

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-14

Date of Issue: August 24, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Participation in non-political charity walks by a judge running for election/re-election

Issues: Whether a judge running for election/re-election may participate in non-political charity walks such as the Alzheimer’s walk. If so, whether such participation would be seen as being done in the judge’s personal capacity and whether it is permissible to post such participation on a campaign website.

Answer: A judge may participate in non-political charity walks in a personal capacity, whether or not he/she is running for election/re-election. The judge may not post information about such participation on a campaign website or allow information about the judge’s participation to be included on the charity’s website.

Questions presented: The Requestor poses three questions concerning the ability of a judge who is running for election/re-election to participate in non-political charity walks:

1. Can a judge running for election/re-election participate in non-political charity walks such as the Alzheimer’s walk?
2. In light of Opinion 2014-30, insofar as an electoral candidate is required to personally campaign, would it be seen as done in one’s “personal capacity?”
3. And if so, is it permissible to post it on a campaign website?

Discussion: Several Rules of the Maryland Code of Judicial Conduct (Maryland Rule 18-101 *et seq.*, “the Code”) are implicated in the questions posed in this Request. Rule 18-103.7 allows judges to participate in educational, religious, charitable, fraternal, or civic organizations with certain exceptions. The Rule provides in pertinent part:

- (a) Subject to the requirements of Rules 18-103.1¹ and 18.103.6,² a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including the following activities:

¹ Rule 18-103.1 sets forth general guidelines when judges participate in extrajudicial activities.

² Rule 18-103.6 prohibits affiliation with discriminatory organizations.

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- (1) assisting such an organization or entity in planning related to fund-raising and participating in the management and investment of the organization's or entity's funds;
- (2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority...;

...

Rule 18-101.2 (a), entitled Promoting Public Confidence, provides: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary."

Rule 18-101.3 provides: "A judge shall not lend the prestige of judicial office to address the personal or economic interests of the judge or others, or allow others to do so."

Specifically pertaining to judges who are running for election, Rule 18-104.4, Political Conduct of Candidate for Election, provides in pertinent part:

A candidate for election:

- a. shall comply with all applicable election laws and regulations;
- b. shall act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary and maintain the dignity appropriate to judicial office.

The Requestor did not provide any information about what participation in a non-political charity walk such as the Alzheimer's walk would involve. A review of the website of the Alzheimer's Association provides three instructions under *How to Participate*:

1. Register for your local walk.
2. Start fundraising and spread the word.
3. Join us on Walk day.

It is clear from the instructions that an important component to participate in the Alzheimer's walk is fundraising, for which judges are limited by the Code. While Rule 18-103.7 provides that a judge may participate in charitable organizations, judges may only solicit contributions for such organizations from "members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority." Rule 18-103.7(a)(2). Therefore, a judge may contribute to and participate as a walker in an annual non-political charity walk such as the Alzheimer's walk, but the judge may only solicit contributions from his/her family and judges over whom he/she does not exercise supervisory or appellate authority.

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Opinions from judicial ethics committees in other states have reached the same conclusion. In Opinion J-8 (January 31, 2014), the Michigan Standing Committee on Judicial Ethics provided guidance on a variety of charitable activities, including a walk-a-thon. The Committee found that:

[A] judge is allowed to participate in a walk-a-thon, softball game, etc., or other educational, religious, charitable, fraternal or civic causes as long as the judge does not personally solicit contributions, does not individually solicit for backers or sponsors of other participants, and does not allow others to use the prestige of the judge’s office to coerce solicitations on the judge’s behalf.

In Opinion 10-152 (January 10, 2011), the New York Advisory Committee on Judicial Ethics determined that a judge may participate in runs/walks and contribute personal funds to the sponsoring organization but cannot personally participate in the solicitation of funds or other fund-raising activities.

The Florida Judicial Ethics Advisory Committee also found that a judge may participate in a walk-a-thon fundraiser to benefit a charitable organization and make a personal contribution as long as the judge does not solicit sponsorships. Opinion Number 2010-15 (June 10, 2010). The Committee distinguished prior opinions that had prohibited a judge from participating in charitable activities, such as being a model in a charity fashion show or ringing a bell at a Salvation Army kettle, from those that permitted participation in activities, such as a Habitat for Humanity build or decorating a hall for a charity function. The Committee reasoned that in the former activities the judge would appear to be personally or actively soliciting funds but in the latter activities the judge would not.

The Requestor’s second question referred to our Opinion Request Number 2014-30 where we addressed the issue of whether a judge could participate in the “Ice Bucket Challenge.”³ In that Opinion we concluded that a judge could participate in the Ice Bucket Challenge, but only under circumstances where it was clear that he/she was acting in a personal capacity. We referred to former Rule 1.3, which prohibited judges from “lend[ing] the prestige of judicial office to advance the personal or economic interest of the judges or others, or allow[ing] others to do so,” and former Rule 1.2, which required judges to “act

³ The Ice Bucket Challenge was an activity undertaken to raise public awareness of ALS and monetary contributions to the ALS Association through the dumping of a bucket of ice water over a person’s head. (ALS is the acronym for amyotrophic lateral sclerosis and is commonly known as Lou Gehrig’s disease.)

