

Maryland Judicial Ethics Committee

Opinion Request Number: 2021-03

Date of Issue: March 08, 2021

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge's ability to advise other judges and members of the Judiciary that a charitable organization is producing handmade robes

Issue: May a judge advise other judges and members of the judiciary that a charitable organization has begun production of handmade robes?

Answer: Yes, with limitations.

Facts: The Requestor, in early 2017, read a newspaper column in which the author stated that a charitable organization was being formed to sew handmade judicial, ministerial, academic, and choir robes. The concept was created by a clergyman. The robes would be created by former inmates who would be taught how to sew the garments.

A subsequent article reported that the concept was near a reality. The Requestor was identified in the column as a judge who contacted the author to inquire about the organization. The newspaper column was emailed to all employees of the Maryland Judiciary by the media relations staff of the Administrative Office of the Courts (AOC) as part of a daily news report.

Subsequently, several judges contacted the Requestor asking for information about how to contact the organization. On February 9, 2021, the Requestor received notice that the organization, whose mission is to break the cycle of poverty with careers for Baltimore citizens returning from prison, had begun production ("notice of production").

The Requestor desires to provide the notice of production to (1) all Maryland judges; (2) judges who previously requested information from the Requestor; (3) the media relations staff; and (4) the Requestor's Twitter followers, which would allow some judges, clerks, and lawyers to access the tweet.

Discussion: The Code of Judicial Conduct (Code), codified as Title 18, chapter 100 of the Maryland Rules, does not expressly address the requested activity. The following Code Rules are pertinent.

Rule 18-101.2(a) provides that a judge shall act in a manner that "promotes public confidence in the independence, integrity, and impartiality of the judiciary."

Rule 18-101.3 provides that a judge may not lend the prestige of judicial office to advance the "personal or economic interests of the judge or others."

Rule 18-103.1 provides that a judge may engage in extrajudicial activities provided that such participation shall not interfere with performance of the judge's duties; lead to

Maryland Judicial Ethics Committee

Opinion Request Number: 2021-03

Date of Issue: March 08, 2021

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 2 of 3

frequent disqualification of the judge; appear to undermine the judge's independence, impartiality, or integrity; appear to be coercive; or make inappropriate use of court resources.

Rule 18-103.7 provides that a judge may participate in activities sponsored by "educational, religious, charitable, fraternal, or civic organizations not conducted for profit." Subsection (a) of that Rule describes certain included and excluded activities. The activity that is the subject of this opinion is not expressly addressed in the Rule as an included or excluded activity. Among the excluded activities, as applied to the organization, would be: (1) soliciting contributions for the organization (except from the Requestor's family members or from judges over whom the Requestor does not exercise "supervisory or appellate authority"); (2) receiving recognition as part of a fund-raising event for the organization; and (3) making recommendations with respect to the organization's programs and activities unless the organization is concerned with the law the legal system or the administration of justice.

Rule 18-104.2(a) provides that a judge who is not a candidate for election or retention shall not engage in partisan political activity.

The Code of Judicial Ethics applies to a judge's relationships beyond the relationship with the public, *e.g.*, relationships with other judges and court staff. The boundaries of ethical conduct are dependent upon the totality of the facts. When the issue is dissemination of information about a product or service offered by a vendor, the variables include whether the information is (1) primarily beneficial to judges or is primarily beneficial to the vendor; (2) directed only to other judges on the same level of court or to others; (3) in response to an inquiry from a specific judge or judges or an unsolicited mass dissemination; and (4) part of a casual conversation or a formal communication. As this Committee has recognized, sometimes the question is not whether the conduct is permitted at all but rather whether it is permitted under specific circumstances. See Ethics Opinion 2014-30, issued September 25, 2014 (a judge may participate in "ice bucket challenge" under certain circumstances).

Turning to the Requestor's specific requests, we conclude that the Requestor may provide the notice of production to the AOC media relations staff; the staff members will then decide what to do with it. The Requestor may respond to judges who contacted the Requestor, advise them that the organization has begun production of robes, and give them information as to how to contact the organization. The Requestor may contact other judges over whom the judge does not exercise "supervisory or appellate authority" and provide general information about the organization, including contact information, being mindful not to advance the economic interests of the organization. The Requestor may give general

Maryland Judicial Ethics Committee

Opinion Request Number: 2021-03

Date of Issue: March 08, 2021

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 3 of 3

and contact information to other judges if and when the subject of acquiring robes arises in casual conversation.

Contacting persons other than judges or utilizing social media is strongly discouraged. This Committee, in a prior opinion, stated that posting on social media may lend the prestige of judicial office to the matter posted. *See* Ethics Opinion 2012-07, issued June 12, 2012 (a judge should use social media cautiously). The reason is that postings on social media can be quickly and widely disseminated, without any control by the person who posted the information.

A judge who is not a candidate for election or retention, *see* Rule 18-104.1(b), shall not engage in partisan political activity. *See* Rule 18-104.2(a). Because the author of the newspaper articles about the organization included what reasonably could be understood as political commentary, we discourage the Requestor from providing the columns to judges generally, as distinguished from casual communications with judges who are friends or acquaintances or judges on the same level of court. Likewise, the Requestor should consider similar limitations in providing literature that describes the organization and its mission to the extent that it may intertwine them with politics or express any views that reasonably would call the Requestor's impartiality into question. Providing the newspaper articles or any literature that fits the description in the preceding sentence to other persons is strongly discouraged.

Application: The Maryland 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.