

Maryland Judicial Ethics Committee

Opinion Request Number: 2017-05

Date of Issue: May 10, 2017

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Swearing In Officers of a Local Business Chamber of Commerce at the Annual Installation Dinner

Issue: May a judge install officers of a local business chamber of commerce through an oath of office at the organization's annual installation dinner?

Answer: Yes, provided that the judge determines that the local chamber is non-partisan and that the judge considers recusal or disqualification if a member of the organization appears before the judge as a party.

Facts: A circuit court judge received a request to swear in through an oath of office the officers of a local business Chamber of Commerce at the organization's annual installation dinner.

The local business Chamber of Commerce at issue is in the County that the circuit court judge resides in and is an organization in which the judge used to be a member. The local chamber is non-partisan and does not participate in local political activity.

Discussion: Maryland Rule 18-103.1 permits a judge to engage in extrajudicial activities provided that the judge does 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.

Maryland Rule 18-103.7 provides that a judge may participate in educational, religious, charitable, fraternal, or civic organizations and activities subject to Maryland Rule 18-103.1 above and Maryland Rule 18-103.6.¹ Specifically, Maryland Rule 18-103.7(a)(4) provides that a judge may appear or speak at, receive an award or other recognition at, be featured on the program of, and permit his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice.

¹ Maryland Rule 18-103.6 prohibits a judge from holding membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

From the information provided by the Requestor, it is this Committee's opinion that the local chamber of commerce is a civic organization within the meaning set out in Maryland Rule 18-103.7, and that the event serves no fundraising purpose. Thus, the judge may conduct the swearing in at the organization's dinner as long as the prohibitions enumerated in Maryland Rule 18-103.1 and Maryland Rule 18-103.7 are not present. Because the requestor is a circuit court judge, there is a possibility that a member of the organization or the organization would appear before the judge, or the court on which the judge serves, as a party.² Accordingly, the judge is cautioned to consider whether disqualification or recusal would be required under Maryland Rule 18-102.11 if a member of the organization or the organization appears before the judge as a party.³

Although the local chamber of commerce is non-partisan, the National Chamber of Commerce engages in lobbying and supports pro-business candidates. The extent of the Maryland Chamber of Commerce's political involvement is unclear. The connections between the local chamber of commerce and the Maryland and National Chambers remains unclear. As such, it would be prudent for the requesting judge to inquire with the local chamber regarding such ties to ensure that the judge does not engage in any partisan political activity (Maryland Rule 18-104.2).

Finally, the requesting judge specifically requested advice on whether the requester could "install officers through an oath of office." It is unclear whether the requesting judge would be "installing" the officers in the requesting judge's official capacity as a circuit court judge, or merely as a former member of the organization. Article I § 10 of the Maryland Constitution provides that a holder of a public office "qualifies," that is, takes his or her oath of office, before either the Governor or the clerk of court of the jurisdiction in which the officer resides. In other words, judges do not have an inherent authority to administer oaths of office and there is no provision or rule in Maryland law which authorizes or condones a judge's doing so.⁴ The Committee is aware that the officers of the local chamber of commerce are not public officers but we think that it would be appropriate for the requesting judge to make it clear to the audience that he or she is administering the oath in a private capacity, and not as a judge. Additionally, the requesting judge should not wear his or her judicial robes when administering oaths to members of the organization. Such precautions will guard against any perceptions that the judge is exceeding his or her authority.

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.

² The requesting judge indicated that the organization has not been involved in any litigation before the courts in the last two decades.

³ The Committee advised in Opinion 2011-06 that an Orphans' Court judge may serve on the Board of Directors of a non-partisan chamber of commerce, noting that "as the requesting judge is a member of the Orphans' Court, it is *unlikely* that the organization would come before that court." [Emphasis added.] The Committee further cautioned the judge to "consider whether any other members of the organization would appear before the judge and whether disqualification or recusal would be required."

⁴ With the exception of Maryland Rules Title 18, Chapter 500, which gives judges the authority to perform marriage ceremonies.

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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 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.