

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2025-05

**Date of Issue:** March 11, 2025

Published Opinion    Unpublished Opinion    Unpublished Letter of Advice

### **Judge participation in analysis of White House Executive Orders in service of MSBA.**

**Issue:** May a judge, a section council member of the Maryland State Bar Association (“MSBA”), participate in reviewing White House Executive Orders in order to provide members with practical information and legal analysis?

**Answer:** No

**Facts:** The MSBA describes itself as “home to the Maryland legal profession.” Its ranks include more than 20,000 attorneys and legal professionals. According to its by-laws, its “mission is to effectively represent Maryland’s lawyers, to provide member services and to promote professionalism, diversity in the legal profession, access to justice, service to the public and respect for the rule of law.” Those eligible for membership in the MSBA include “[a]ny person who is admitted to practice law in any jurisdiction within the United States or any of its territories and is not disbarred or suspended from the practice of law.” Judges are eligible for membership and, over the years, have served in varying leadership capacities, including as president, on the Board of Governors, on the Executive Committee, as committee chairs, and as section chairs.

Recently, the MSBA sent a “Special Message” to its members, which included the following information:

In service of its focus on supporting and educating members, MSBA has launched a resource page for Maryland attorneys in light of the many White House Executive Orders that have far-reaching legal implications and will change how practitioners do their work and advise their clients. As part of this important effort, [the] MSBA President . . . has instructed MSBA’s substantive law sections to review these Executive Orders and develop articles, webinars, roundtables, and other resources as necessary to ensure members are informed of the Executive Orders’ legal impact.

Requestor, a Judge, is a member of the MSBA and serves as an officer of an MSBA section council. Requestor inquires whether it is permissible for Requestor to attend section council sessions focused on these “White House Executive Actions,” during which Requestor’s section will review and discuss the many presidential Executive Orders that have been signed since January 20, 2025. The stated purpose of the meetings is to “provide [MSBA] members with practical information and *legal analysis* of the [presidential orders] so they can be informed, adjust their work, and *properly advise* their clients in light of these actions.” (Emphases added.)

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**Analysis:** The Maryland Code of Judicial Conduct (the “Code”), Title 18, Chapter 100 of the Maryland Rules, establishes the standards for the ethical conduct of judges. Several rules of the Code potentially are pertinent to this request.

Rule 18-101.2 requires that a judge “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary” and “avoid conduct that would create in reasonable minds a perception of impropriety.”

Rule 18-102.4 mandates that “[a] judge shall not be swayed by public clamor or fear of criticism.” In addition, “[a] judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.” Importantly, pursuant to this Rule, “[a] judge shall not convey or permit others to convey the impression that any person is in a position to influence the judge.”

Comment [1] confirms that “[a]n independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision-making is perceived to be subject to inappropriate outside influences.”

Rule 18-102.10 states, in pertinent part, that:

(a) A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome or impair the fairness of that proceeding and shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Rule does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.

(b) With respect to a case, controversy, or issue that is likely to come before the court, a judge shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office.

Rule 18-103.1 provides that:

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;

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

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(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.

Rule 18-103.7 states that:

(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 fundraising, 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 the judge's 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

(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:

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(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 any 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 18-103.10 provides that, except in circumstances not present here, “[a] judge shall not practice law.”

Pursuant to relevant comments, a judge may act self-represented and may also, without compensation, “give legal advice to, and draft legal documents for, a member of the judge’s family.” Comments [1], [2], [3].

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

We start with the premise that, to the “extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extra judicial activities.” Rule 18-103.1, Comment [1]. Indeed, “[j]udges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice . . . .” *Id.* This type of engagement “helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.” *Id.*, Comment [2].

Obviously, the MSBA is an organization focused on the law, the legal system, and the administration of justice. According to its website, the MSBA “empowers its members with resources, opportunities and a strong sense of community to succeed in their practice while promoting ethical standards and advancing the cause of justice for all.” Again, according to its website, membership in the MSBA provides the opportunity to “assist in amplifying the voice of the legal community across the state.” Members are able to register for any of the MSBA’s unique practice area-driven sections (of which there are 22) and specialized affinity groups (of which there are three). It is through the efforts of these sections that “MSBA members do the work: share news and resources, learn from each other via regular events and CLE programing, and actively engage in the profession through discussion groups and newsletters.” As already mentioned, several members of the judiciary appropriately serve in various capacities with the MSBA.

In this particular instance, however, the purpose of the anticipated meetings is to provide MSBA members with practical information and legal analysis such that the members may

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then, in turn, properly advise their clients. Judges clearly are prohibited from practicing law. Rule 18-103.10. “Practice law,” as defined in Md. Code Ann. Bus. Occ. & Prof. §10-101(h), includes, among other things, “giving legal advice” and “performing any other service that the Supreme Court of Maryland defines as practicing law.” The U.S. Bankruptcy Court in *In re Lucas*, 312 B.R. 559, 575 (Bankr. D. Md. 2004), discussed what constitutes the practice of law in Maryland:

Under Maryland law, the focus of the inquiry on whether an individual has engaged in the practice of law should be on whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent. The preparation of legal documents, their interpretation, the giving of legal advice, and the application of legal principles to problems of any complexity constitutes the practice of law.

Here, as already mentioned, the purpose of the MSBA effort is to assist members by providing legal analysis vis-à-vis the White House Executive Orders so that the members “can be informed, adjust their work, and properly advise their clients.” These are complex matters that require legal knowledge and skill. Although judges appropriately participate in general educational activities through the MSBA and other bar organizations, in our view, for the current and recalled/senior judges who serve on these MSBA committees, the evaluation and analysis of White House Executive Orders is so specific that it would constitute the practice of law and, moreover, can be seen as indirectly advising the members’ clients themselves. This type of activity would run afoul of Rule 18-103.10.

In addition, given the nature of the task – to provide legal analysis regarding White House Executive Orders – participation could be seen as engaging in “partisan political activity,” which is prohibited by Rule 18-104.2(a). We are not suggesting that any MSBA member judges *would* engage in “partisan political activity.” The concern is that their participation in the anticipated meetings might reasonably raise a question of impropriety, contrary to Rule 18-101.2. Certainly, the Committee acknowledges that, on occasion, judges are called upon to attend events such as the state of the State address, which will include political speech. The distinction, of course, is that the judges attending those types of functions are not engaged in the discourse. To the contrary, the MSBA objective regarding evaluation of White House Executive Actions envisions an engaged, participating work group as opposed to simple attendance.

We also note that the White House Executive Orders have spawned significant litigation throughout the country. At this point, most of that litigation has been initiated in the federal courts. Similar lawsuits, however, could be filed in Maryland courts, rendering particularly relevant Rules 18-102.10 and 18-102.11 (dealing with disqualification).

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Based on all of the above, participation in these meetings could reasonably call into question the judge's independence, integrity, and impartiality.

Given the information provided by Requestor and the directive from the MSBA president, the Committee concludes that judges and recalled/senior judges serving on MSBA committees may not participate and should not attend meetings where White House Executive Orders are evaluated and analyzed.

**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.