

Maryland Judicial Ethics Committee

Opinion Request Number: 2009-13

Date of Issue: October 19, 2009

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Recalled Judge May Continue To Sit In Maryland Courts
If Appointed As Alternate Land Commissioner For The
United States District Court For The District of Maryland

Issue: May a retired, recalled judge continue to sit in Maryland courts if he or she accepts an appointment to be an Alternate Land Commissioner for the United States District Court for the District of Maryland?

Answer: Yes.

Facts: The requesting judge (the “Requestor”) is a retired, recalled judge who sits in Maryland’s courts. The Requestor has applied for appointment as an Alternate Land Commissioner for the United States District Court for the District of Maryland (referred to hereinafter as an “Alternate Land Commissioner”). According to the “Vacancy Announcement” to which the Requestor responded, applications were sought from “retired state or federal judicial officers to serve as Alternate Land Commissioners for the District. The principal duty of a Land Commissioner is to determine the amount of just compensation the United States of America should pay to the condemnee(s) for their respective estates or easements acquired by the government in the course of a condemnation proceeding. ... Land Commissioners serve on an as[-]needed basis and are paid a maximum hourly or daily rate.”

If appointed an Alternate Land Commissioner, the Requestor would, if called upon to do so, serve as a member of a commission comprised of multiple members (the “Commission”) who, by majority rule, take action and issue a report to the Clerk of the United States District Court for the District of Maryland regarding, in essence, the appropriate compensation to be paid by the United States for land which is subject to condemnation. It is the Committee’s understanding that while the Commission conducts hearings according to the Federal Rules of Evidence regarding just compensation for condemned property, the Commission does not determine whether the plaintiff has the right to condemn property and the federal judge to whom the case was assigned may adopt, modify or reject the Commission’s report. The Commission’s role thus appears essentially to be an advisory one.

Discussion: Canon 4A of the Maryland Code of Judicial Conduct (Md. Rule 16-813) provides:

A judge shall conduct all extra-judicial activities so that they do not:

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- (1) cause a substantial question as to the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

In turn, Canon 4(C)(2) provides that "[e]xcept as otherwise provided by law and subject to Canon 4A, a judge may accept appointment to a governmental advisory commission, committee or position."

Finally, Canon 4H provides:

Unless otherwise prohibited by law, a judge may receive compensation and reimbursement of expenses for extrajudicial activities permitted by this Code if:

- (1) the source of compensation or reimbursement does not give the appearance of impropriety;
- (2) the compensation does not exceed a reasonable amount and does not exceed the amount a person who is not a judge would ordinarily receive for the same activity; and
- (3) the expense reimbursement is limited to the actual cost of food, lodging and travel reasonably incurred by a judge. ...

Based upon the Committee's review of Canon 4, the Committee believes that the Requestor's potential service as an Alternate Land Commissioner is permitted by the Code. To the extent that the Requestor's service as an Alternate Land Commissioner might "cause a substantial question as to the judge's capacity to act impartially as a judge" (Canon 4A), undermine the "public[s] confidence in the impartiality and integrity of the judiciary" (Canon 2A) or pose a risk that the Requestor might "appear to be improperly influenced by a ... relationship" (Canon 2B) to the federal government by virtue of the Requestor's receiving compensation therefor, the Requestor should be cautious regarding whether any compensation received as an Alternate Land Commissioner might constitute "a significant financial interest" as defined in Rule 16-813, and whether the Requestor should either recuse him/herself from serving as a judge in Maryland courts in matters in which the United States, or any of its agencies, is a party (Canon 3D) or obtain an agreement regarding non-recusal under Canon 3E.

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.

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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.