

Maryland Judicial Ethics Committee

Opinion Request Number: 2015-17

Date of Issue: April 22, 2015

Judge May Appear Before Local Governing Bodies or Agencies in Limited Circumstances

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Issue: May a judge voluntarily appear before, or otherwise consult with, local governing bodies or agencies?

Answer: Yes, in limited circumstances.

Facts: The requesting judge (the “Requestor”) inquires whether he/she may *voluntarily appear* before, or *otherwise consult with*, the local legislative body and administrative agencies. (Emphasis added.)

Discussion: Rule 3.2 of the Maryland Code of Judicial Conduct (“Code”), Maryland Rule 16-813, governs this request:

A judge shall not *appear voluntarily* at a public hearing before, or otherwise *consult with*, an executive or a legislative body or official, except:

- (a) in connection with matters concerning the law, the legal system, or the administration of justice;
- (b) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge’s judicial duties; or
- (c) when the judge is acting self-represented in a matter involving the judge’s legal or economic interests, or when the judge is acting in a fiduciary capacity.

(Emphasis added.)

The term “voluntary appearance” has a very specific legal meaning and it is appropriate to import that meaning into Rule 3.2. An “appearance” is a “coming into court as a party or an interested person[.]” BLACK’S LAW DICTIONARY at 118 (10th ed., West 2014). A “voluntary appearance” is an “appearance entered by a party’s own will, without the service of process[.]” *Id.* at 119. “Consult,” by contrast, is not a legal term of art. In the context of Rule 3.2, it can mean either to seek advice, usually expert or at least informed advice, or to engage in the practice of providing such advice. Thus, Rule 3.2 sets out: (1) when a judge may be present, by his or her own choice, at a public hearing or meeting and speak to the issue(s) before the public body; and

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(2) when a judge may substantively communicate with public officials outside of the context of a public meeting. The rule does not address whether a judge may simply attend a public hearing or meeting without speaking.

Rule 3.2 is based on the duty of judges to promote “public confidence in the independence ... of the judiciary” (Rule 1.2(a)), not to lend the “prestige of judicial office to advance the personal or economic interests of the judge or others” (Rule 1.3) and to “avoid conduct that would create in reasonable minds a perception of impropriety.” (Rule 1.2(b)).

A judge’s interaction with government bodies and officials of other branches of government may create an appearance that the independence of the judiciary may be compromised. Observers might conclude that the judge is advising other government officials in non-judicial matters or that those officials may influence the judge in carrying out judicial duties.

Another risk is that it may appear that the judge is using the prestige of office to gain a personal advantage over others or to have his or her opinion given greater weight than that of other citizens. Members of the public are accustomed to placing extra trust and confidence in judges’ statements and may feel that a judge’s input carries more weight than their own. The officials with whom the judge confers, in turn, may feel bound to give his or her input more weight than those of other members of the public solely on the basis of the judge’s office.

The phrase “the law, the legal system, or the administration of justice,” as stated in Rule 3.2(a), should be interpreted narrowly. It would be appropriate for a judge to testify or consult about matters concerning the relationship between his or her court and the local governing body. However, on broader matters, the particular expertise of the judge is likely not relevant. As Chief Justice William Rehnquist noted:

What is an appropriate sentence for a particular crime, and similar matters, are questions upon which a judge’s view should carry no more weight than the view of any other citizen.¹

Further, if a judge expresses an opinion on matters of policy (i.e. land use planning), it may lead listeners to the conclusion that a judge holding a strong enough opinion to attend a public meeting or meet with an official would rule consistently with that position and not on the merits of each case that came before the court.

¹ Chief Justice William H. Rehnquist, 1994 Year-End Report on the Federal Judiciary (Dec. 30, 1994), quoted in Charles Gardner Geyh, *Paradise Lost, Paradigm Found*, 71 N.Y.U. L. Rev. 1165, 1200 (Nov. 1996).

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Of course, judges do not relinquish their First Amendment rights upon taking office. Rule 3.2(c) provides an exception that allows judges to appear before government bodies in personal matters. Even in the instance of this limited exception Comment [3] to the Rule notes that “judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.”

In summary, the Requestor should recognize that there are very few instances in which it is appropriate for a judge to appear before, or consult with, local government bodies, officials or agencies. Moreover, when a judge merely attends a public meeting, the judge must take care that his or her conduct does not create the impression in reasonable minds that the judge is privately communicating his or her views to the members of the public body, by, for example, speaking privately to public officials before or after the meeting.

Application: The Maryland 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 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.