

Maryland Judicial Ethics Committee

Opinion Request Number: 2022-52

Date of Issue: January 11, 2023

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge's Ability to Attend the Inaugural Swearing In and/or Gala of Maryland Governor-Elect

Issue: May a judge attend the inaugural swearing in and/or gala of the Maryland Governor-Elect?

Answer: Yes, with conditions.

Facts: The Requestor is a judge who seeks advice on whether he/she may attend *The People's Ball: Celebrating the Inauguration of Wes Moore and Aruna Miller*. The gala is hosted by the Moore Miller Inaugural Committee, Inc. The Requestor reports that the treasurer of the Committee released a statement that "all funds raised by the Inaugural Committee will go towards funding the inauguration celebration; none of these funds will be spent on any campaign or electoral activity." The Requestor's spouse has purchased two tickets to the gala and the Requestor has inquired as to whether he/she may attend as a guest of the spouse.¹

Discussion: The Maryland Code of Judicial Conduct (the "Code"), Title 18, Chapter 100 of the Maryland Rules, establishes standards for the ethical conduct of judges. Several rules of the Code potentially are implicated in this Request.

Rule 18-103.1 provides that a judge may engage in extrajudicial activities provided that such participation shall not interfere with performance of the judge's duties; lead to frequent disqualification of the judge; appear to undermine the judge's independence, impartiality, or integrity; appear to be coercive; or make inappropriate use of court resources. Rule 18-103.1 must be read in conjunction with Rule 18-101.2 and Rule 18-104.2.

Rule 18-101.2(a) requires that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary."

Rule 18-104.2(a) provides that "[a] judge who is not a candidate shall not engage in any partisan political activity."

¹ Although the Requestor seeks advice only with regard to the gala, we have also included the related swearing in ceremony due to anticipated inquiries.

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We applied Rules 18-101.2(a) and 18-103.1 in Opinion Request Number 2017-12, where we concluded that judges may not accept free tickets to Baltimore Orioles baseball games to sit in the Governor's Box. Our opinion was based on our determination that acceptance of the tickets could create an appearance that the judges were too closely associated with members of the executive branch, which could undermine the confidence of litigants that judges could handle their cases fairly if the executive branch of government were involved in the litigation in any way. We see no such issue with the facts as presented in this Request where the gala tickets were available to all members of the public.

In analyzing the Request presented, we have looked to opinions from other states. In general, judicial ethics committees have permitted judges to attend inaugural events for elected state and local officials, although with limitations. *See e.g., Connecticut Committee on Judicial Ethics Informal Opinion Summaries 2010-36* (December 17, 2010) (judicial officials may attend a gubernatorial inaugural ball and dinner at no cost where the ball is a civic event open to the public); *Colorado Judicial Ethics Advisory Opinion 2006-10* (December 20, 2006) (judge may attend gubernatorial inaugural events); *New York Advisory Committee on Judicial Ethics Opinion 98-12* (January 29, 1998) (judge may attend an inaugural ball for a recently-elected mayor where the proceeds will go to a charitable organization and the event is not a political gathering); *South Carolina Judicial Department, Advisory Committee on Standards of Judicial Conduct Opinion No. 2-1995* (January 6, 1995) (a judge may attend the inauguration ceremony of an elected official and may attend an inauguration ball provided that any fee paid by the judge covers the cost of the ball only and is not deposited in the general funds of any party or election committee).

Similarly, judicial ethics committees have permitted judges to attend presidential inaugural events. *See e.g., Florida Judicial Ethics Opinion 2016-21* (November 29, 2016) (judge may attend a presidential inauguration as long as no funds are paid to a partisan political organization; judge may attend presidential inaugural ball where no funds are paid to a partisan political organization and attendance is not limited to members of one partisan political party); *New York Advisory Committee on Judicial Ethics Opinion 08-213* (December 4, 2008) (judge may attend public presidential inauguration but may not attend an inaugural ball hosted by a state political group unless the judge is a candidate for judicial office). *Compare Arkansas Judicial Ethics Advisory Committee Opinion No. 92-05* (November 19, 1992) (judges who hold offices filled by election may purchase tickets to attend presidential inaugural balls even though the costs charged may be used to support activities of a political party).

We quote with approval the analysis provided by the South Carolina Advisory Committee on Standards of Judicial Conduct:

[A]n inauguration ceremony and an inauguration ball that follows are not political activities, but rather governmental activities in which every citizen regardless of their official position should be allowed to participate. By

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attending the inauguration ceremonies, including the ball, a judge simply participates as a spectator to a time honored tradition of government that symbolizes and celebrates the orderly and legal transition of elected officials. Also, by attending as a spectator the judge is merely showing respect, in a dignified manner, for a branch of government other than his own, which thus avoids harming the integrity and impartiality of the judiciary and avoids any appearance of impropriety.

South Carolina Judicial Department, Advisory Committee on Standards of Judicial Conduct Opinion No. 2-1995 (January 6, 1995).

Based on the Maryland Code of Judicial Conduct, we conclude that no Rule would prohibit a judge from attending the inaugural gala for the Maryland Governor-Elect, or the Swearing in Ceremony (which is free and open to the public),² provided the judge abides by the conditions set forth below:

1. A judge must remain mindful during attendance at inauguration activities of the judge's ethical obligation to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary;
2. A judge must not use his/her attendance at the inauguration as an opportunity to seek elevation by the Governor to a higher bench;
3. A judge must not be seated on the dais with the Governor-Elect or position himself/herself in such a way as to suggest a particular allegiance with the Governor-Elect unless it is the Chief Justice, who is officiating at the ceremony, or another judge playing a formal role in the inauguration ceremony, as contemplated by the Maryland constitution or statutes; and
4. A judge attending inaugural activities who is not performing a formal role (e.g., officiating at the ceremony) should be identified, to the extent possible, by his/her name, without reference to his/her judicial title.

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.

² Unless Maryland courts are closed on inauguration day, a judge attending the ceremony would be expected to comply with any requirements for securing leave, if needed.

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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.