

Maryland Judicial Ethics Committee

Opinion Request Number: 2004-24

Date of Issue: December 3, 2004

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Serve on Local Substance Abuse Council

Issue: May a judge accept appointment as a member of a local drug and alcohol abuse council?

Answer: Yes.

Discussion: Maryland Code, Health – General Article, § 8-1001 requires that a local drug and alcohol abuse council be established in each county. The composition and duties of a council are set forth in the statute. Council membership is broad-based and must include the county administrative judge of the circuit court for the county and the administrative judge of the District Court for the district, or their designees. Other required members include representatives from the departments of health, social services, and juvenile services, the Division of Parole and Probation, the State’s attorney, the public defender, the sheriff or county police, the board of education, the local correctional facility, and county government. Provision also is made for the appointment of persons knowledgeable about substance abuse prevention and treatment programs and providers of such programs.

The local council is charged with developing, and periodically revising, a county plan and strategies to meet the needs of the general public and the criminal justice system for substance abuse evaluation, prevention and treatment services. A council also must consider any county or county unit application for funds from a State unit for substance abuse services. A council may recommend to any federal or State unit or private foundation that an application for funds for substance abuse services in the county be approved. In making its recommendation, a council must consider whether the grant application is consistent with the local plan and may include in its recommendation other information relevant to consideration of the application.

Canon 4B(2) of the Code of Judicial Conduct allows a judge to serve on governmental advisory bodies devoted to the improvement of the law, the legal system or the administration of justice. A judge’s participation is subject to the qualifications that such service must not interfere with the proper performance of judicial duties, must not reflect adversely upon the judge’s impartiality and must not detract from the dignity of the office. The Commentary cautions that judges should be mindful of the need to protect the courts from involvement in extra-judicial matters that may prove controversial and should avoid appointments that could interfere with the effectiveness and independence of the judiciary. The Commentary also notes that judges are prohibited from assuming or discharging the legislative or executive powers of government (Article 8 of the Maryland Declaration of Rights) or holding an “office” under the constitution or laws of the United States or State of Maryland (Article 33 of the Maryland Declaration of Rights). The Commentary following Canon 4C further recognizes that “[a]s a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law

Maryland Judicial Ethics Committee

Opinion Request Number: 2004-24

Date of Issue: December 3, 2004

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 2 of 2

and the improvement of criminal and juvenile justice [and t]o the extent that time permits, a judge is encouraged to do so”

The mission of local drug and alcohol abuse councils plainly relates to improvement of the legal system and the administration of justice. Many, if not most, cases in criminal and juvenile courts involve in some way the consequences of drug and alcohol abuse. Substance abuse also is implicated in a significant number of family law cases. Judicial decisionmaking in these cases often is influenced by the availability and efficacy of substance abuse evaluation and treatment services in the local jurisdiction. Certainly the administration of justice in these areas of the law is enhanced by measures that improve access to substance abuse services and the efficient allocation of resources devoted to those services. Furthermore, a judge is especially well informed about the substance abuse service needs of the justice system in the judge’s jurisdiction. For this reason, membership by a judge or the judge’s designee on a local council would appear particularly appropriate.

The inquiry advises that one objective of the local council is to increase diversion from prosecution and provide alternatives to incarceration for non-violent offenders. The judge asks whether that objective may be deemed controversial and preclude the judge’s participation. The Committee recognizes that there are differences of opinion as to the appropriate response of criminal justice system to non-violent drug offenders. We do not believe, however, that the public debate on this topic is so contentious that participation of a judge in a government body addressing the issue is undesirable.

An examination of the statute creating local drug and alcohol abuse councils demonstrates that the councils perform only advisory functions. The primary responsibility of a council is to develop a plan to meet the substance abuse service needs of the jurisdiction. This plan is essentially advisory, as it not binding on any other governmental or private entity. The plan merely serves as a guide to other entities and funding sources as to those needs and the appropriate strategies to meet them. Certainly it is contemplated that county government, as well as other agencies and organizations, will recognize the local council plan as authoritative and will direct their resources in a way that supports the plan; but clearly the local council has no authority to compel them to do so.

Local councils also are required to consider county applications for State funding of substance abuse services. Although review of applications for federal and private funds is not mandated, the councils have discretion to do so. A council may recommend to State or other funding sources approval of an application and may provide other information in support of the recommendation. Significantly, local councils are not authorized to recommend disapproval of an application, nor is application funding contingent on securing a recommendation for approval.

As the local drug and alcohol abuse councils lack control over funding or access to funding of any other entity and do not otherwise exercise control over any other entity, the Committee believes that they are advisory bodies within the meaning of Canon 4B(2).