

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2002-03

**Date of Issue:** March 13, 2002

■ Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

Maryland Judge May Participate on Merit Selection Panel for U.S. Magistrate Judges

**Issue:** Whether a State judge may participate on a merit selection panel that will evaluate and make recommendations to the U.S. District Court about the reappointment of sitting U.S. Magistrate Judges?

**Answer:**        Yes.

**Discussion:**    A merit selection panel may consider the appointment as, and reappointment of, U.S. Magistrate Judges who are employed on a full or part time basis in their judicial positions.

The procedures for such panels are set out in the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges and are further explained in a volume called *The Selection and Appointment of United State Magistrate Judges published by the Administrative Office of the United States Courts* (October, 1997).

Under these procedures a panel is selected by a majority vote of the active district judges of the court. The panel must consist of a chairperson and at least six other members, at least two of whom must be non-lawyers. The panel should be established by an order of the court and the panel is directed to report to the District Court within 90 days unless otherwise directed by the court. The members serve without compensation.

Under these procedures, the panel considers applicants for initial appointment to a U.S. Magistrate position or may be asked to consider the re-appointment of a sitting U.S. Magistrate Judge. As noted above, the U.S. Magistrate Judge may be sitting in either a full-time or part-time basis.

The panel considers the applicants, receives comments from the public, interviews applicants and makes recommendations to the judges of the District Court. In the case of a proposed reappointment of a U.S. Magistrate Judge, the panel advises whether the incumbent judge is recommended for reappointment. The judges of the District Court are free to accept or reject any of the recommendations of the panel, and any appointment or reappointment is made by a majority vote of the active judges of the U.S. District Court.

Canon 4B(2) of the Maryland Code of Judicial Ethics allows a state judge to perform certain limited extra-judicial activities. It provides:

A judge may serve on governmental advisory boards devoted to the improvement of the law, the legal system or the administration of justice and may represent his or her country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities.

We believe that an advisory panel on the selection of magistrate judges to the U. S. District

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Court is the type of “governmental advisory board” that is envisioned by Canon 4B(2). It is purely advisory in nature and does not exercise any of the appointment power of the U.S. District Court. It does perform an important governmental service in aid of the improvement of the law, the legal system and the administration of justice.

We note that by rule, federal judicial officers cannot serve on the selection panel, and allowing state judges to serve on the panel would provide an appropriate judicial background and point of view in evaluating candidates that would be of assistance to our federal judicial colleagues in making their ultimate selection or reappointment decision.

We also note that service on the panel is of an occasional nature and should not unduly interfere with a State judge’s performance of his or her responsibilities.

For these reasons, we do not find there to be an ethical barrier to a state judge serving on a merit selection panel for U.S. Magistrate Judges.