

Maryland Judicial Ethics Committee

Opinion Request Number: 2017-13

Date of Issue: June 15, 2017

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge may sponsor or participate in a public education program

Issues: (1) May a judge sponsor and participate in a public education program aimed at raising awareness and educating the general public about the heroin epidemic, the Good Samaritan Law and related Maryland law?

(2) May a judge utilize judicial stationery and the service of the judge's law clerk in the endeavor?

Answer: (1) Yes, with limitations

(2) Yes, with limitations

Facts: The requesting judge wishes to "sponsor and participate in a public speaking outreach program ... aimed at educating the general public about the heroin epidemic, Good Samaritan Law and related Maryland Acts and law." The judge envisions a joint effort among the judge, the local bar association, the public school system, local law enforcement agencies, local government entities, religious and other community organizations. The program would involve participants giving panel discussions at schools, civic centers, religious institutions and any other venue where there is interest in the topic. Participation in the program would be voluntary. The program would not be presented to officials or employees of rehabilitative or correctional institutions to which the judge would refer defendants who might appear before him/her. Panel members would receive no compensation nor would they be permitted to use the program to advocate for any law or reform. Recognizing the amount of time required, the judge would task his/her law clerk with the coordination of the program.

Discussion: The judge may initiate and participate in the intended program provided that his/her time commitment does not interfere with his/her ability to carry out his/her judicial duties properly and that the program otherwise conforms to Maryland Rule 103.1, Extrajudicial Activities in General:

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. When engaging in extrajudicial activities, a judge shall 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

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resources.

The Committee has concerns about the time commitment the project may involve and any effect it might have on his/her judicial duties. If “sponsoring” the program means to take the lead in planning, scheduling, marketing, etc. the time required might well interfere with the judge’s availability to perform judicial duties¹. On the other hand, a one-time effort to bring together the organizations who are to be involved to establish the program and to have them conduct it thereafter might not impinge on the judge’s available time.

[JT1]The judge’s goal of educating the public about the dangers of heroin and the law is commendable. Comment [1] to the above Rule notes that: “judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice....” His/her vision anticipates the avoidance of the appearance of undermining his/her independence, integrity or impartiality by prohibiting advocacy of any law or reform.

The judge should not require anyone who comes before him/her as a party to litigation to attend any session put on pursuant to his/her plan. By ruling out the presentation of the program to officials or employees of rehabilitative institutions to whom he/she might refer defendants the judge has minimized the chance that he/she might be disqualified on the bench.

In whatever role the judge may participate he/she should be careful to avoid any conduct that might appear to be coercive of others. Lawyers and bar associations might feel obligated to participate solely because they were asked to do so by a judge. Local agencies and organizations and individuals who might belong to them might have similar concerns.

The appropriateness of the use of judicial stationery also depends on the scope of the judge’s involvement in the program. Judicial letterhead is appropriate to make initial contact with potential participants, but such letters should make it clear that the program is not an official program of the Maryland Judiciary and should be worded to avoid any coercive effect upon a recipient.

Because the program is not a program of the Judiciary, the judge should not ask his/her law clerk to devote significant amounts of his/her normal work day time to it. The judge should not ask the law clerk to spend evening or weekend hours on the program. Such a request, no matter how phrased, is inherently coercive and unfair to the clerk.

¹ The Committee does not understand that by “sponsor” the judge intends to underwrite the program financially.

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All court staff, including the judge's law clerk, must "act in a manner consistent with the judge's obligations" under the Maryland Code of Judicial Conduct. Rule 102.12(a). The judge must ensure that the clerk is aware of the judge's ethical obligations and restrictions in his/her participation in the program.

In his/her request the judge does not make any reference to financial requirements that might be involved, whether for printing costs, facilities rental or any other expense. Pursuant to Rule 103.7 the judge should not be involved in any fund raising.

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 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.