

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2013-11

**Date of Issue:** August 12, 2013

■ Published Opinion   □ Unpublished Opinion   □ Unpublished Letter of Advice

Judge May Serve on Task Force on Juvenile Court Jurisdiction

**Issue:** May a judge serve as a member of a Task Force on Juvenile Court Jurisdiction?

**Answer:** Yes, subject to the qualifications set forth below.

**Facts:** Chapter 639, 2013 Laws of Maryland (House Bill 786) established a Task Force on Juvenile Court Jurisdiction (the “Task Force”) effective June 1, 2013. The Task Force is comprised of various stakeholders from the Legislature and the Executive Branch, the Maryland Public Defender, a Maryland State’s Attorney, local law enforcement, advocacy groups, and a juvenile court judge appointed by the Chief Judge of the Court of Appeals, among others.<sup>1</sup> The Task Force is charged with the responsibility of studying the current laws relating to the jurisdiction of the juvenile court and reviewing current research on best practices for handling offenses committed by youth in the court system. Chapter 639, Section 1(f). The Task Force is to make recommendations to the Governor regarding: (1) whether or not to eliminate the existing exclusionary offenses that automatically result in adult charges for youth and restore juvenile court discretion; (2) the benefits of retaining youth under the jurisdiction of the juvenile court; (3) methods to reduce the number of youth in adult detention centers and prisons; and (4) the long-term fiscal impact of treating youth in the adult criminal system. *Id.*, Section 1(f)(3). The Task Force members receive no compensation, but may be reimbursed for expenses. *Id.*, Section 1(e).

**Discussion:** Chapter 639 evidences the Legislature’s intent that a juvenile trial judge serve on the Task Force. Judges, nevertheless, may face a dilemma when asked to participate in such extra-judicial activities given the necessity of maintaining judicial independence and impartiality. As the Committee previously opined in [Opinion Request No. 2007-11], issued on October 14, 2008:

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<sup>1</sup> Chapter 639, Section 1(b) provides that the Task Force consists of the following members: one member of the Senate of Maryland, one member of the House of Delegates, the Secretary of Juvenile Services or the Secretary’s designee, the Secretary of Public Safety and Correctional Services or the Secretary’s designee, the Secretary of the State Police or the Secretary’s designee, the Maryland Public Defender or the Public Defender’s designee, a juvenile court judge, a representative from the Governor’s Office of Crime Control and Prevention, a Maryland State’s Attorney, a representative of a local correctional facility, a representative of a local law enforcement agency, a representative from a juvenile justice advocacy group, a representative from a victims’ rights advocacy group, an ex-offender who was charged as an adult for an offense committed as a juvenile, a youth services provider, a mental health provider specializing in adolescent mental health and a national expert on youth justice issues, or the expert’s designee.

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Sometimes a statute that establishes a governmental commission will specify that a judge should be one of the members. Legislation, however, does not override the specific rules and general principles in the code of judicial conduct to render legitimate service that is otherwise impermissible under those standards. ... Automatic deference to the legislature is not consistent with the principles of judicial independence that underlie the code. Although a legislature would not intentionally attempt to compromise judicial independence by requiring judicial participation in a government commission, the legislature may have mandated judicial participation without due consideration or understanding of the possible ramifications for judicial impartiality and independence.<sup>2</sup>

Rule 3.4 of the Maryland Code of Judicial Conduct (Md. Rule 16-813) states 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.” Comment [1] to Rule 3.4 provides that the Rule “implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system or the administration of justice.” Comment [1] warns, however, that “a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment ... and giv[e] due regard to the requirements of the independence and impartiality of the judiciary.” Comment [2] to Rule 3.4, in turn, provides that “[a] judge may not accept a governmental appointment that could interfere with the effectiveness and independence of the judiciary, assume or discharge an executive or legislative power, or hold another ‘office’ under the Constitution or laws of the United States or the State of Maryland.”<sup>3</sup>

This Committee has issued several opinions with respect to a judge’s service on governmental committees. These opinions all largely turn on the level and extent to which a committee otherwise concerned with the law is mandated to undertake an executive or legislative function. For example, in [Opinion Request No. 2007-11], the Committee opined that a judge should not accept an appointment as a member of a

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<sup>2</sup> Quoting Cynthia Gray, *Ethics and Judges’ Evolving Roles off the Bench: Serving on Governmental Commissions*, 17-18 (2002).

