

Maryland Judicial Ethics Committee

Opinion Request Number: 2021-32

Date of Issue: January 5, 2022

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge's ability to serve on the Frederick County Domestic Violence Coordinating Council

Issue: May a judge serve on the Frederick County Domestic Violence Coordinating Council?

Answer: Yes, with limitations.

Facts: The ordinance creating the Frederick County Domestic Violence Coordinating Council (the Council) designated as two of its members the County District Court Administrative Judge or the Judge's designee and the County Circuit Court Administrative Judge or the Judge's designee (the Requestors). *See* Frederick County Code, Article XIV, § 1-2-400, *et seq.*

The Requestors are full participatory and voting members of the Council. The Requestors identified five of the eight duties of the Council that are of particular concern to them.¹ They are:

(1) Advise the County Executive, County Council, and Criminal Justice Coordinating Commission and its members on policies, programs, and legislation necessary to prevent domestic violence and assist victims and their families with safety, stability and services;

(2) Promote and facilitate an effective community wide victim-centered response to domestic violence, including a well-coordinated, multi-disciplinary approach to all programs serving victims of domestic violence and their families;

[(3) Coordinate with the Maryland Network Against Domestic Violence and all other county, state, federal, and non-governmental agencies, committees, boards, commissions, and organizations that operate, monitor, provide education or technical assistance or coordinate domestic violence programs or services in the county to maximize the effectiveness of these programs and services;]

(4) Develop recommendations to improve the coordination and effectiveness of county, state, federal, and non-governmental multi-disciplinary, victim-centered efforts regarding domestic violence, including prevention, intervention, treatment, law enforcement, prosecution, correctional, and advocacy efforts;

¹ We have added the remaining duties, in brackets.

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(5) Cooperate with any relevant departments, agencies, committees, boards, commissions, and organizations to periodically review the quality and sufficiency of programs and facilities available to domestic violence victims, offenders and their children throughout the county;

[(6) Obtain, evaluate and assist in implementing the recommendations of the county's Domestic Violence Fatality Review Team established under Md. Code Ann., Title 4, Subtitle 7, the Family Law Article;

(7) Obtain and evaluate statistical data, reports, and other information related to domestic violence, including information regarding innovative efforts by other governmental and non-governmental entities, as necessary to implement the requirements of this section; and]

(8) Subject to §1-2-404, advocate for policies or legislation at the county, state and federal levels that would improve efforts to address domestic violence issues, including prevention, intervention, treatment, law enforcement, prosecution, correctional and advocacy efforts.

The current chair of the Council is an Assistant State's Attorney who is chief of the domestic violence unit and regularly appears before the Requestors. The administrative duties of the Council are performed by an employee of the States Attorney's Office and all the public information about the Council is on the State Attorney's Office website.

The remaining members of the Council are a member of the County Council; the County State's Attorney or designee; the Regional Director of the State Division of Parole and Probation or designee; the County Sheriff or designee; the Chief of the Frederick Police Department or designee; the Forensic Nursing Services Coordinator at Frederick Health Hospital or designee; the President of a comprehensive domestic violence program serving county residents or designee; the Director of the County office of the State Department of Human Services or designee; the Director of Behavioral Health Services of the County Health Department or designee; the Superintendent of the County's public schools or designee; the Director of the County Child Advocacy center or designee; two attorneys; a member of the public; and a student.

Discussion: A judge may not accept a governmental appointment that assumes an executive or legislative power or that constitutes an "office" within the meaning of the Maryland Declaration of Rights, Articles 8, 33, and 35. The activity in question is advisory and does not run afoul of these restrictions.

Several Rules in The Code of Judicial Conduct (Code), codified as Title 18, chapter 100 of the Maryland Rules, are pertinent.

Rule 18-101.2(a) provides that a judge shall act in a manner that "promotes public confidence in the independence, integrity, and impartiality of the judiciary."

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Rule 18-101.3 provides that a judge may not lend the prestige of judicial office to advance the “personal or economic interests of the judge or others.”

