

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2013-29

**Date of Issue:** February 12, 2014

Published Opinion       Unpublished Opinion       Unpublished Letter of Advice

Judges May Solicit Attorneys for *Pro Bono* Representation of Indigent Parties

**Issue:** May judges solicit attorneys (personally and/or *en masse*) to represent indigent parties on a *pro bono* basis?

**Answer:** Yes.

**Facts:** In Opinion No. 124 (Solicitation of Attorneys for Pro Bono Work), issued by this Committee on October 22, 1996, we opined that under the then applicable Canon 4C(2), a judge may solicit volunteers for *pro bono* service to indigent parties by writing to such attorneys individually, by speaking publicly to Bar gatherings, and by placing advertisements in Bar publications. The Committee has been asked by the requesting judge whether judges may continue to rely upon Opinion No. 124 given “[t]he passage of time ... [and] developments in the area of judicial ethics ... that could affect the conclusion of the Committee” as set forth therein.

**Discussion:** Canon 4C(2), upon which Opinion No. 124 was primarily based, provided, in pertinent part, that “[a] judge should not solicit funds for any [civic or charitable] organization, or use or permit the use of the prestige of the judge’s office for that purpose ... .” Meanwhile, Canon 4A provided that “[a] judge may speak ... on both legal and non-legal subjects.... [and] may participate in other activities concerning the law, the legal system and the administration of justice.” The Committee interpreted these provisions to permit the course of conduct addressed in the original inquiry.

Since that time, the Canons have, of course, been superseded by various revisions, culminating in the current Rule 16-813, the Maryland Code of Judicial Conduct (the “Code”).<sup>1</sup> Rule 1.3 of the Code is the descendent of Canon 4C(2) and provides that “[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.” As the Committee stated in Opinion No. 124, “the solicitation of volunteer *pro bono* assistance to indigent parties ... does not constitute ‘... use [of] the prestige of the judge’s office for that purpose....’” Our opinion, today, remains the same, namely, that Rule 1.3 permits judges to solicit attorneys to represent indigent parties on a *pro bono* basis.

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<sup>1</sup>The new Code of Judicial Conduct, organized by Rules rather than Canons, became effective on July 1, 2010.

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Similarly, as did Canon 4A, Rule 3.7(a) of the Code permits “a judge ... [to] participate in activities ... concerned with the law, the legal system ... [and] the administration of justice ... .” Comment [5] to Rule 3.7 cautions, however: “In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion or abuse the prestige of judicial office.”

Finally, the Committee notes that since Opinion No. 124 was issued, Rule 2.6 has been adopted, which is derived, in part, from Canon 3A(5).<sup>2</sup> Rule 2.6 provides that “[a] judge *shall* accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.” (Emphasis added).

Comment [2] thereto also states, in part:

Increasingly, judges have before them self-represented litigants whose lack of knowledge about the law and about judicial procedures and requirements may inhibit their ability to be heard effectively. A judge’s obligation under Rule 2.2 to remain fair and impartial does not preclude the judge from making reasonable accommodations to protect a self-represented litigant’s right to be heard ... . This Rule does not require a judge to make any particular accommodation.

While the Committee recognizes that Rule 2.6 is meant to affirm “the right to be heard” as a value which judges should nurture, in adding that “accommodations” may be made to self-represented parties, the Comments thereto reflect a recognition that the *absence* of legal representation can “inhibit” that right. As this is so, implicit in such proposition is the reality that *facilitating* such representation enhances a party’s “right to be heard” and is therefore consistent with both the letter and spirit of the Code.

Accordingly, we believe that the course of conduct permitted by Opinion No. 124 remains valid under the Code.

**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

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<sup>2</sup>Canon 3A(5) of former Rule 1231 provided, in pertinent part: “A judge should accord to every person who is legally interested in proceedings, or the person’s lawyer, full right to be heard according to law[.]”

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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.