

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2017-28

**Date of Issue:** November 17, 2017

■ Published Opinion    □ Unpublished Opinion    □ Unpublished Letter of Advice

### **Disqualification of Judge when Attorney-Acquaintance Appears Before the Judge as a Party or as Advocate for Clients**

**Issues:** (1) If a judge recuses in a case where that judge has a social and professional acquaintance with an attorney who is a party in the litigation, is the judge required to recuse in cases where the same attorney is appearing as counsel for another?

(2) Does a judge's recusal in circumstances such as this, violate Rule 18-102.7 (A Judge's Responsibility to Decide Cases)?

**Answer:** No, as to both questions.

**Facts:** The Requestor has been assigned a case (the "Case") where the defendant is a local attorney with whom the Requestor has a social and professional relationship; the social aspect of the relationship mainly consists of attending bar association functions; while the professional relationship is comprised of counsel appearing before the requestor on occasion. The Requestor does not view the attorney as a personal friend. However, the Requestor feels that recusal in the Case is appropriate under Md. Rule 18-102.11(a)(1), as the Requestor's impartiality could be questioned by the plaintiff in this case because of the social and prior professional relationships with the attorney-defendant. As such, the Requestor feels that recusal is appropriate to avoid even the appearance of impropriety.

The Requestor then poses the following two questions: (1) If the judge recuses in the case where the attorney-acquaintance is a party, must the judge recuse thereafter in ALL cases involving that attorney, even when that attorney is appearing as counsel and not a party? and, (2) Is the judge violating his/her duty to decide cases under Rule 18-102.7 by recusing in the first instance?

### **Discussion**

As this Committee has previously noted, in JEC Opinion Request 2009-18, "...the continuation of recusal once the circumstances giving rise to it have ceased to exist cannot be resolved by a bright line rule. Rather it must be determined by the individual judge exercising his or her discretionary authority." Here, the conflict giving rise to the appropriateness of the recusal is the attorney's appearance as a party in the case, and the possible perception by the opposing party that the judge's prior relationship with the

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attorney defendant could affect the judge's rulings. As Comment [1] of Rule 18-102.11 notes, "...a judge is disqualified whenever the judge's impartiality might reasonably be questioned...." The Requestor properly wished to avoid any suggestion that the prior (and ongoing) professional relationship with the attorney-defendant could impact the Court's rulings.

This concern is not present when the attorney appears as counsel in front of the Requestor. The attorney is not a personal friend of the Requestor. The nature of the relationship between local counsel and the local bench, by necessity, creates familiarity with the local bar, and that sort of collegiality, by itself, is not a reasonable basis to conclude that a judge is biased or partial.

As to the Requestor's second inquiry, Rule 18-102.7 states "[a] judge shall hear and decide matters assigned to the judge unless recusal is appropriate." The Requestor's decision to recuse from the Case because the Requestor has concluded, in the exercise of his/her discretion, that the plaintiff in the Case might reasonably question the Judge's impartiality, would not constitute a violation of the Rule. Comment [1] to that Rule notes that at times the judge's disqualification is appropriate to "protect the rights of litigants and preserve public confidence in the independence, integrity and impartiality of the judiciary...." And, as noted above, recusal is not an all or nothing matter. When a judge determines that recusal is proper to avoid the appearance of impropriety and has an honest, reasonable, and articulable basis to so conclude, recusal is not a violation of Rule 18-102.7. Based on the facts provided by the Requestor, his/her decision to recuse in the Case would satisfy those criteria.

**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 opinion. Omission or misstatement of a material fact in the 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 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.