

Maryland Judicial Ethics Committee

Opinion Request Number: 2023-09

Date of Issue: March 27, 2023

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Judge's Attendance at Sponsored Bar Association Event

Issue: May a judge attend a local bar association event for which part of the cost is defrayed by private sponsors?

Answer: Yes, absent unusual circumstances.

Facts: The Requestor, a circuit court judge, seeks guidance on whether she/he and other judges may attend an annual dinner sponsored by a local bar association if part of the cost of the event is paid by sponsors. The event is promoted as a “dinner with the judges,” an opportunity for members of the bar and judges to gather socially. The Requestor states that the sponsors likely would be or would include law firms and would be identified and acknowledged in advertisements for the event and in the program for the event.

Analysis: The Maryland Code of Judicial Conduct (the “Code”), Title 18, Chapter 100 of the Maryland Rules, establishes the standards for the applicable conduct of judges.

Rule 18-101.2 provides:

(a) **Promoting Public Confidence.** — A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

(b) **Avoiding Perception of Impropriety.** — A judge 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.

Rule 18-102.4(c) states that “[a] judge shall not convey or permit others to convey the impression that any person is in a position to influence the judge.”

Rule 18-103.1 concerns “Extra-Official Activities in General”:

Except as prohibited by law or this Code, a judge may engage in extrajudicial activities. When engaging in extrajudicial activities, a judge shall not:

(a) participate in activities that will interfere with the proper performance of the judge’s judicial duties;

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(b) participate in activities that will lead to frequent disqualification of the judge;

(c) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(d) engage in conduct that would appear to a reasonable person to be coercive; or

(e) make inappropriate use of court premises, staff, stationery, equipment, or other resources.

More specifically, Rule 18-103.7 applies to a judge's participation in certain organizations and activities:

(a) Subject to the requirements of Rules 18-103.1 and 18-103.6, 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) 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;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

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(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(A) will be engaged in proceedings that would ordinarily come before the judge; or

(B) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in a court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge may encourage but not coerce attorneys to provide pro bono publico legal services.

Rule 103.13 provides in relevant part:

(a) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(b) Unless otherwise prohibited by law, or by section (a) of this Rule, a judge may accept the following:

* * *

(3) ordinary social hospitality;

* * *

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(A) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice

Rule 103.14 provides:

(a) Unless otherwise prohibited by Rule 18-103.1, Rule 18-103.13(a), or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(b) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably

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incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

Judges are permitted to engage in bar association activities because bar associations are "organizations . . . concerned with the law, the legal system, or the administration of justice." Md. Rule 18-103.7(a). Indeed, judges are encouraged to be active in bar associations: "Interaction between the judiciary and the bar associations is to be encouraged and that is the obvious reason such invitations [by a local bar association to a dinner dance] traditionally have been extend[ed] for many years." Opinion 1981-01. Such participation fosters connections in the legal community and avoids judges becoming isolated. *See* Code of Conduct for United States Judges, Canon 4, Commentary ("Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives.") (available at <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#e>). The range of activities authorized for a judge in Rule 18-103.7 in law-related organizations is broad and specifically includes "appearing . . . at . . . an event of such an organization." Md. Rule 18-103.7(a)(4). Thus, the Requestor and other judges certainly may attend an annual dinner event sponsored by a local bar association.

The special issue in this request is whether financial sponsorship support of the dinner event would affect the propriety of a judge attending the event. The Requestor states that these sponsors would be identified and acknowledged for their financial support by being listed both in advertising for the event and in a program or signs at the event. The sponsors are likely to include law firms. Other typical sponsors of such bar association events are businesses that support and do business with lawyers, such as court reporting companies, document management companies, and accounting firms.

Rule 18-103.13(b)(10) specifically permits a judge to accept a complimentary invitation to a bar-related function for the judge and the judge's spouse, domestic partner, or guest. In addition, although less directly applicable, Rule 18-103.14 approves a judge's receipt of reimbursement for food and other expenses. Comments to Rule 18-103.14 link acceptance of reimbursement from sponsors to the desirability of judges participating in such events:

Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activities is also permitted and encouraged by this Code.

