

Maryland Judicial Ethics Committee

Opinion Request Number: 2019-13

Date of Issue: May 21, 2019

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A Judge Participating in an interview that will be published in a book written by a person that the Requestor sentenced

Issue: Whether a Judge may participate in an interview that will be published in a book written by a person that the Requester sentenced.

Answer: Yes, with restrictions.

Facts: The Requestor is a Judge who sat on a reconsideration hearing for a young person who had been given a life sentence for a murder committed while the person was a juvenile. The Requestor reduced the sentence to life, suspend all but 24 years, with 5 years of supervised probation. The person's probation has ended, he/she has been contributing to the community, and he/she has written a memoir that is coming out in paperback. The Requestor asks whether he/she may participate in a brief email interview that would be included at the end of the book.

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.

Rule 18-102.10(a) provides:

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.

The request here, involving a case that has concluded, should not violate this rule.

Two other Rules are pertinent:

Rule 18-103.5 provides:

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.

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Rule 18-103.1 states:

Extra-Official Activities in General.

Except as prohibited by law or this Code, a judge may engage in extra-judicial activities. When engaging in extra-judicial 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.

The Requestor will need to keep these Rules in mind when engaging in the interview.

Finally, Rule 18-101.3 provides: "A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."

Comment 4 to that Rule States:

Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

We advise, as we did in a prior Ethics Opinion, Op. 2013-26, concluding that a judge could write an introduction to a book on a law-related topic, that "Requestor should also take reasonable steps to ensure that the prestige of the Requestor's judicial office is not exploited in any marketing of the book by the publisher."

In sum, the Requestor may participate in the interview, keeping in mind the restrictions set forth in the above-listed Rules.

Application: The 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

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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.