

Maryland Judicial Ethics Committee

Opinion Request Number: 2019-28

Date of Issue: October 24, 2019

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A sitting judge may permit his/her election committee to send fundraising communications to the local bar association via electronic mail.

Issue: May a Circuit Court Judge, who is a current candidate for his/her judicial seat and is engaged in campaign activities, authorize the election committee to send flyers for fundraising activities to members of the local jurisdiction's bar association via electronic mail?

Answer: Yes.

Facts: The requestor seeks an opinion whether he/she may, as part of election related fundraising activities, mail flyers to members of the local bar association, whose members include lawyers and judges. The requestor advises that the membership list was purchased by the judge's campaign committee and that the flyers would be made and sent off-site without the use of any governmental time or materials. The requestor also inquires whether the flyers could be circulated via email to bar association members who have provided their county email address as their preferred method of contact.

Discussion: Rule 18-104.1(c)(1)(B) of the Maryland Rules of Judicial Conduct defines the term "candidate for election" to include an incumbent judge of a Circuit Court or Orphans' Court who seeks to retain that office through an election conducted pursuant to Article IV, § 3, 5, or 40 of the Maryland Constitution. Requestor is, therefore, a candidate for election under the Code.

Rule 18-104.4(c) authorizes a candidate for election to engage in partisan political activity allowed by law. Partisan political activity, of necessity, includes fundraising and advertising. Rule 18-104.4 directs candidates for election to comply with all applicable election laws and regulations, and to review, approve and be responsible for the content of all campaign statements and materials. The general constraints on a candidate for election's partisan political activity are found in subsections (b) and (d) of Rule 18-104.4, and include requirements that a candidate for election act at all times in a manner that maintains the independence, impartiality, integrity and dignity appropriate to judicial office; and prohibit misrepresenting facts or making commitments or statements on issues pending or likely to come before the court.

Rule 18-104.4(d)(6) specifically provides that partisan political activity may include speaking or writing on behalf of one's candidacy through, "any medium, including advertisements, websites, or other campaign literature; . . ." There is nothing in the Rules that prohibits use of electronic mail as a medium for advertising. Nor is there a prohibition that would preclude sending mail to other judges. The Committee notes that even if

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precluded from attending partisan fundraisers or contributing to a political candidate, judges, as citizens entitled to vote, may receive campaign communications from all political candidates.

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.