Opinion Request Number: 2019-27

Date of Issue: November 08, 2019

⊠ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

A judge may participate in a study focusing on judicial diversity in state courts subject to certain limitations.

Issue: Whether a judge may participate in a study focusing on judicial diversity in state courts.

Answer: Yes, subject to certain limitations.

Facts: The Requestor is a judge who received a letter from an assistant professor at a college asking that the judge participate in an interview being conducted for a study.¹ The study focuses on judicial diversity in state courts. The professor and a research team are surveying state court judges from all U.S. states and interviewing state court judges from During the 2019-2020 academic year, the team will be surveying and ten cities. interviewing Black state court judges. During the 2020-2021 academic year, the team will survey and interview American Indian, Asian American, Latino/Hispanic and White state court judges. Some of the questions inquire into the judge's background; while others ask about topics such as to what extent the judge believes that he/she represents group interests, whether the judge's race or gender affects his/her judging and behavior as a judge, and whether the judge believes that his/her race or gender influences the judge's perspective and issues that come before the judge. The study results would be aggregated and anonymized so that no individual judge can be identified in the study. The data would go into two books that the professor is writing, as well as research articles, law review articles, and presentations.

Analysis: The Maryland Code of Judicial Conduct ("the Code"), Title 18, Chapter 100 of the Maryland Rules, establishes standards for the ethical conduct of judges. Several Rules have potential implications to the issue presented to us.

Rules 18-103.1 through 18-103.15 address extra-official activities by judges. The general rule is contained in Rule 18-103.1, which states:

¹ The professor sent the same letter to many judges across the State. The interview requested is either inperson or by phone, with in-person preferred.

Opinion Request Number: 2019-27

Date of Issue: November 08, 2019

☑ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice Page 2 of 4

Except as prohibited by law or this Code, a judge may engage in extrajudicial activities. When engaging in extrajudicial activities, a judge shall not:

- (a) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (b) participate in activities that will lead to frequent disqualification of the judge;
- (c) participate in activities that would appear to a reasonable person to undermine the judge'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.

One of the comments to Rule 18-102.1² provides that "judges are encouraged to participate in activities that promote public understanding of and confidence in the judicial system." In the issue presented to us, it appears that the ultimate intent of the study is to provide a better understanding of state court judges. The question, however, is whether the Requestor could be perceived as being in violation of some of the Code provisions by answering certain questions in the interview.

The following Rules could be implicated by some of the interview questions:

Rule 18-101.2. Promoting Confidence in the Judiciary

- (a) **Promoting Public Confidence.** A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- (b) **Avoiding Perception of Impropriety.** A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

· · ·

Rule 18-102.2. Impartiality and Fairness

(a) A judge shall uphold and apply the law and shall perform all duties of judicial office impartially and fairly.

² Rule 18-102.1. Giving Precedence to the duties of Judicial Office.

The duties of judicial office, as prescribed by law, shall take precedence over a judge's personal and extrajudicial activities.

Opinion Request Number: 2019-27

Date of Issue: November 08, 2019

☑ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice Page 3 of 4

(b) A judge may make reasonable efforts, consistent with the Maryland Rules and other law, to facilitate the ability of all litigants, including selfrepresented litigants, to be fairly heard.

Rule 18-102.3. Bias, Prejudice, and Harassment

- (a) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (b) In the performance of judicial duties, a judge shall not, by words or conduct, manifest bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. A judge shall require attorneys in proceedings before the court, court staff, court officials, and others subject to the judge's direction and control to refrain from similar conduct.
- (c) The restrictions of section (b) of this Rule do not preclude judges or attorneys from making legitimate references to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Rule 18-102.10. Judicial Statements on Pending and Impending Cases

- (a) A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome or impair the fairness of that proceeding and shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Rule does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.
- (b) With respect to a case, controversy, or issue that is likely to come before the court, a judge shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office.
- (c) Notwithstanding the restrictions in sections (a) and (b) of this Rule, a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a non-judicial capacity.

.

.

Opinion Request Number: 2019-27

Date of Issue: November 08, 2019

☑ Published Opinion □ Unpublished Opinion □ Unpublishe Page 4 of 4

□ Unpublished Letter of Advice

Rule 18-103.5. Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties. Nonpublic information means information that is not available to the public. It may include information that is (a) sealed or shielded pursuant to the Maryland Rules, other law, or court order, (b) impounded, (c) communicated in camera, or (d) offered in grand jury proceedings, pre-sentencing reports, dependency cases, or psychiatric reports.

The Requestor will need to keep the Rules set forth above in mind when engaging in the interview. Further, we believe that the Requestor should not respond to interview questions where he/she is asked to express views that could be perceived to suggest a predisposition to decide matters in a certain way, whether or not a case is pending or impending in any court. The fact that the study results would be aggregated and anonymized so that no individual judge can be identified in the study does not alter the Requestor's responsibility to comply with the Code. *See* Rule 18-101.1.³ In summary, we conclude that the Requestor may participate in the described interview for the study, with the limitations as set forth above.

Application: The Maryland 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 amendments 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 Requestor engages in a continuing course of conduct, he or she 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.

³ Rule 18-10.1. Compliance with the Law

A judge shall comply with the law, including this Code of Judicial Conduct.