

Maryland Judicial Ethics Committee

Opinion Request Number: 2011-04

Date of Issue: April 4, 2011

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Judge Not to Serve as President of Civic Organization that Solicits Funds from the Public
If Judge Plays Prominent Role in Fundraising

Issue: May a judge serve as president of a civic organization that solicits funds from the public?

Answer: Not if the president plays a prominent public role in the fundraising activity.

Facts: An Orphans' Court judge (the "Requestor") has inquired about the propriety of serving as president of a civic organization that solicits funds from the public, which funds are used to finance the training of paramedics and to provide smoke detectors and automatic external defibrillators for the community. A major function of the organization is a fundraising event during which several candidates apparently engage in a competition, asking "their friends for donations to buy equipment in their name." While the Requestor states that he/she has "established a separate fundraising chairman and would not directly ask any person or business to make a donation," the role of the organization's president is "to introduce [the candidates] to the community through interviews in the media and thanking them and donors at the annual event."

Discussion: An Orphans' Court judge is subject to the Maryland Code of Judicial Conduct ("Code"), Maryland Rule 16-813, A-109(2) subject to certain exceptions not relevant to this request.

Rule 3.1 of the Code provides that "[a] judge may engage in extrajudicial activities, except as prohibited by law or this Code." In fact, as expressed in Comment [1] to the rule:

To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. . . . In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law.

Such participation "helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system." Rule 3.1, Comment [2]. Nevertheless, as this Committee observed in [Opinion 2007-11], issued on October 14, 2008, "there is often a fundamental tension between judicial independence and the benefits of community involvement." That tension exists because the involvement must be constrained by the mandate that "a judge shall act at all times in a manner that

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promotes public confidence in the independence, integrity, and impartiality of the judiciary.” Rule 1.2(a). In that vein, “[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.” Rule 1.3. Consequently, Comment [4] to Rule 3.1 states:

While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge’s solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7 (a), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

For that reason, while Rule 3.7(a)(1) permits a judge to assist extrajudicial organizations “in planning related to fund-raising, and participating in the management and investment of the organization’s or entity’s funds[.]” Rule 3.7(a)(2) restricts the solicitation of contributions for such organizations to “members of the judge’s family, or from judges over whom the judge does not exercise supervisory or appellate authority[.]”

According to the inquiry, the Requestor has “established a separate fundraising chairman” so that, as president, the Requestor would not personally or directly engage in the solicitation of funds. However, playing a highly visible role in an association that engages in public fundraising as a primary activity, requires the exercise of elevated caution on the part of a judge. In this case, the president “introduces [the fundraisers] to the community through interviews in the media,” presumably after which the fundraisers go out into the community to request donations. Once the donations have been made, the president then thanks the fundraisers “*and donors* at the annual event” (emphasis supplied). Thus, although not soliciting funds directly, by serving as president, the Requestor might reasonably be perceived as more than an indirect participant in the solicitations. The circumstances “create [a] risk that persons solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.” Rule 3.1, Comment [4]. Accordingly, it is the opinion of the Committee that, under the facts described in the inquiry, the Requestor should not serve as president of the organization, if serving as president requires such direct participation in the fundraising activities of the organization.

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.

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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.