

Maryland Judicial Ethics Committee

Opinion Request Number: 2016-26

Date of Issue: August 25, 2016

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

A Judge's Service on a Non-Profit Organization's Committee that Performs Fund-Raising

Issue: May a judge serve as chair of a committee at a not-for-profit organization where the committee's roles include fund-raising?

Answer: Yes, provided the judge has no role in fund-raising activities.

Facts: The Requestor serves on the Board of a non-profit organization that provides workforce development and educational services for women seeking employment in health care and allied fields.

Requestor has been a member of the development committee; one of the committee's functions is to raise money. Requestor does not participate in these fund-raising activities. Requestor has been asked to serve as chair of the development committee.

Discussion: Rule 3.7 discusses the proper scope of a judge's participation in various organizations, including not-for-profit organizations similar to the organization at issue. In contrast to the language of Canon 4C(2) of the prior version of the Code of Judicial Conduct, which flatly prohibited a judge to solicit funds for any such organization, Rule 3.7 explicitly allows some fund-raising activity where such activity does not create a possibility of coercion. Subsection (2) expressly allows a judge to solicit from members of the judge's family or from judges over whom the judge does not have supervising or appellate authority.

Similarly, Rule 3.1 allows judges to participate in extrajudicial activities like the not-for-profit at issue here. Comment 3 to Rule 3.7 permits a judge limited participation in fund-raising connected activities, specifically allowing ". . . a judge to serve as an usher or food server or preparer, or perform similar functions . . . such activities are not solicitation and do not present an element of coercion or abuse of judicial office." Comment to Rule 3.7, [3]. Comment 4 goes on to note that the identification of a judge's position on letterhead used for fund-raising by a civic organization does not violate the Rules so long as similar designations are used by other persons.

Since the activities here do not involve the Requestor soliciting funds, participation as chair of that committee is permitted. However, the Requestor should

Opinion Request Number: 2016-26

Date of Issue: August 25, 2016

Page 2 of 2

Published Opinion Unpublished Opinion Unpublished Letter of Advice

clarify that he has no involvement in the fund-raising activities, and may recommend that a vice chair be named, specifically designated to cover all fund-raising activity during the Requestor's tenure as chair to avoid any possible Rule 1.2 or 1.3 concerns.

As the Committee noted in Opinion 2014-30 regarding The Ice Bucket Challenge, "Broadly speaking, with respect to fund-raising activities . . . the ethics questions that arise typically do not involve whether a judge can participate, but rather, the manner in which he or she does so. Accordingly, every situation must be analyzed based on the facts presented and great care must be taken to avoid action that may be perceived as coercive or an invitation to court favor with the judge."

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 letter. 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.