

Maryland Judicial Ethics Committee

Opinion Request Number: 2019-30

Date of Issue: November 08, 2019

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A Circuit Court judge, who is a candidate for election, may use his/her personal social media accounts to notify the public of campaign fundraising events and seek financial support.

Issue: May a Circuit Court judge, who is a candidate for election, use his/her personal social media accounts, such as Facebook, Twitter, Instagram and/or group chats, to advertise fundraising events and seek financial support?

Answer: Yes.

Facts: Requestor is a Circuit Court judge, appointed by the Governor within the past year. Requestor currently is in the midst of campaigning to retain his/her judicial position and is running with a slate of judicial colleagues, some also newly appointed and one pursuing a second term (the "Slate"). The Slate maintains a social media presence, including a website and Facebook page. In addition, Requestor maintains various individual social media pages relevant to the campaign, as well as various personal social media accounts.

Requestor seeks advice as to whether "judicial candidates for office" may, "during the time of campaigning, post [and/or] share a flyer or text about an upcoming fundraising event (on behalf of the candidates) on their social media pages." Requestor also asks whether it is permissible to post "and/or share a flyer that includes a link to registration, which includes the ability to purchase tickets and/or sponsorships." Finally, Requestor would like to know whether he/she is permitted to post and/or share "a link to the Sitting Judges website's donation page as an alternative to attending a specific event."

Requestor's inquiry relates to his/her purely personal social media accounts as opposed to those specifically created for the campaign.

Analysis: The Maryland Code of Judicial Conduct (the "Code"), Title 18 of the Maryland Rules, Rule 18-104.1, makes clear that Requestor, a newly appointed judge, became a "candidate for election" on the date he/she took the oath of office. Pursuant to Rule 18-104.4,

A candidate for election:

- (a) shall comply with all applicable election laws and regulations;
- (b) shall act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary and maintain the dignity appropriate to judicial office;

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- (c) subject to the other provisions of this Rule, may engage in partisan political activity allowed by law with respect to such candidacy, and, in that regard:
 - (1) may publicly endorse or oppose candidates for the same judicial office;
 - (2) may attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office; and
 - (3) may seek, accept, and use endorsements from any person; but
 - (4) shall not act as a leader in or hold office in a political organization, make a speech for a candidate or political organization, or publicly endorse a candidate for non-judicial office.

- (d) As to statements and materials made or produced during a campaign:
 - (1) shall review, approve, and be responsible for the content of all campaign statements and materials produced by the candidate or by the candidate's campaign committee or other authorized agents;
 - (2) shall take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities that the candidate is prohibited from doing by this Rule;
 - (3) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;
 - (4) shall not make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court;
 - (5) shall not knowingly, or with reckless disregard for the truth, misrepresent the candidate's identity or qualifications, the identity or qualifications of an opponent, or any other fact, or make any false or misleading statement;
 - (6) may speak or write on behalf of the candidate's candidacy through any medium, including advertisements, websites, or other campaign literature; and
 - (7) subject to section (b) of this Rule, may respond to a personal attack or an attack on the candidate's record.

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Pursuant to the Rule, Requestor "may engage in partisan political activity allowed by law." Certainly, this includes fundraising activities. In addition, Requestor "may publicly endorse...candidates for the same judicial office." This may be done "through any medium, including...websites..." Therefore, between now and the general election, Requestor is permitted to use his/her personal social media accounts to inform the public of campaign fundraising events and seek financial support for the Slate. Also pursuant to this Rule, Requestor is permitted to share links to the Slate's website, including the donation page. Of course, Requestor is reminded that he/she must "comply with all applicable election laws and regulations."

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.