-09], dated October 30, 1981. The Committee therefore concludes that the rule set forth in [Opinion Request Nos. 1974-07 (unpublished) and 1981-09] applies under the facts of this inquiry.

For this reason, we believe that while each judge continues to receive collections from his successor in interest, he should disqualify himself from hearing those cases in which the partnership associate participates under contract to the Public Defender Service.