

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-06

Date of Issue: March 27, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A District Court Commissioner May Not Accept a Temporary Position as a Census Taker/Enumerator

Issue: May a District Court Commissioner accept temporary employment as a Census Taker/Enumerator?

Answer: No.

Facts: Requestor is a District Court Commissioner who has asked the Committee's advice as to whether the Commissioner may accept a paid temporary position as a census taker/enumerator. The job description provides that Requestor would interview residents who have not responded to the Census by visiting their households and entering census data onto electronic devices such as smartphones or tablets provided by the Census Bureau. While Requestor would be required to work evenings and weekends, the schedule is flexible. The paid federal position would begin with training on or about April 1, 2020, and last for eight (8) weeks.

Analysis: District Court Commissioners are "appointed by and serve at the pleasure of the Administrative Judge of the district, subject to the approval of the Chief Judge of the District Court." Md. Constitution Art. IV § 41G(2). As a judicial appointee, a Commissioner's conduct is subject to the Code of Conduct for Judicial Appointees, ("the Code"), Md. Rule 18-200.1 *et seq.* Therefore, "a judicial appointee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." Md. Rule 18-201.2(a). In addition, he/she "shall avoid conduct that would create in reasonable minds a perception of impropriety." Md. Rule 18-201.2(b). A Commissioner must remain mindful that his/her duties as a judicial appointee "shall take precedence over a judicial appointee's personal and extra-official activities." Md. Rule 18-202.1.

The Census Bureau is a division of the United States Department of Commerce. According to its website, the bureau's mission is to "serve as the nation's leading provider of quality data about its people and economy." Every ten (10) years, it conducts a survey of households to determine population and demographics. At that time it hires temporary employees for various jobs, including enumerators, from January until July to collect data regarding residents. Maryland census takers are paid \$18.50 - \$29.50 per hour, depending on the jurisdiction.

Maryland Judicial Ethics Committee

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Page 2 of 3

The general rule regarding extra-official activities is Md. Rule 18-203.1 which stipulates that “[e]xcept as prohibited by law or this Code, a judicial appointee may engage in extra-official activities. 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.

Commissioners have the “power prescribed by law to issue warrants of arrest, or bail or collateral or other terms of pre-trial release pending hearing and issue civil interim peace orders and civil interim protective orders within the jurisdiction of the District Court when the Office of the Clerk of the District Court is not open.” Md. Constitution Art. IV § 41G(b). Further, Commissioners 1) receive applications for statements of charges to determine probable cause to issue a summons or arrest warrant; 2) conduct investigations and inquiries into the circumstances of any matter presented to the Commissioner; and 3) advise arrested persons of their constitutional rights; set bonds; commit persons to jail in default of bond or release them on personal recognizance. Md. Code Ann., Cts. & Jud. Proc. § 2-607.

The Census Bureau website provides that all Census Bureau employees, including enumerators, must sign a Sworn Affidavit, or Oath of Non-Disclosure, which states, “I will not disclose any information contained in the schedules, lists, or statements obtained for or prepared by the Census Bureau to any person or persons either during or after employment.”

Given the above, the Committee is concerned that performance of a Census Bureau enumerator’s duties by a Commissioner has significant potential to lead to conflicts with the Code. It is easily foreseeable that a Commissioner, in canvassing an area for the census, would have occasion to contact and ask personal questions of persons: to whom the Commissioner has issued or will issue charging documents; whom the Commissioner has advised or will advise of their Constitutional rights; for whom the Commissioner has set or will set bond; whom the Commissioner has committed or will commit to jail.

Such contact could well compromise a Commissioner in the performance of official duties and could also compromise the census-taking function. A Court Commissioner could learn information in census-taking that may later influence a bail decision, for example. The person who answered the census questions posed by that Court Commissioner might reasonably question the impartiality of that same bond decision. Any number of situations

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-06

Date of Issue: March 27, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 3 of 3

could arise that would raise issues of the independence, integrity, and impartiality of the judicial appointee.¹

In view of the above, the Committee is persuaded that part-time employment as a Census enumerator is too likely to undermine public confidence in the judiciary to be permissible under the Code.

Application: The 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.

¹ A census-taker’s uncontrolled contact with random community members also raises safety concerns. *See* Md. JEC Opinion 2018-03, holding that Commissioners should not engage in part-time ride-share driving. As part of that opinion, we observed: “...the Commissioner may have set bond for, or denied bond to, the passenger. The Commissioner may have denied the passenger’s application for a criminal charge, or a protective order, or a peace order. While these encounters would probably not arise frequently, a single instance could place the driver in a compromised position both with respect to personal safety as well as professional performance.” Risks taken when a Commissioner goes door-to-door for the census are no different.