

Maryland Judicial Ethics Committee

Opinion Request Number: 2008-05

Date of Issue: January 30, 2008

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Not Serve on the Board of Charitable Organization Likely to Appear in
Judge's Court

Issue: May a judge continue to serve as a board member and in the future accept election as vice president, and eventually president, of a charitable organization which likely will appear in the judge's court?

Answer: No.

Discussion: The requesting judge has served for the past year as a member of the board of directors of a charitable organization that provides services to individuals with developmental disabilities. The judge has been asked to serve as vice president, and eventually president, of the organization. In addition to the duties prescribed by the bylaws, the president is expected to be the "face" of the organization for media contact.

A representative of the organization previously was prepared to testify in a guardianship matter before the judge's court. The judge exercised self-recusal in that case. There is likelihood that one case involving the organization will be filed in the judge's court and the potential of another. The judge's court has fewer than six judges on the bench.

Canon 4C(4)(a) provides that judges may serve as officers or directors of charitable organizations, "[s]ubject to other provisions of this Code." Rule 16-813, Code of Judicial Conduct. Two other provisions of the Code which apply are set forth in Canon 4C(4)(c) and (d).

A judge shall not be a director or officer of an organization if it is likely that the organization will be engaged regularly in adversary proceedings in any court. Canon 4C(4)(c)(i). While the organization at issue here may not be engaged *regularly* in adversarial proceedings, it is likely to appear as a party in the requesting judge's own jurisdiction at least twice in the future and its representative has done so at least once in the last year. Although the judge may avoid direct contact with the litigation through recusal, a colleague on the same bench will have to handle the matter. The public will be aware that a judge with whom the requesting judge shares chambers will be hearing the case. Litigation in the judge's jurisdiction involving an organization with which he or she is so publicly identified would likely compromise public confidence and create doubt in the impartiality of the judiciary. Canon 2A.

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Judges are prohibited from participating personally in fund-raising activities [Canon 4C(4)(d)(i)], although they may assist in planning fund-raising. [Canon 4C(4)(d)(iv)(A)]. Although the judge does not address fund-raising in the request for this opinion, it is highly likely that, as other charitable organizations must, the particular organization in question must, of necessity, engage in fund-raising for its own existence. It is extremely doubtful that the judge can avoid appearing to be a part of fund-raising efforts, in that the judge's name will likely appear on stationery of the organization and the judge will be perceived to be the voice of the organization.

To the extent that the organization draws financial support from, or cooperates in providing services related to, government agencies, the president likely would appear at a public hearing, or consult with, an executive or legislative body or official of such entity. That contact is prohibited by Canon 4C(1) except as to matters that concern the administration of justice or the legal system.

The responsibilities associated with the role of president of an organization require the incumbent to represent or be the "face" of the organization and to authorize its activities. Fund-raising, dealing with related private and public agencies and, in some cases, litigation are normal activities in which the organization must engage. A judge's participation in each of them is prohibited.

Application: The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the requestor described in this opinion, 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 you engage in a continuing course of conduct, you 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.