

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2010-12

**Date of Issue:** August 5, 2010

■ Published Opinion    □ Unpublished Opinion    □ Unpublished Letter of Advice

Judge Has an Ethical Responsibility in Regard to Staff Who Campaign for Candidates Running for Public Office

**Issue:** Does a judge have an ethical responsibility in regard to a member of his or her staff who wishes to campaign for candidates running for public office?

**Answer:** Yes.

**Facts:** A member of a judge's staff wishes to campaign actively on behalf of a candidate for public office in the county where the judge presides. The employee plans to distribute campaign material and to wear apparel supporting the candidate while campaigning. The employee would campaign or attend a campaign event only:

- a. outside of working hours;
- b. on a vacation day; or
- c. on personal time during working hours.

**Discussion:** This issue highlights the inherent tension between the right of an employee, as a citizen, to engage in partisan political activity and the ethical constraints prohibiting judges from engaging in partisan political activity.

State employees "may freely participate in any political activity and express any political opinion." § 2-304(a)(2)(i), Maryland Code, State Personnel and Pensions Article. That participation, however, may not be engaged in "while on the job during working hours ...." *Id.* § 2-304(c)(1). County employees enjoy the same rights subject to the same restrictions. Maryland Code, Article 24, §§ 13-102 and 105(1).

All State Judiciary staff have been advised of the limitations on political activity set forth in the sections of the Maryland Code cited above in a memorandum by the State Court Administrator, dated March 1, 2010. Those restrictions, however, were not intended and do not reflect the ethical obligations of the judges as mandated by the Maryland Code of Judicial Conduct. Md. Rule 16-813.

Judges are required to perform their duties without bias and unaffected by outside influences. This principle is articulated in many of the specific rules set out in the Code of Judicial Conduct.

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“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” Rule 1.2(a).

It is fundamental to promoting public confidence that judges not even give the *appearance* that they are politically biased.

“A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias, prejudice, or harassment based upon ... political affiliation.” Rule 2.3(b).

Even more specifically,

A judge who is not a candidate [for re-election] shall not engage in any partisan political activity. Rule 4.2(a).

To maintain the confidence of the public in the independence and impartiality of the Judiciary, judges must be seen not to be involved in partisan politics, personally or by proxy. Members of a judge’s staff deal with the public, lawyers, court staff and others. Judges must recognize that the words and actions of their staffs, at times, may be assumed by others to reflect the views of the judges for whom they work. Therefore, judges have the responsibility to ensure that employees subject to their control are made aware of the judge’s ethical obligations and act accordingly. Rule 2.12(a). Rule 2.3(b), in turn, specifically requires that a judge require employees not to conduct themselves in any manner that might lead to the perception of bias by the judge because of political affiliations.

An additional risk to a judge’s duty to be seen as unbiased is any perception that the staff member is using his or her position with the judge to advance the political fortunes of a candidate. Not only must judges not “lend the prestige of judicial office” for the benefit of others, they may not allow others to act in such a manner. Rule 1.3. Accordingly, they must be cognizant of the political activities of staff members. To that end, a judge should not permit an employee to give the impression that he or she supports a particular candidate or is advancing the cause of the candidate through the activities of his or her employees.

All judges should counsel their staffs as to the ethical constraints of judges and the reasons behind them. Specifically, they should advise all employees that, in addition to the limitations set out in the memorandum from the State Court Administrator, the

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employees not take any action that suggests that:

- (1) their political activities are an expression of the judge's views or preferences as to any candidate or political party; and
- (2) they are not on leave from work during such activities.

**Application:** The 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 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 you engage in a continuing course of conduct, you 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.