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at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.”⁴

The analysis and conclusion in Opinion Request Number 2014-30 are applicable to participation in a charitable walk as well. A judge’s participation in any such event should always be in the judge’s personal capacity and must not lend the prestige of the judicial office to the charity. Additionally, a judge must always act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary while engaging in extra-judicial activities.

In Opinion Request Number 2014-30 there was no information presented on whether the Requestor was running for election/re-election. We note, however, that a judge’s electoral candidate status is not a factor in our analysis of a judge’s ability to participate in a charitable walk.⁵ Nor is it a determining factor in what information may be posted on social media or a campaign website as presented in the Requestor’s third question.

The use of social media and websites in judicial campaigns is widespread and accepted. In Opinion Request Number 2019-30 we concluded that a judge running for election was permitted to use social media to inform the public of campaign fundraising events and to seek financial support for the slate of judges. In the facts before us now, however, the issue is not fundraising for a judicial slate, but rather whether posting pictures and other information on a campaign website could be perceived as fundraising for a charitable organization. Soliciting funds from the general public for a judicial slate is permitted; soliciting funds from the general public for a charitable organization is not.

In Opinion Request Number 2014-30 we found that if a judge recorded his/her response to an Ice Bucket Challenge on social media it would “unavoidably and impermissibly lend the prestige of judicial office to the ALS Association’s fund-raising campaign.” We reach the same conclusion in this Opinion as it relates to a judge posting his/her participation in a charity walk on the judge’s campaign website. While it is acceptable for a judge to post information on a campaign website showing the judge’s participation in a charitable community activity, such as, for example, packaging meals for needy residents, a judge may not post information concerning his/her participation in a fundraising activity of a charitable organization.

⁴ Rule 1.3 is now Rule 18-101.3. Rule 1.2 is now 18-101.2(a).

⁵ We do not see either a connection or a conflict regarding an electoral candidate’s requirement to personally campaign and the requirement that the judge participate in the walk in his/her personal capacity.

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The judge seeking an opinion in this Request only referred to a campaign website – not the website of the charity. It is possible, however, that the charity’s website could include the names of all the walkers and donors. In CJE Opinion No. 2008-11 (December 15, 2008), the Massachusetts Committee on Judicial Ethics addressed the potential conflict that could arise when a judge participates in a charitable walk or other activity and the information is posted on the charity’s website.

The Massachusetts Committee on Judicial Ethics issued the formal opinion after informally advising a judge that he could participate in a charity bike ride but could only solicit funds from family members and judges over whom he did not exercise supervisory or appellate authority. After the bike ride the judge requested a formal opinion concerning the propriety of certain contributions that he had received from persons who were not his immediate family or judicial colleagues, such as his son’s in-laws, his niece, a probation officer in his court who made a contribution on the charity’s website and someone whom he knew in a professional capacity who sent a contribution in his name directly to the charity’s website.⁶ The judge had taken steps to keep his webpage on the charity’s website private but the donation from the probation officer was received by the charity and acknowledged on the judge’s webpage. The judge recognized that the contribution from the probation officer was not appropriate and personally reimbursed the employee after the charity declined to do so. The Committee explained why such a donation was inappropriate and the risks involved when information about a participating judge is shared on a website:

This contribution was, as you have recognized, troublesome . . . [P]eople who work in the judicial system should not feel pressured to contribute to a charity favored by a judge. The Committee believes that you handled the matter properly by your explanation to the probation officer that, conformably with the Code, you could not in your judicial position take credit for her unsolicited contribution or give the appearance that you had solicited contributions from the staff of your court. Where the charity would not refund the donation to her, it was appropriate for you to reimburse the probation officer from your own funds.

This donation does raise a separate issue that may potentially affect any future unsolicited donations that may be received by the charity and credited to your fundraising goal.

. . . .

⁶ The Committee found that the first two donations were made by family members. The last donation was not considered to be problematic because the donor did not work for the judge’s court and the contribution was not solicited by the judge.

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Finally, to avoid any further contributions being made by persons who may feel a desire to contribute based on your position as a judge, you should take down your webpage or otherwise make it publicly inaccessible. Allowing your name to be placed on the website creates a risk that individuals other than the small pool of individuals from whom the judge may solicit will also see and contribute on the judge's behalf.

Consequently judges should make every effort to prevent a fundraising website containing their name from being made publicly available for fundraising purposes and, if the effort is unsuccessful, they should not permit their name to appear on the site.

We agree with the analysis provided in CJE Opinion No. 2008-11. Accordingly, in addition to our conclusion that the Requestor may not post information concerning his/her participation in the walk on a campaign website, we also conclude that the Requestor must not permit his/her name to be made publicly available on the charity's website.

Application: The Maryland 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.