Rule 18-103.1 provides that a judge may engage in extrajudicial activities provided that such participation shall not interfere with performance of the judge’s duties; lead to frequent disqualification of the judge; appear to undermine the judge’s independence, impartiality, or integrity; appear to be coercive; or make inappropriate use of court resources. If judicial independence and impartiality are not compromised, “judges are encouraged to engage in appropriate extrajudicial activities.” Rule 18-103.1 Comment (1). Judges “are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects.” *Id.* Participation in law related activities “helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.” Rule 18-103.1 Comment (2).

Rule 103.4 provides that a judge “shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.”

Rule 18-103.7, arguably relevant, provides that a judge may participate in activities sponsored by “organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit.” Subsection (a) of that Rule describes certain included and excluded activities. Some of those activities are relevant here, and some are not. For example, making recommendations to an organization in connection with its programs and activities is permitted if the organization is “concerned with the law, the legal system, or the administration of justice.”

Clearly, the County has evidenced its intent that the Requestors or their designees serve on the Council. The governmental creation of advisory boards, commissions, and the like occurs with some regularity. It is not unusual that legislative enactments evidence an intent that judges serve on such bodies. Despite that intent, judges must maintain judicial independence and impartiality and comply with other portions of the Code.

In Opinion 2013-15, this Committee considered a similar issue at some length. Generally, whether a judge can serve on a governmental committee or similar entity turns on the extent to which its concerns go beyond the law. In Opinion 2013-15, the issue was whether a judge could serve on a Commission on Child Custody Decision Making. The answer was yes with qualifications. The Committee explained that the judge’s participation must be limited to those functions that “concern the law, the legal system, and the administration

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of justice, that are not executive or legislative in nature, and do not compromise judicial independence.”

Those requirements are applicable here. Although the role of the Council is advisory, the judge should not be involved in recommending executive or legislative actions.

In Opinion 2013-15, the Commission on Child Custody Decision Making was focused on studying the practice, principles, and process for child custody decision making. In the instant matter, the Committee notes that the Council is “victim-centered.” That term is not defined. We are aware that all persons do not share the same view of domestic violence issues and how to combat the problem. The term raises the question of whether the Council is too aligned with the State’s Attorney’s Office and the prosecutorial function. That is especially true because the State’s Attorney’s Office is housing the Council, so to speak, and the current chair appears frequently before the Requestors. On the other hand, some of the stated duties and the make-up of the Council suggest a broader approach to the issues of domestic violence. The Requestors should participate only in activities that concern the law, the legal system, and the administration of justice. They should not participate in making recommendations relating to prosecution of offenses and should not participate in or support activities by advocacy groups. The Requestors should advise all Council members, and those with whom they interact while acting in the role of members, of the limits on their participation, explaining that they must “refrain from activities that reflect adversely upon a judge’s independence, integrity, and impartiality.” Rule 18-103.7 Comment (2).

Finally, we note a theme that is present in several Rules, which is that a judge has an obligation to give precedence to the judge’s judicial duties. That includes deciding cases, absent a reason for recusal. *See* Rule 18-102.1 (the duties of judicial office shall take precedence over a judge’s extrajudicial activities); Rule 18-102.7 (a judge shall hear and decide matters unless recusal is appropriate); Rule 18-103.1 (a judge shall not participate in activities that will interfere with the proper performance of the judge’s judicial duties); Rule 18-103.7(a)(6) (a judge may not serve as an officer, director, trustee, or nonlegal advisor to an entity if the entity is likely to be engaged in proceedings that would ordinarily come before the judge or the entity will frequently be engaged in adversary proceedings that would ordinarily come before the judge).

The Council is housed in the State’s Attorney’s Office and its chair is an Assistant State’s Attorney who regularly appears before the Requestors. At this point in time, it is unclear whether this will result in recusals by the Requestors, which could implicate the above Rules.

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We cannot foresee all of the activities that the Council might undertake, and cannot compile an exhaustive list of activities that are or are not ethically protected. As the process moves forward, and bylaws, organizational structure, and detailed activities become known, the Requestors must continue to evaluate whether there is an appearance that their independence, integrity, or impartiality are being affected or that other Rules are implicated.

Application: The Maryland Judicial Ethics Committee cautions that this Opinion is applicable only prospectively and only to the conduct of the Requestor described herein, 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 the request for advice involves a continuing course of conduct, the Requestor 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.