

Maryland Judicial Ethics Committee

Opinion Request Number: 1978-03

Date of Issue: May 8, 1978

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Serve on College's Board of Governors but Cannot Be Involved in Fundraising

On February 22, 1978 you asked this Committee whether you may constitutionally and legally serve in the capacity of a member of the Board of Visitors and Governors of [a college] as an alumni representative, or as a Board designated representative, and retain your present position as [a judge].

It is appropriate for judges to participate in the activities of educational, religious and charitable institutions, subject to the provisions of the following Maryland Canons and Rules of Judicial Ethics. ([Opinion Request No. 1975-09], 10/3/75).

Canon XXIII of the Maryland Canons of Judicial Ethics provides:

“A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.”

Canon XXIV provides:

“A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute either to the success of private business ventures or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.”

Rule 3 of the Rules of Judicial Ethics provides:

“No judge shall hold any office or position with any political party or organization, nor shall he hold any office or employment, civil, military or political of any kind, whatsoever, under the Constitution or laws of this State, or of the United States, or any of them; or receive fees, or perquisites of any kind for the discharge of his official duties.”

The above rule should be read in conjunction with Article 33 of the Declaration of Rights which provides*, in part:

“No judge shall hold any other office, civil, military, or political, trust or employment of any kind, whatsoever, under the Constitution or laws of this State, or of the United States, or any of them; or receive fees, or perquisites of any kind, for the discharge of his official duties.”

* Wording prior to ratification of Chapter 61, Acts of 1990.

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The comment to Rule 3 states:

“This ethics rule is broader than Article 33 of the Declaration of Rights in that it prohibits judges from holding an office or position with any political party or organization. The remaining prohibitions in the rule are those contained in Article 33. Some contend that there is no point in duplicating one section of the Constitution and ignoring others. However, the Committee believes that there should be a rule such as this because the Declaration of Rights contains no sanctions for its violation, thus leaving impeachment as the only penalty. The adoption of this rule will permit sanctions short of impeachment. ...”

(See *Board v. Attorney General*, 246 Md. at p. 439, which sets forth the standard whether a position is an office).

We received a copy of the Attorney General’s opinion of April 4, 1978 advising you that your election or appointment as a member of the Visitors and Governors of [a college] would not violate Articles 8, 33 and 35* of the Declaration of Rights, nor the common law incompatibility doctrine. The opinion held that such a position did not satisfy the traditional tests of a “public office.” Therefore, Rule 3 would not be violated.

We note that the Visitors and Governors of the college receive no compensation; that their function is the management of a private institution of learning and as such do not engage in the exercise of the sovereign power of the state.

Rule 6 provides:

“A full-time judge shall not hold any office or directorship in any public utility, bank, savings and loan association, lending institution, insurance company, or any other business corporation or enterprise or venture which is affected with a public interest. A judge shall not hold an office or directorship in any other business corporation, enterprise, or venture if the holding thereof interferes with the performance of his official duties or permits the exploitation of the prestige of his office or conflicts with the impartial exercise of his official duties.”

Rule 9 provides:

“A judge shall not, directly or indirectly, lend the influence of his name or the prestige of his office to aid or advance the welfare of any private business or permit others to do so. He shall not personally solicit funds for any purpose, charitable or otherwise.”

Committee Note.) This rule is not intended to prohibit judges from serving without compensation on advisory or other committees, commissions or boards established for charitable, educational or religious purposes or for the purpose of the improvement of judicial administration.

* Chapter 80, Acts of 1996, ratified on November 5, 1996, amended Article 35 to alter the meaning of “office of profit”.

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Rule 6 when read in conjunction with Rule 9[,] which prohibits the solicitation of funds by a judge for any purpose, charitable or otherwise, does not preclude service by a judge on the boards or organizations established for charitable, educational or religious purposes, subject to the limitation that a judge should have no official connection with any agency which appears regularly before his court. ([Opinion Request No. 1971-05], 3/1/72).

It is preferable for a judge not to serve as treasurer of his church. ([Opinion Request No. 1975-10], 10/21/75).

The above rule proscribes solicitation by [judges] for restoration of historical treasures in the _____ Court House. ([Opinion Request No. 1976-07], 7/8/76).

It is the opinion of the Committee that the Canons and Rules of Judicial Ethics do not impede your serving as a member of the Board of Visitors and Governors of [a college]. However, it is suggested that you not participate in, or permit the use of your name in, any fund raising activity for and on behalf of the college.