

Maryland Judicial Ethics Committee

Opinion Request Number: 2016-09

Date of Issue: March 31, 2016

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Issue: Whether a judicial appointee may apply for and/or receive medical cannabis licenses to be a Grower, Processor and Dispenser in the State of Maryland.

Answer: A judicial appointee may not grow, process or dispense medical cannabis.

Facts: The Requestor is a judicial appointee who asks whether it would be an ethical violation for him/her to apply for or receive licenses to grow, process and dispense cannabis for medical purposes in the State of Maryland.

Discussion: The Code of Conduct for Judicial Appointees (“Code”), Maryland Rule 16-814, Rules 1.1 and 3.1 provide, in pertinent part:

Rule 1.1 COMPLIANCE WITH THE LAW

A judicial appointee shall comply with the law, including the Rules in this Code of Conduct for Judicial appointees that are applicable.

Rule 3.1.(c) EXTRA-OFFICIAL ACTIVITIES IN GENERAL

A judicial appointee may engage in extra-judicial activities, except as prohibited by law or this Code.

In 2014, the Maryland General Assembly enacted legislation authorizing the growing, processing and dispensing of cannabis for medical purposes by individuals licensed by the State of Maryland. Maryland Code Annotated, Health General Article §§13-3306 through 13-3316 (2015). Pursuant to §13-3313, growers, processors and dispensers licensed by the State of Maryland are exempt from arrest, prosecution or administrative penalty.

However, pursuant to the federal Controlled Substances Act (“CSA”), 21 U.S.C. 801, *et seq.* marijuana (cannabis) is listed as an illegal Schedule I Controlled Substance under §812, Subtitle I(c)(10).¹

Nothing in the Code of Conduct for Judicial Appointees limits the mandates of Rules 1.1 and 3.1 to Maryland law. Accordingly, as long as federal laws make the possession, use, manufacturing and/or distribution of marijuana (cannabis) illegal,

1. Maryland’s Health General Title uses the term “cannabis” while the federal CSA uses the term “marijuana” for the same substance.

Maryland Judicial Ethics Committee

Opinion Request Number: 2016-09

Date of Issue: March 31, 2016

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 2 of 2

a judicial appointee may not participate in the growing, processing or dispensing of the substance, regardless of the intended purpose.²

We are aware that Health General § 13-3313 exempts growers, processors and dispensers licensed by the State from arrest, prosecution or administrative penalty, “including a civil penalty or disciplinary action by a professional licensing board.” However, the Code of Conduct for Judicial Appointees was not promulgated by a “professional licensing board,” but by the Court of Appeals in the exercise of its plenary authority to regulate the Judicial Branch of the State government. In the exercise of that power, the Court of Appeals has mandated that judicial appointees act “at all times in a manner to promote public confidence in the . . . integrity . . . of the judiciary.” Code Rule 1.2(a). Accordingly, judicial appointees “should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by this Code.” Rule 1.2 Comment [2].

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 letter. 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.

2. Even if the Congress enacted federal legislation analogous to Health General §§ 13-33-6 *et seq.*, a proposal by a judicial appointee to act as a medical cannabis grower, processor and dispenser might raise concerns with other provisions of the Code, for example, Rule 1.2 “PROMOTING CONFIDENCE IN THE JUDICIARY.” We need not address these issues at this juncture, however.