

Maryland Judicial Ethics Committee

Opinion Request Number: 2014-25¹

Date of Issue: August 4, 2014

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Judge May Coach a Basketball Team Under Certain Circumstances

Issue: A judge has requested advice as to whether he/she may coach a public high school junior varsity basketball team and, if so, whether he/she may accept a “modest stipend.”

Answer: Yes.

Facts: The requesting judge (the “Requestor”) was contacted and asked if he/she would be willing to coach a public high school junior varsity basketball team. The Requestor was informed that head coaches receive a “modest stipend.”

Discussion: Rule 3.1 of the Maryland Code of Judicial Conduct (“Code”), Maryland Rule 16-813, provides that a judge may engage in extrajudicial activities, “except as prohibited by law or this Code.” The rule further states that 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;
- (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 3.12, in turn, provides that a judge may accept “reasonable compensation” for permitted extrajudicial activities “unless such acceptance would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” Comment [1] to Rule 3.12 states, in part, that “[a] judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed.” Comment [2] states that “[c]ompensation derived from extrajudicial activities may be subject to public reporting. *See* Rule 3.15.”

¹ Judge Kehoe did not participate in this opinion.

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We thus conclude that coaching a junior varsity basketball team does not violate Rule 3.1, assuming no use of court resources. It is highly unlikely that the extrajudicial activity would present a substantive conflict. The Requestor, nevertheless, must manage the time requirements of the activity so as not to interfere with the performance of judicial duties.

We further conclude that as long as the “modest stipend” meets the requirements of Rule 3.12, the Requestor may accept it. The amount of the stipend, however, should be commensurate with the duties of coaching and reasonable in comparison with other positions with similar time and duty requirements.

We call the Requestor’s attention to Rule 3.7. It provides that, generally, a judge may participate in activities sponsored by non-profit organizations, including non-law related organizations, but not if the event serves a fund-raising purpose. Rule 3.7(a)(4). While the request does not mention fund-raising activities, the Committee is mindful that, on occasion, athletic teams engage in fund-raising activities. The Requestor should not participate in or lend the prestige of his/her judicial office to such activities.

The Requestor references Attorney General Opinion No. 80-042 (1980) (65 Md. Op. Atty. Gen. 285, 1980 WL 118104 (Md. A.G.)). That opinion interpreted Articles 33 and 35 of the Maryland Declaration of Rights, which, in essence, prohibit a judge from holding any other “office.” The Attorney General concluded that the term “office” did not include a part-time teacher. The Court of Appeals also has addressed the scope of Articles 33 and 35. *See, e.g., Duncan v. Koustenis*, 260 Md. 98 (1970) (public school teacher did not hold an “office” within the meaning of Article 35).

As we have explained previously, the authority of this Committee is limited to rendering opinions as to the application of the Code of Judicial Conduct; it does not extend to interpretations of the Maryland Declaration of Rights. Our conclusion is consistent with the Court of Appeals’ decisions and the Attorney General’s opinion, however.

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 amendments to the applicable law and/or developments

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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.