

Maryland Judicial Ethics Committee

Opinion Request Number: 2008-12

Date of Issue: July 22, 2008

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Judge Serving on Juvenile Drug Court May Not Sit on Board of Directors of Non-Profit Organization That Counsels and Treats Juvenile Drug Offenders

Issue: May a presiding Juvenile Drug Court judge sit on the Board of Directors of First Step, Inc., a 501(c)(3) non-profit organization that counsels and treats juvenile drug offenders who are referred to the program by the Juvenile Drug Court?

Answer: No.

Facts: First Step, Inc. is a 501(c)(3) non-profit organization, located in the requesting Juvenile Drug Court judge's county, which provides education, prevention and treatment services for substance abuse and mental health issues. Through the county's Office of Substance Abuse, First Step was hired to counsel and treat juvenile offenders who are *referred* by the Juvenile Drug Court. The requesting judge regularly receives reports from First Step regarding the juvenile offenders' treatment progress, along with recommendations for recovery, during informal and non-adversarial courtroom proceedings. First Step is not a party to the proceedings. It does, however, detail the progress of its clients, which can result in judicially imposed sanctions, or rewards, as appropriate. Defense counsel or the Assistant State's Attorney may take a position on the reports or submit on First Step's recommendations.

The judge recently has been asked to serve on First Step's Board of Directors. The Board is responsible for the overall policy and direction of First Step. The responsibility for the day-to-day operations of the organization, however, is delegated to the Chief Executive Officer. Board members are expected to make a personal financial contribution to the organization and to assist in securing outside resources.

Discussion: Canon 4C(4)(a) of the Maryland Code of Judicial Conduct (Rule 16-813) states that, subject to other provisions of the Code, "a judge may be a director, member, non legal adviser, officer, or trustee of a charitable, civic, educational, fraternal or sororal, law related, or religious organization," subject to certain limits. These limits require that the judge's participation not put at issue the judge's impartiality, demean the judge's office or interfere with the proper performance of judicial duties. Canon 4C(4)(c)(ii) specifically addresses a judge's association with an organization that accepts referrals from the Court. It provides that "a judge shall not be a director, adviser, officer, or trustee of an organization if it is likely that the organization ... deals with people who are referred to the organization by any court."

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Juvenile offenders who are referred to Drug Court are thus, by virtue of the contract between First Step and the county's Office of Substance Abuse, referred to the organization for counseling and substance abuse treatment. Because the organization accepts referrals made by the Juvenile Drug Court, the requesting judge's impartiality may be placed at issue by participation on its Board of Directors. Accordingly, pursuant to Canon 4C(4)(c)(ii), participation on First Step's Board of Directors would be prohibited.

In addition, were the judge otherwise permitted to serve on the Board, he or she would be largely prohibited from securing outside resources for the organization. Canon 4C(4)(d)(i)(A) prohibits a judge, with certain exceptions, from participating in the solicitation of funds or other fund-raising activities. Canon 4C(4)(d)(i)(B)(iii), in turn, prohibits a judge from lending or using the prestige of judicial office for fund-raising.

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 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.