<sup>3</sup> Rule 1.2(a) of the Maryland Code of Judicial Conduct provides: “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” (Md. Rule 16-813). Article 8 of the Maryland Declaration of Rights states: “That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.” Article 33 provides, in pertinent part: “[T]he independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People[.]”

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county's Local Management Board as many of the Board's functions were executive in nature. Among the duties carried out by the Local Management Board were the development, funding and evaluation of services to achieve measurable improvement in child well-being.

In contrast, in [Opinion Request No. 2004-24], issued on December 3, 2004, after concluding no executive or legislative powers were implicated, nor were there any other constitutional impediments, the Committee permitted a judge to serve on a Local Drug and Alcohol Abuse Council as the functions of that Council were seen as advisory only, not involving control over funding or otherwise binding on any governmental entity.

In [Opinion Request No. 2009-02], issued on July 28, 2009, the Committee opined that a judge could accept an appointment to the Maryland Justice Act Committee ("CJAC"); however, there were limits to the participation. In that opinion, the Committee noted that the purposes and functions of the CJAC, which were to "review and evaluate, make policy recommendations and coordinate efforts with other agencies" were not clearly delineated, and concluded that appointment to the CJAC was permissible if it was understood that the judge's participation was primarily limited to the functions that concerned the administration of justice and improvement of the law, and were not otherwise executive or legislative in nature.

Finally, in [Opinion Request No. 2011-24], issued on December 14, 2011, the Committee found that a judge may be a member of a Public Defender Regional Advisory Board, but again with limitations. The Committee noted that while many functions of the Regional Advisory Board had a direct relationship to the administration of justice, other functions of the Advisory Board such as employee and office management issues and funding and budgetary issues were executive in nature. The Committee concluded that the requesting judge could accept appointment to the Regional Advisory Board, provided that the judge's participation was limited to those functions that concerned the law, the legal system and the administration of justice, and that were not executive in nature.

Broadly speaking, the charge given to the Task Force on Juvenile Court Jurisdiction concerns the law, the legal system and the administration of justice. While the Task Force's responsibilities appear to be advisory, the nature of some of the recommendations to be made, however, are of concern to the Committee. For example, the question of "whether or not to eliminate the existing exclusionary offenses that automatically result in adult charges for youth and restore juvenile court discretion" may implicate legislative functions in which a judge should not be involved.

Similarly, the Task Force's recommendations regarding "methods to reduce the number of youth in adult detention centers and prisons" and "the long-term fiscal impact

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of treating youth in the adult criminal system” may implicate executive functions involving, *inter alia*, the development of protocols for Executive Branch agencies. As the Committee said in [Opinion Request 2009-02] “judges should not create protocols for Executive Branch agencies. Nor should they create protocols that bind the courts; each case should be decided on its own facts and the law applicable to those facts.”

Accordingly, to the extent that the development of these recommendations involves executive or legislative functions, the requesting judge should not participate in them.

The Committee thus concludes that the requesting judge can accept appointment to the Task Force if it is understood that the judge’s participation is limited to those functions that concern the law, the legal system and the administration of justice, that are not executive or legislative in nature, and do not compromise judicial independence. The requesting judge, therefore, should make clear to all Task Force members, and those who appear before the Task Force, the limits of the judge’s participation. The Committee further cautions that the judge should constantly review the activities in which he or she is asked to participate.

**Application:** The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct described in this opinion, to the extent of your 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.