

Maryland Judicial Ethics Committee

Opinion Request Number: 2011-06

Date of Issue: April 4, 2011

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Orphans' Court Judge May Serve on the Board of Non-Partisan County Business Organization

Issue: An Orphans' Court judge has requested advice as to whether the judge may serve on the board of a non-partisan county business organization.

Answer: Yes.

Facts: An Orphans' Court judge received a request to serve on the board of a local business organization in the county in which the judge sits. The organization is a non-partisan group with a main goal of serving the business community. The organization is similar to a Chamber of Commerce in that its activities are designed to foster a positive business climate. The requesting judge's role would be strictly advisory in nature and would not involve fundraising or lobbying. The position with the organization is voluntary and one for which the judge would receive no compensation. The judge would be expected to attend the organization's monthly meetings.

Discussion: An Orphans' Court judge is subject to the Maryland Code of Judicial Conduct ("Code"), Maryland Rule 16-813, A-109(2) subject to certain exceptions not relevant to this request.

Rule 3.1 of the Code permits a judge to engage in extrajudicial activities provided that the judge does not: (a) participate in activities that would interfere with the proper performance of the judge's judicial duties; (b) participate in activities that would lead to frequent disqualification of the judge; (c) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality; (d) engage in conduct that would appear to a reasonable person to be coercive; or (e) make inappropriate use of court personnel or the resources of the court.

Rule 3.7 of the Code provides that a judge may participate in educational, religious, charitable, fraternal or civic organizations subject to Rule 3.1 above and Rule 3.6.¹ Specifically, Rule 3.7(a)(6) provides that a judge may serve as an officer, director, trustee or nonlegal advisor of such organizations unless the organization would be engaged in proceedings that would ordinarily come before the judge or would frequently be engaged in adversary proceedings in the court of which the judge is a member, or in

¹ Rule 3.6 prohibits a judge from holding membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation.

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any court, subject to the appellate jurisdiction of the court of which the judge is a member.

It is the Committee's opinion that the organization described by the requesting judge is a civic organization within the meaning set out in Rule 3.7. As such, the judge may accept a position with that organization as long as the prohibitions set forth in Rules 3.1 and Rule 3.7 do not exist. The requesting judge indicated that his/her role would be purely advisory in nature and no compensation would be received for his/her services to the organization. Further, the requesting judge indicated that he/she would not be involved in fundraising or lobbying for the organization.

As the requesting judge is a member of the Orphans' Court, it is unlikely that the organization would come before that court. The judge is cautioned, however, to consider whether any other members of the organization would appear before the judge and whether disqualification or recusal would be required under Rule 2.11. The judge is further cautioned as to lending the prestige of the judge's judicial office to the organization (Rule 1.3) and the avoidance of external influences on the judge's conduct (Rule 2.4).

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.