

Maryland Judicial Ethics Committee

Opinion Request Number: 2022-18

Date of Issue: May 10, 2022

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A Photograph of a Judge with a University President and Other Judges from the Same University May Appear in a University Newsletter or Magazine Directed to Alumni, Alumnae, and Friends of the University

Issue: May a judge who graduated from a university appear with the retiring university president along with other judges who also graduated from that university in a photograph that is published in the university's newsletter or magazine?

Answer: Yes, under certain conditions.

Facts: The Requestor was asked to gather on campus with the 20 other judges who are graduates of a university for a photograph with the retiring president of the institution. As stated by the Requestor, the occasion "was reciprocal in nature; we sought to honor him just as well as the university sought to honor us." Several photographs were taken: some were taken with robes, in which the president wore his academic robe; others were taken without robes. The Requestor indicates that he/she will advise the university that no photographs are to be used "in conjunction with any advertising." At this time, the university has not published any of the photographs. But because "judges' photos regularly appear in and on publications in conjunction with non-advertisement articles or events highlighting their achievements," the Requestor is requesting advice on whether one of the photographs "may be featured in (or on) the university newsletter or magazine."

Discussion: Because publishing the photograph has not been brought up by the university, this request is in the nature of a preemptive strike prompted by our earlier opinion in JEC Opinion Request No. 2019-31. In that opinion, we framed the question presented as "May a judge appear in an advertisement for a private elementary school?" We answered in the negative because the school wanted to use the prestige of the judge's office "to promote itself" in violation of Rule 18-101.3 of the Maryland Code of Judicial Conduct (Title 18, Chapter 100 of the Maryland Rules) "(the "Code")."

Rule 18-101.3 also applies to this request. It provides that "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." As the Interpretive Provisions of the Code state, the Rules of the Code are "rules of reason" and are to be applied in keeping with all applicable law and "other Court Rules" and by giving "due regard [to] all relevant circumstances." Rule 18-100.1(b)(3). Here, the audience and the intended purpose of

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Page 2 of 2

the photograph's publication are different from those in JEC Opinion Request 2019-31. There, a private elementary school wanted to use a photograph identifying the judge, who was a former student, by his/her judicial position. The expressed and "front and center" purpose for doing so was advertising solely for the benefit of the school.

We do not view an educational institution's recognition of its former students' professional achievement in a newsletter or magazine sent to former students and friends of the institution to be prohibited by the Code. Nor are we persuaded that a photograph where everyone is wearing a robe mandates a different result. Therefore, the Requestor would satisfy his/her responsibility under the Code by indicating that any photograph identifying the judge by name and office cannot be used in advertising publications directed at advancing student enrollment and fund raising.

Requestor also asks whether the university would "have been precluded in any way from reporting in (or on) its newsletter [or] magazine, the names and/or photos of each of the judges, using the publicly accessible judicial portraits and the educational information contained in our MSA biographies?" We understand that to mean that the university did so without asking any of the judges for their permission. Those circumstances would not invoke the Code because the judge would not be lending the prestige of judicial office to advance the personal or economic interests of the university. If, however, a judge became aware that the university was or was intending to do so for the purposes of advertising, he/she would have the obligation to object.

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.