

Maryland Judicial Ethics Committee

Opinion Request Number: 2009-14

Date of Issue: November 23, 2009

- Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

District Court Commissioner May Accept Part-time and/or Seasonal Employment With an Executive Branch Agency

Issue: May a District Court Commissioner accept part-time and/or seasonal employment with an Executive Branch agency?

Answer: Yes.

Facts: A District Court Commissioner has requested an opinion as to the propriety of accepting part-time and/or seasonal employment with an Executive Branch agency, which determines eligibility for certain benefits. The job posting contains the following information: “The work may be for varying lengths of duration dependent upon the workload. It may range from a few days, a week, or full-time from a few weeks to several months.” The minimum qualifications include one year of full-time employment, or its equivalent, rendering and/or determining eligibility for certain agency benefits or comparable experience with another public or private agency in a related area, or a Bachelor’s degree from an accredited college or university.

The Commissioner was advised orally that the job would entail working in an office or cubicle, taking information by telephone from clients, and entering that information into a computer. The information would include the client’s name and social security number, employer, etc. The information would be used within the agency to determine a client’s eligibility for certain benefits. The job does not involve physical contact with the clients, and the Commissioner would not receive information relating to a physical description of the clients.

Discussion: District Court Commissioners are “appointed by and serve at the pleasure of the Administrative Judge of the district, subject to the approval of the Chief Judge of the District Court.” Md. Constitution, Art. IV, section 41G(a)(2). Commissioners need not be lawyers. Md. Code (2006 Repl. Vol. & 2009 Supp.) Courts and Judicial Proceedings, § 2-607. Commissioners may lawfully accept part-time or seasonal employment if approved by the appointing authority.

Article 8 of the Maryland Declaration of Rights mandates a separation of powers in government and prohibits a person who exercises the functions of one branch, such as the Judiciary, from assuming the duties of another branch. The proposed part-time or seasonal employment does not involve the assumption of an executive function, and the Committee perceives no violation of Article 8. Articles 33 and 35 of the Maryland Declaration of Rights prohibit holding more than “one office of profit”. For the reason just stated, the Committee perceives no violation of Articles 33 and 35.

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District Court Commissioners are subject to the Maryland Code of Conduct for Judicial Appointees. Md. Rule 16-814. Canon 4, governing extra-official activities, is very relevant, particularly subsections B, D(2), and H. Subsection B provides that a judicial appointee, which includes Commissioners, “may participate in ... extra-official activities[,]” subject to other provisions of the Code. Clearly, there is no blanket prohibition against extra-official activities. Indeed, although this is not the situation before the Committee, a part-time judicial appointee may even practice law. Subsection D(2) provides that a judicial appointee may engage in “remunerative activity” with stated exceptions not controlling here. Subsection H provides that a judicial appointee may receive compensation for extra-official activities if it is a reasonable amount, does not include a premium because the person’s judicial status, and the source of compensation “does not give the appearance of impropriety[.]”

While the Committee perceives no general prohibition to accepting the part-time or seasonal employment, we caution, however, that the other canons apply. As examples, the Commissioner, when engaging in the part-time or seasonal employment, should not identify the Commissioner’s judicial status. Canon 2. The Commissioner should recuse himself or herself from a proceeding when impartiality might reasonably be questioned. Canon 3D. The latter situation could arise if the Commissioner was involved in a judicial proceeding in which information obtained through the part-time or seasonal employment was relevant.

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.