

Maryland Judicial Ethics Committee

Opinion Request Number: 2019-35

Date of Issue: January 21, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A judge retaining an interest in a real estate partnership with former law partners.

Issue: May a judge retain a partnership interest in the ownership of real estate with former law partners where the firm and other law firms are tenants on the subject properties?

Answer: No. The Requestor should relinquish his/her partnership interest as soon as financially practicable.

Facts: The Requestor is a newly-appointed judge who previously was a partner in a law firm, and he/she and the other law partners have a separate partnership that owns real estate where the law offices (two locations) for that firm are located. The real estate partnership receives rent from several law firms (including the Requestor's former firm).

Analysis: Several provisions of the Maryland Code of Judicial Conduct (the "Code") potentially are implicated in this request.

Rule 18-101.2 provides: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary" (...) and "shall avoid conduct that would create in reasonable minds a perception of impropriety."

Rule 18-101.3 provides: "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." This Rule requires that neither the Requestor nor the other partners advance the Requestor's interest in the partnership in marketing the rental of the property.

Rule 18-102.1 provides: "The duties of judicial office, as prescribed by law, shall take precedence over a judge's personal and extrajudicial activities."

Two additional Rules relate more directly to extrajudicial economic activity. Rule 18-103.1 provides that, when a judge engages in extrajudicial activities, the judge shall not, among other things, participate in activities that will interfere with the proper performance of the judge's judicial duties, lead to frequent disqualification of the judge, or appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. Rule 18-103.11 provides:

- (a) A judge may hold and manage investments of the judge and members of the judge's family.

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- (b) Except as permitted by Rule 18-103.7,^[1] a judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:
- (1) a business closely held by the judge or members of the judge's family; or
 - (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
- (c) A judge shall not engage in financial activities permitted under sections (a) or (b) of this Rule if they will:
- (1) interfere with the proper performance of judicial duties;
 - (2) lead to frequent disqualification of the judge;
 - (3) involve the judge in frequent transactions or continuing business relationships with attorneys or other persons likely to come before the court on which the judge serves; or
 - (4) result in violation of other provisions of this Code.
- (d) This Rule does not apply to senior judges.

The Judicial Ethics Committee previously issued an opinion stating that the ethics rules “do not prohibit the ownership of rental real estate by a judge,” and “a judge is permitted to invest in real estate as long as it does not reflect adversely on his impartiality, interfere with the performance of judicial duties, exploit his judicial position or involve him in frequent transactions with those coming before him.” Opinion Request No. 1979-03 (1980). The Committee concluded that “a mere landlord-tenant relationship with an attorney who practices before a judge is not in violation” of the ethics rules. *Id. Accord* Opinion Request No. 1981-14 (1982).

Subsequently, however, in Opinion Request No. 2007-10 (2007), the Committee addressed the issue of recusal in this regard. Noting that other jurisdictions had expressed concerns with this type of situation, the Committee stated that it found

persuasive more recent opinions of other jurisdictions that have addressed this issue and that conclude that a failure to recuse or disclose the existence of a landlord-tenant relationship between a judge and an attorney appearing before the judge could result in an appearance of impropriety and/or be violative of the prohibition against financial dealings with lawyers that come before the judge. *See, e.g.,* Florida Judicial Ethics Advisory

¹ Rule 18-103.7 addresses “Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities,” which is not applicable here.

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Committee Opinion No. 2007-10 (2007), citing Florida Judicial Ethics Advisory Committee Opinions Nos. 97-33 & 85-08 (judge directed to recuse or disclose where the local legal aid office leased space in an office owned by the judge); South Carolina Advisory Committee on Standards of Judicial Conduct Opinion No. 6-2006 (2006) (judge should not lease residence to State Trooper who appears regularly in front of the judge); Massachusetts Committee on Judicial Ethics Opinion No. 93-3 (1993) (directing recusal from all contested cases in which a tenant of the judge represents a party before the judge); New York Judicial Advisory Committee Opinion No. 05-113 (2006) (requiring recusal from cases involving attorney in a landlord-tenant relationship with the judge); Wisconsin Judicial Conduct Advisory Committee Opinion No. 02-2 (2003) (a judge may not lease space to a lawyer who is likely to appear before the judge).

The Committee concluded that a judge in Maryland is not automatically disqualified from a case involving an attorney who leases office space from the judge, but because the relationship may raise doubts in the public's mind regarding the ability of the judge to remain fair and impartial, the judge must disclose the nature of the relationship to the parties and their clients, so the parties have a chance to object to the judge's participation in the case. And if the parties do object, the judge should recuse, unless there are compelling reasons not to do so.

The facts in Opinion Request No. 2007-10 were different from the situation here. In the prior situation, the judge solely owned the office space and the lease was to one attorney. Here, the Requestor states that he/she owns the real estate as a partner in a real estate partnership with the Requestor's former law partners, and he/she is a 16% partner in the real estate partnership. *See* Rule 18-103.11 (with exceptions not relevant here, "a judge shall not serve as . . . [a] general partner . . . of any business entity"). Moreover, the partnership receives rent from several law firms, including the Requestor's former firm. Although the request does not state how many lawyers are included in these firms, or the likelihood that they might have cases in front of the Requestor, it appears that multiple lawyers are employed in firms that would be involved in a landlord-tenant relationship with the Requestor.

More recently, the State of Vermont issued an Ethics Opinion stating that a newly appointed judge should not retain an interest in real estate co-owned with his former law partners and occupied by his former law firm. Opinion Number 2728-18, 2016 WL3402214. The Vermont Ethics Committee stated that the new judge's former partners or their associates might appear before the judge, and there were concerns that the judge's extrajudicial economic activity would risk situations where the judge's impartiality reasonably could be questioned and would implicate the judge's duty to avoid disqualification. The Committee concluded that, to avoid ethical concerns, it was prudent

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for the judge to relinquish his interest in the real estate partnership, as soon as financially practicable.

We agree with the conclusion reached by the Vermont Ethics Committee. Although we do not know the numbers of attorneys involved, or the likelihood that they will appear before the Requestor, the Requestor's partnership interest with his former law partners in the ownership of real estate that leases to several law firms in the county in which the Requestor is a judge has the potential to violate the Code. Based on the facts provided, it appears that retaining his/her interest could involve the judge in a continuing business relationship with attorneys likely to come before the court, lead to frequent disqualification of the judge, or appear to undermine the judge's impartiality and integrity. In addition, although the Requestor advises that the partnership is a verbal agreement, continuing as a partner may violate the general prohibition against a judge serving as a general partner of a business entity. *See* Rule 18-103.11(b). Accordingly, we conclude that the Requestor may not retain his/her partnership interest and should relinquish it as soon as financially practicable.

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.