

Maryland Judicial Ethics Committee

Opinion Request Numbers: 2008-31 and 2008-32

Date of Issue: September 12, 2008

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Judge May Endorse Proclamation Encouraging Cooperative Discovery

Issue: May a judge allow publication of the judge's endorsement of a proclamation encouraging court "collaborative, transparent" discovery?

Answer: Yes.

Facts: The issuer of the proclamation is a non-profit organization whose mission is the advancement of law and policy in areas of complex litigation. It has asked the requesting judges to endorse the proclamation and to permit the publishing of the judges' names and titles, along with those other judges who have also endorsed the proclamation. The issuer has assured the requesting judges that no judge's name or title will be used in connection with any solicitation for funds or membership.

Discussion: Judges are encouraged to engage in professional activities dedicated to the improvement of the law. The Comment to Canon 4B notes, "[a] judge is in a unique position to contribute to the administration of justice, the legal system, and improvement of the law, including the revision of substantive and procedural law...." The intent of the proclamation is to relieve the burden caused by abusive adversarial conduct in pre-trial discovery.

The judges' endorsement will not be in violation of Canon 4C(4)(d) in that the endorsement will not be used for the solicitation of funds or membership. Upon that assurance, the Committee concludes that the endorsement by the judges is appropriate.

Application: The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the requestors described in this opinion, to the extent of the requestors' 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.