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Md. Rule 18-103.14 cmt. 1. In the Committee’s view, the fact that sponsors would be underwriting all or part of the cost of the dinner event and that judges therefore indirectly would be accepting a benefit from those sponsors does not change the basic approval in Rule 18-103.13(b)(10) of a judge’s receipt of the value of attending bar-related functions at no cost.

The request does not make clear whether the plan for this dinner event is for sponsors to contribute to the overall expenses such that all participants, including judges, pay the same reduced ticket price or whether the bar association may use sponsor funds to provide special discounts for judges who attend, perhaps even providing complimentary tickets for judges. Because Rule 18-103.13(b)(10) approves of even fully complimentary admission for judges, this possible distinction does not matter.

The specific approval of accepting complimentary tickets provided in Rule 18-103.13(b)(10) is qualified by subsection (a) of the same Rule, which provides that a judge may not accept the benefit “if acceptance . . . would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” Md. Rule 18-103.13(a). This qualification coincides with the broader requirements in Rules 18-101.2, 18-102.4(c), and 18-103.1(c) that a judge must avoid any situation that would create a perception of impropriety in a reasonable person. The typical sponsors of bar association events are unlikely to present any such concern. The Committee specifically does not see any particular concern with law firm sponsors as long as sponsorship opportunities are open to multiple firms. A judge should be alert to unusual situations. For example, if a local bank or developer or some other person or entity that was then involved as a party in significant litigation in the judge’s jurisdiction were a primary sponsor of an event, there might be the possibility of an appearance of improper influence.

Another comment to Rule 18-103.14 addresses this concern:

Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge’s decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

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Md. Rule 18-103.14 cmt. 2. As an example, it was considered appropriate for a judge to speak at a large gathering of attorneys considering ethical issues and legal malpractice, where the event was co-hosted by Bar Counsel and a law firm and sponsored by a legal liability insurance company. Opinion 2008-18 (noting that event would include breakfast for all attendees and insurer's name and logo on materials). Also, a judge may conduct a training session in civil trial practice at a law firm for the firm's young lawyers, including a free dinner before the program, so long as the participation with this law firm is only occasional and "the judge remains reasonably available to accept similar invitations from other lawyers or law firms." Opinion 1988-02. "[T]he acceptance of a dinner in this context [does not] adversely reflect upon the judge's impartiality." *Id.* *But see* Opinion 2021-19 (judge may participate in panel presentation to police cadets but must confine comments to the law and the legal process).

In contrast, a judge should not accept an invitation to participate in an educational "mission" to another country with expenses to be paid by a "Philanthropic Fund." Opinion 1997-12. Because of the "substantial value" of the trip being paid by Maryland entities "whose interests could be submitted to the [judge] in the future," the judge should accept the invitation only if she/he pays her/his own expenses. *Id.* In another opinion, a judge asked "if he may attend bar association social affairs or private parties as a guest of an attorney or law firm where after arrival he concludes that he is part of a judicial 'show and tell' put on for purpose of displaying to other attorneys or clients of the host what would appear to be a close relationship between the host and guest judges." Opinion 1983-09. The Committee opined that a judge may accept such an invitation to a social function only if "there is no reason to suspect that the attorney will attempt to use the judge's presence for any inappropriate purpose." *Id.* "If, after arriving, the judge finds that he is being placed in a compromising or uncomfortable position, he should leave." *Id.* *See also* Opinion 2017-14 (with some limitations, concluding that a judge may attend fund-raising events sponsored by not-for-profit charitable and educational organizations of which the judge is a board member).

On the facts related in the current request, these particular concerns are unlikely to arise. The event is hosted and organized by a local bar association open to all members of the local bar. The benefit conferred by the private sponsors is likely to be distributed among all attendees in the form of reduced ticket prices, but even if judges receive a special discount, receipt of a complimentary ticket to a bar association event is permitted. There is no indication that the sponsors are likely to include unusual businesses or individuals who are likely to be parties in matters before the courts in that jurisdiction.

The Committee cautions that if the Requestor or other judges are involved in planning the event, they may be involved in planning, including "planning related to fund-raising,"

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Md. Rule 18-103.7(a)(1), but they must avoid personally soliciting sponsors, Md. Rule 18-103.7(a)(2).

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.