

Maryland Judicial Ethics Committee

Opinion Request Number: 2024-06

Date of Issue: March 11, 2024

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A sitting judge candidate for election may respond to a questionnaire from a non-partisan advocacy group.

Issue: May a sitting judge candidate for election respond to a questionnaire from the League of Women voters?

Answer: Yes, with limitations.

Facts: The Requestor is a judge who is running in the upcoming election. The Requestor has received a request from the League of Women Voters to respond to a survey that it publishes to provide information to voters regarding candidates. The Requestor believes that a candidate-judge may answer some questions in compliance with the Maryland Code of Judicial Conduct but is concerned that other questions ask for opinions/positions that judges are not permitted to offer. The question, therefore, is whether a response is permitted for all the questions in compliance with the Requestor's ethical obligations. The questions are as follows:

1. Qualifications: How does your experience prepare you for the duties of this judgeship?
2. Juvenile Justice: How would you address the problem of large numbers of minority youth being imprisoned?
3. Diversion Programs: What are your views on diversion programs for behavioral problems and substance abuse?
4. Challenges: What are the greatest challenges facing Maryland's Circuit Courts and how should they be addressed?

The Requestor is particularly concerned that an answer to Question No. 2 would violate Rule 18-104.4(d)(3).

We note the following as obtained from websites. The League of Women Voters of the United States is a 501(c)(4) organization. (<https://www.lwv.org>.) Members are organized into state and local chapters. The League of Women Voters of Maryland has its own website – <https://www.lwvmd.org>. The League of Women Voters of Anne Arundel County also has a site – <https://www.lwv.org/local-leagues/lwv-anne-arundel-county>. (Collectively known as the League). The state and local members all must comply with League policies and guidelines.

According to the League's website, the organization supports its positions on issues by engaging in advocacy with members of the executive and legislative branches of all levels of government. It describes itself as non-partisan. It does not endorse candidates.

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Discussion: Most pertinent to this request are the following rules:

Rule 18-101.2 provides that a judge shall promote “public confidence in the independence, integrity, and impartiality of the judiciary” and “shall avoid conduct that would create in reasonable minds a perception of impropriety.”

Rule 18-102.2(a) provides:

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

Rule 18-102.3 provides:

(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 provides, in part:

(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.

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Rule 18-102.11 provides, in part:

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including the following circumstances:

* * *

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

Rule 18-104.4 is also pertinent and provides that:

A candidate for election:

(a) shall comply with all applicable election laws and regulations;

(b) shall act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary and maintain the dignity appropriate to judicial office;

(c) subject to the other provisions of this Rule, may engage in partisan political activity allowed by law with respect to such candidacy, and, in that regard:

(1) may publicly endorse or oppose candidates for the same judicial office;

(2) may attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office; and

(3) may seek, accept, and use endorsements from any person; but

(4) shall not act as a leader in or hold office in a political organization, make a speech for a candidate or political organization, or publicly endorse a candidate for non-judicial office.

(d) As to statements and materials made or produced during a campaign:

(1) shall review, approve, and be responsible for the content of all campaign statements and materials produced by the candidate or by the candidate's campaign committee or other authorized agents;

(2) shall take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities that the candidate is prohibited from doing by this Rule;

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(3) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;

(4) shall not make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court;

(5) shall not knowingly, or with reckless disregard for the truth, misrepresent the candidate's identity or qualifications, the identity or qualifications of an opponent, or any other fact, or make any false or misleading statement;

(6) may speak or write on behalf of the candidate's candidacy through any medium, including advertisements, websites, or other campaign literature; and

(7) subject to section (b) of this Rule, may respond to a personal attack or an attack on the candidate's record.

In answering questions, the Requestor must be mindful of Rule 18-101.2, which requires a judge to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary. The Code of Judicial Conduct requires a judge to "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." Rule 18-102.10(a). "[A] public statement, other than in a court proceeding, decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way" in the proceeding or controversy, would require a judge to "disqualify himself or herself in any proceeding in which [his/her] impartiality might reasonably be questioned." Rule 18-102.11(a)(4).

The Code does not prohibit a candidate-judge from expressing their opinion on important matters of public concern, notwithstanding the disputed legal and political positions and issues it may generate as long as the statements do not violate the ethical rules.

With respect to Question 2, the press recently has reported that African American children account for 30% of the state's population under 13 but make up 64% of the number of children from that age group processed by juvenile services. Juvenile justice has been in the forefront of discussion statewide, and the issue is presently before the General Assembly.

To the extent that an answer to this question may be interpreted as advocating for a particular position, i.e., to reduce the number of minority youth being incarcerated, the

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answer could violate Rule 18-104.4(d)(3), prohibiting making a statement “with respect to a case, controversy, or issue that is likely to come before the court.” Moreover, depending on the answer, it may be viewed as making a “pledge[] or promise that is inconsistent with the impartial performance of the adjudicative duties of the office,” in violation of Rule 18-104.4(d)(3). The question also implicates Rule 18-104.4(d)(4), which prohibits a judge from making a statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.

There is, however, an alternative way to approach Question No. 2 that would not raise ethical problems. The question may be an attempt to elicit a response to discrimination in society and the right of all to be afforded equal justice under the law. In the Voter’s Guide for the 2020 primary, this area of questioning was labeled “Discrimination” and in the Voter’s Guide for 2022, the same sentiment was discussed under the caption, “Judicial Philosophy.” Judicial candidates may take that opportunity to express their strictest fidelity to justice and equal justice under the law.

Thus, the Requestor is able to answer Question 2, as well as the other questions, as long as the answer given does not violate the Code of Judicial Conduct.

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.