

Maryland Judicial Ethics Committee

Opinion Request Number: 2011-07

Date of Issue: April 28, 2011

Judges May Preside Over Proceedings in Which a Party is Represented by an Elected Official with Some Control Over the Court's Budget

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Issue: Must judges recuse themselves in proceedings in which a party is represented by an elected official with some degree of budget control over the judges' court?

Answer: No.

Facts: The requesting judges sit in a county that is governed by a board of five county commissioners. The county commissioners serve part-time and control a portion of the budget of the court's operations. One of the commissioners is a lawyer who occasionally appears in the requesting judges' court.

Discussion: Judges are ethically bound to hear and decide the cases assigned to them unless recusal is appropriate. Maryland Code of Judicial Conduct, Rule 16-813, Rule 2.7. They must do so impartially, without bias or prejudice, by applying the law to the facts of cases before them, unaffected by irrelevant influences. Rule 2.2 & 2.3(a).

Rule 2.4 addresses "external influences" that judges must not permit to sway their judicial conduct or judgment, including family, social, political, and financial relationships. Focusing on the court budget concern, the Committee notes that Rule 2.11 requires the disqualification of a judge who has a similar relationship with an attorney or a party to litigation before the judge in which the judge's impartiality might reasonably be questioned, including a situation in which the judge has a significant financial interest in the matter or is a party to the matter before the court.

The requesting judges are appropriately sensitive to any appearance of bias, recognizing that judges must "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." Rule 1.2 (a). The judges are concerned that they may be perceived to be biased in favor of the commissioner's clients simply because of their representation by the commissioner.

The issue raised by this inquiry involves the relationship between a judge and an attorney appearing before the judge who exercises some control over the budget. Recusal is not required because the only connection between the judge and the attorney is that they are officers of different branches of government. It is not a personal relationship and has no bearing on the judges' personal finances because judges are State employees.

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In *Boyd v. State*, 321 Md. 69 (1990), the Court of Appeals considered the types of external influences that might require recusal. Judges are presumed to be impartial. *Id.* at 80. The Court provided an objective test to determine the need for disqualification:

[T]he test to be applied is an objective one which assumes that a reasonable person *knows and understands all the relevant facts*. [citations omitted.] We disagree with our dissenting colleague's statement that recusal based on an appearance of impropriety . . . 'requires us to judge the situation from the viewpoint of the reasonable person, and not from a purely legalistic perspective.' Like all legal issues, judges determine appearance of impropriety—not by considering what a straw poll of the only partly informed man-in-the-street would show—but by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge.

Id. at 86 (quoting *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1313 (2d Cir. 1988)).

The commissioner who prompts this request is one of five commissioners. Any control that he or she might attempt to exercise over the court's budget would require the concurrence of others. The authority of a county commissioner creates no more of a conflict than an elected member of the Maryland General Assembly appearing before the court, given that the legislature controls much of the court's budget, as well as the judges' salary and benefits. Indeed, deference to legislator-lawyers is required by statute, which provides that their cases must be scheduled so as not to interfere with the legislative session. Md. Code Ann., Courts and Judicial Proceedings Article, § 6-402. *See also* Md. Rule 2-508(d). Yet it is accepted that the appearance of a legislator on behalf of a client does not require recusal. Viewed objectively, then, the circumstances presented by the appearance in court of the county commissioner do not require recusal.

The Committee notes that the application of an objective standard, as enunciated in *Boyd*, assumes that a reasonable person "knows and understands all the relevant facts." It suggests that it may be advisable to announce at the commencement of proceedings that the attorney is a member of the board of county commissioners, which does exercise some budget control and to allow any party to question the judge as to any influence that fact may have on his or her decisions. There may be, however, instances when the subject matter of litigation concerns the relationship of the court and county government. In those cases recusal may be required.

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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.