

Maryland Judicial Ethics Committee

Opinion Request Number: 2017- 37

Date of Issue: December 14, 2017

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge may appear in his/her robe in campaign photographs. Judicial candidate slate may appear in robes in photograph together.

Issue: May an incumbent Circuit Court judge pose in his/her robe in campaign photographs while running for election to retain his/her seat? May a slate of judges pose together in robes for campaign photographs?

Answer: Yes, as to both questions.

Facts: A Circuit Court judge running for election on a slate of four incumbent judges requests an opinion on whether a judge may use a photograph of him/herself in his/her robe in campaign literature and whether the entire slate may pose in robes as a group.

Discussion

In public elections the First Amendment protects the rights of candidates and voters. Those rights are as applicable to judicial elections as they are to others. Candidates are entitled to communicate relevant information to the public. The public is entitled to have access to relevant information about candidates. Judges campaigning to retain their positions have the right to communicate their incumbency to the public which has the right to know the status of each candidate for the position.¹

A photograph of an incumbent judge accurately communicates to the public the very relevant information that the candidate in fact currently holds the office. It does no more than state the candidate's status.

Judges who are candidates for judicial office “may endorse or oppose other candidates for the same judicial office.” Rule 18-104(c)(1). When judges who are running for the same judicial office appear together in campaign photographs they

¹ In *Republican Party v. White*, 536 U. S. 765 (2002), the United States Supreme Court held that the “announce clause” improperly infringed on the rights of candidates and the public in judicial elections. “[D]ebate on the qualification of candidates” is “at the core of our electoral process and of the First Amendment freedoms”....” 536 U. S. at 781.

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are, in effect, endorsing each other. A photograph of a slate of judges in robes communicates to the public that they are incumbent judges who endorse each other.

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.