

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2010-22

**Date of Issue:** January 5, 2011

■ Published Opinion    □ Unpublished Opinion    □ Unpublished Letter of Advice

A Judge May Hire a Law Clerk Who also Serves as an Elected but Unpaid Central Committee Member

**Issue:** May a judge hire a law clerk who also serves as an elected but unpaid Central Committee Member?

**Answer:** Yes.

**Facts:** A judge is considering hiring a law clerk that also serves as an elected Central Committee Member. It is represented that the potential law clerk's duties as a Central Committee Member will not conflict with the responsibilities and duties as a law clerk. The potential clerk is otherwise qualified as a law clerk. An informal opinion of a member of the State Ethics Commission has found that the Public Ethics Law (Md. State Gov. Art., Title 15), does not prohibit the potential law clerk from serving as a Central Committee Member as well as a law clerk.

**Discussion:** This issue again highlights the inherent tension between the right of an employee, as a citizen, to engage in partisan political activity and the ethical constraints prohibiting judges from engaging in partisan political activity.

State employees "may freely participate in any political activity and express any political opinion[.]" § 2-304(a)(2)(i), Maryland Code, State Personnel and Pensions Article. That participation, however, may not be engaged in "while on the job during working hours ...." *Id.* § 2-304(c)(1). County employees enjoy the same rights subject to the same restrictions. Maryland Code, Article 24, §§ 13-102 and 105(1).

All State Judiciary staff have been advised of the limitations on political activity set forth in the sections of the Maryland Code cited above in a memorandum by the State Court Administrator, dated March 1, 2010. Those restrictions, however, were not intended and do not reflect the ethical obligations of a judge as mandated by the Maryland Code of Judicial Conduct. Md. Rule 16-813.

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Judges are required to perform their duties without bias and unaffected by outside influences. This principle is articulated in many of the specific rules set out in the Code of Judicial Conduct.

“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” Rule 1.2(a).

It is fundamental to promoting public confidence that judges not even give the *appearance* that they are politically biased.

“A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias, prejudice, or harassment based on ... political affiliation.” Rule 2.3(b).

Even more specifically,

A judge who is not a candidate [for re-election] shall not engage in any partisan political activity. Rule 4.2(a).

To maintain the confidence of the public in the independence and impartiality of the Judiciary, a judge must be seen not to be involved in partisan politics, personally or by proxy. Accordingly, the requesting judge has the responsibility to ensure that his/her law clerk is made aware of the judge’s ethical obligations and act accordingly. Rule 2.12(a). Rule 2.3(b), in turn, specifically requires that the judge require the law clerk not to conduct himself/herself in any manner that might lead to the perception of bias by the judge because of political affiliations. Further, the judge must inform the law clerk that the law clerk is prohibited from disclosing or using any confidential information obtained on the job for his or her personal economic benefit or the economic benefit of another.

An additional risk to a judge’s duty to be seen as unbiased is any perception that the law clerk is using his or her position with the judge to advance the political fortunes of a candidate. Not only must the judge not “lend the prestige of judicial office” for the benefit of others, the judge may not allow others to act in such a manner. Rule 1.3. The judge should not permit the law clerk to give the impression that the judge supports a particular candidate or is advancing the cause of the candidate through the activities of the law clerk.

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The judge has an affirmative duty to inform the law clerk as to the ethical constraints of the judge and the reasons behind them. Specifically, the judge should advise the law clerk that, in addition to the limitations set out in the memorandum from the State Court Administrator, the law clerk must make clear that:

- (1) his/her political activities are not an expression of the judge's views or preferences as to any candidate or political party; and
- (2) he/she is on leave from work during such activities.

**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.