

Maryland Judicial Ethics Committee

Opinion Request Number: 2013-17

Date of Issue: August 14, 2013

Judicial Appointee May Make Loan to a Personal Friend

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Issue: May a judicial appointee make a loan to a personal friend and potentially collect interest income from that loan.

Answer: Yes.

Facts: A judicial appointee has asked whether it would violate any ethical rules for the judicial appointee to make a personal loan to a friend. The judicial appointee will take out a home equity loan for the amount the judicial appointee intends to lend to the friend, and the friend will sign a promissory note and deed of trust for the principal and interest of the loan. The judicial appointee will report as income any interest received above that which the judicial appointee pays on the home equity loan.

Discussion: This request involves the application of Rules 3.1, 3.11 and 3.12 of the Maryland Code of Conduct for Judicial Appointees, Maryland Rule 16-814, set forth below.

Rule 3.1 EXTRA-OFFICIAL ACTIVITIES IN GENERAL

A judicial appointee may engage in extra-official activities, except as prohibited by law or this Code. When engaging in extra-official activities, a judicial appointee shall not:

- (a) participate in activities that will interfere with the proper performance of the judicial appointee's official duties;
- (b) participate in activities that will lead to frequent disqualification of the judicial appointee;
- (c) participate in activities that would appear to a reasonable person to undermine the judicial appointee'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 premises, staff, stationery, equipment, or other resources.

Rule 3.11 FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES

- (a) A judicial appointee may hold and manage investments of the judicial appointee and members of the judicial appointee's family.
- (b)(1) Except as permitted by Rule 3.7, a judicial appointee shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judicial appointee may manage or participate in:
 - (A) a business closely held by the judicial appointee or members of the judicial appointee's family; or
 - (B) a business entity primarily engaged in investment of the financial resources of the judicial appointee or members of the judicial appointee's family.
- (2) This section does not apply to a part-time judicial appointee.
- (c) A judicial appointee shall not engage in financial activities permitted under paragraphs (a) or (b) if

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they will:

- (1) interfere with the proper performance of the judicial appointee's official duties;
- (2) lead to frequent disqualification of the judicial appointee;
- (3) involve the judicial appointee in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the appointing court; or
- (4) result in violation of other provisions of this Code.

Rule 3.12 COMPENSATION FOR EXTRA-OFFICIAL ACTIVITIES

A judicial appointee may accept reasonable compensation for extra-official activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judicial appointee's independence, integrity, or impartiality.

The Comment to Rule 3.12 provides:

- [1] A judicial appointee is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judicial appointee should be mindful, however, that official duties must take precedence over other activities.
- [2] Compensation derived from extra-official activities may be subject to public reporting. *See* Rule 3.15.

There is nothing in the Code of Conduct for Judicial Appointees that would specifically prohibit a judicial appointee from making a loan to a friend, so long as doing so would not interfere with the judicial appointee's official duties as cited above. (It is assumed that the friend receiving the loan is not a person likely to come before the appointing court or cause a conflict of interest that would lead to frequent disqualification.) There is nothing that would prohibit the judicial appointee from receiving a reasonable rate of interest on the loan, so long as the loan and interest income are reported as required. It will be the judicial appointee's onus to assure that the particulars of the loan do not run afoul of the rules cited above by interfering with the judicial appointee's official duties.

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 conclusions 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.