

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2017-10<sup>1</sup>

**Date of Issue:** June 8, 2017

Published Opinion       Unpublished Opinion       Unpublished Letter of Advice

### **Judge's participation in a charitable fund-raising home tour**

**Issue:** May a judge participate in a charitable fund-raising home tour where the judge's house would be on the tour, tickets would be sold for admission, and the event would be significantly publicized?

**Answer:** No.

**Facts:** Requestor is a judge in a county where a not-for-profit charitable corporation sponsors an annual home tour for fund-raising purposes. The organization requests specific local residents to open their residences so that members of the public may view the art, furnishings, and architecture of the homes. In order to enter the homes there is an admission cost. Tickets are sold at local businesses prior to the tour date, and at the selected homes themselves on the day of the event. Proceeds support the charitable organization's activities. These activities are not related to law or the administration of justice.

The tour is advertised in the local newspaper through ads and written articles. These provide the homeowners' names and addresses and a description of the unique or interesting features of each home. Ticket purchasers receive a brochure with more detailed information and directions to each property.

Requestor and his/her spouse, who co-owns the home, have been asked to allow their home to be part of the tour this year. Tour organizers have offered to accommodate the judge in one of the following ways while publicizing the event:

1. In identifying the owner of the property, Requestor would not be identified as a judge. (Proposal One)
2. In the alternative, only the judge's spouse would be identified as the property owner, with no reference to the judge. (Proposal Two)

Requestor recognizes the personal security issues raised by this activity. Putting those aside, Requestor asks the Committee if ethics rules would prevent participation in the tour even with the accommodations suggested.

**Discussion:** The Code of Judicial Conduct (Title 18, Chapter 100 of the Maryland Rules) (the "Code") provides guidance for judges who wish to engage in charitable endeavors. On the one hand, Rule 18-101.3 forbids a judge from using the "prestige of office" to advance

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<sup>1</sup> Judge James A. Kenney, III did not participate in this Opinion.

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either the judge's or another person's economic interests<sup>2</sup>, and Rule 18-103.1(d) proscribes extra-judicial conduct that could reasonably be interpreted as "coercive."<sup>3</sup> On the other hand, Rule 18-103.7, "Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities," makes clear that, with certain restrictions, such activities are permitted. The Rule states in pertinent part:

(a) Subject to the requirements of Rules 18-103.1 and 18-103.6, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including the following activities:

...

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting 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[.]

[Emphasis supplied.]

It is clear in view of paragraph (a) (4) above that the Code will not permit Requestor's participation in the home tour under the title of "Judge" or "the Honorable." The event is a fund-raiser with no connection to the law, the legal system, or the administration of justice. Under such circumstances, and especially when the promotion of the tour in the media is taken into account, Requestor could be viewed as lending the prestige of office to a fund-raising effort. This is problematic because the implicit judicial endorsement favors one worthy cause above others.

We will now proceed to consider the proposed accommodations presented to Requestor by tour organizers to address ethics concerns.

The Committee does not believe the proposal to omit Requestor's judicial title adequately mitigates prestige of office concerns. Judges are public figures and generally have some degree of at least local renown. Merely dropping Requestor's title will not sufficiently serve to remove the aura of judicial imprimatur from the affair: a significant portion of the public is likely to recognize Requestor by name alone as a member of the judiciary.

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<sup>2</sup> Rule 18-101.3 states: "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."

<sup>3</sup> Rule 18-103.1 states, in pertinent part: "When engaging in extrajudicial activities, a judge shall not ... (d) engage in conduct that would appear to a reasonable person to be coercive...."

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Nor does the Committee believe that the proposal to identify Requestor's spouse as the property owner in all promotional materials without mentioning Requestor alleviates the concerns about lending the prestige of office. Even if the spouse has a different last name from the judge, the public, and especially local attorneys, may well recognize the spouse's name in connection with the judge, and infer judicial backing. Beyond that, the couple's home would be toured, and personal belongings and photographs in the home would likely connect the judge to the house in such a way that the appearance of judicial support would be created.

In addition, although the sponsoring organization could impose editorial control over self-generated promotional materials and press releases for the tour so that these would not contain the judge's name, the local media would not be bound by such restrictions. It is easily foreseeable that the chance for the public to view a local judge's home could be deemed newsworthy, and generate radio and paper coverage.

Finally, selling tour admission tickets to the general public outside Requestor's home on the day of the event could reasonably be perceived as active solicitation of non-legal charitable contributions. Rule 18-103.7(a)(2) restricts this activity, allowing such solicitation "only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority." Even if sales were conducted by third parties, such transactions, involving payment on a judge's property for access to the judicial homestead, no matter how well-intentioned, could be viewed as at least an implicit loan of the prestige of office to support a charitable activity.

We recognize that the charitable organization's goals are laudable, and the Requestor's desire to assist the organization is both understandable and commendable. However, there is a tension between the fund-raising campaign and the provisions of the Code of Judicial Conduct that the accommodations proposed by the organization do not fully resolve.

A previously published opinion of this Committee allowed a judicial spouse who was running for non-judicial office to post campaign signs for the spouse's own campaign in the yard of the couple's co-owned home. (Opinion Request No.2015-47, issued February 18, 2016.) In that matter, we were required to weigh the spouse's constitutionally-protected right of free expression and right to seek elected office against the requirements of the Code of Judicial Conduct. Such special circumstances are absent here, and the interests of the judge and the spouse are largely on the same footing in wishing to assist the non-profit organization to reach its fund-raising goals. For all the reasons cited above, the Committee opines that Requestor's participation in the holiday house tour would be inconsistent with the Code of Judicial Conduct.

**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

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Requestor's compliance herewith. Omission or misstatement of a material fact in the written request for an 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.