

Maryland Judicial Ethics Committee

Opinion Request Number: 2007-10

Date of Issue: September 25, 2007

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Disclosure and/or Recusal of Judge Who Leases Property to a Lawyer Who Appears Before the Judge

Issue: Is a judge required to disclose the nature of the relationship and/or recuse himself/herself from cases involving an attorney who leases office space from the judge?

Answer: A judge must disclose the nature of the relationship to the parties and their clients so that the parties may have a chance to object or waive their objections. If the parties do not agree to waive the judge's disqualification, the judge should recuse himself/herself unless there are compelling circumstances to the contrary.

Facts: A judge presently leases office space to an attorney who appears before the judge. There is no relationship between the subject judge and attorney other than a landlord/tenant relationship.

Discussion: Canon 4D of the Maryland Code of Judicial Conduct (2005) establishes the standards a judge must follow in the performance of his or her extra-judicial financial and business dealings. Md. Rule 16-813. While Canon 4D(2) permits a judge to "hold and manage investments, including real estate," the judge must only do so in accordance with the other provisions of the Canons of Judicial Conduct. Pursuant to Canon 4D(1), a judge should refrain from financial and business dealings that involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. A judge should manage such financial investments so as to minimize the number of cases in which recusal would be required. Canon 4D(3). Canon 2A requires that a judge act with propriety and avoid even the appearance of impropriety.

The Judicial Ethics Committee previously addressed this issue in [Opinion Request No. 1979-03], issued January 4, 1980, in which the Committee opined that "a mere landlord-tenant relationship with an attorney who practices before a judge is not in violation of the Canons and Rules." At that time, the Committee reasoned that provided that the judge's impartiality was not impaired, and the relationship did not interfere with the judge's performance of judicial duties or cause the judge to exploit his or her position, there was no violation inherent in the landlord-tenant relationship. *See also* [Opinion Request No. 1981-14], issued January 25, 1982 (finding no impropriety in a judge leasing a building to a State agency and sitting in cases involving the agency).

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Mindful of its prior precedent, the Committee nonetheless finds persuasive more recent opinions of other jurisdictions that have addressed this issue and that conclude that a failure to recuse or disclose the existence of a landlord-tenant relationship between a judge and an attorney appearing before the judge could result in an appearance of impropriety and/or be violative of the prohibition against financial dealings with lawyers that come before the judge. *See, e.g.*, Florida Judicial Ethics Advisory Committee Opinion No. 2007-10 (2007), *citing* Florida Judicial Ethics Advisory Committee Opinions Nos. 97-33 & 85-08 (judge directed to recuse or disclose where the local legal aid office leased space in an office owned by the judge); South Carolina Advisory Committee on Standards of Judicial Conduct Opinion No. 6-2006 (2006) (judge should not lease residence to State Trooper who appears regularly in front of the judge); Massachusetts Committee on Judicial Ethics Opinion No. 93-3 (1993) (directing recusal from all contested cases in which a tenant of the judge represents a party before the judge); New York Judicial Advisory Committee Opinion No. 05-113 (2006) (requiring recusal from cases involving attorney in a landlord-tenant relationship with the judge); Wisconsin Judicial Conduct Advisory Committee Opinion No. 02-2 (2003) (a judge may not lease space to a lawyer who is likely to appear before the judge). *But see* Washington Ethics Advisory Committee Opinion No. 93-08 (1993) (permitting a judicial officer to lease real estate to a lawyer without having to be disqualified in cases where that attorney appears as counsel, although noting that disclosure may be appropriate in certain circumstances); Virginia Judicial Ethics Advisory Committee Opinions Nos. 03-1 (2003) and 017 (2001) (attorney who subleases a portion of an office owned by a judge not prohibited from appearing before that judge although the judge should disclose such relationship to the parties in the case).

The lease of office space by a judge to a lawyer who appears in front of that judge may raise doubts in the public's mind as to the extent to which this relationship may affect the judge's ability to remain fair and impartial, in contravention of Canon 2A. The Committee believes that automatic disqualification is not required in this instance, provided the judge discloses the landlord-tenant nature of the relationship to the parties and their clients so that they may have a chance to object to the judge's participation in the case or waive their objections. If there is an objection made, the judge should not hear the case unless there are compelling circumstances to the contrary. To the extent that any prior opinions of this Committee with respect to this subject matter are inconsistent with this opinion, they are overruled and further reliance on such prior opinions is not advised.

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.

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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.