

## Maryland Judicial Ethics Committee

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Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Judge Not to Sit in Case Involving Regulations Promulgated by Subdivision Association of Which Judge Is Member

The Committee has been asked whether a judge should recuse himself from further participation in a pending case under the following circumstances.

The issue present in the pending case is whether certain traffic regulations established by and applicable in a private subdivision are valid. The case arises because someone has been charged with violating one of the private regulations and has defended on the ground that the regulation is invalid.

The ethical problem arises from the facts that (1) these private regulations are more restrictive than the general speed limits authorized or imposed by the State transportation article, and (2) the judge and his wife live and own property in the subdivision. As residents and property owners, the judge and his wife are members of the subdivision association, a private, non-stock, non-profit corporation consisting of all the property owners in the subdivision. They pay an annual membership fee of \$170 to the association for each of the two lots owned by them and each year they vote to elect members to the association's governing board. The regulations in question were apparently promulgated by or on behalf of the association.

There is, of course, nothing improper about a judge living and owning property in the subdivision or being a member of the association. The issue is whether, having that interest, he ought to sit in a case to determine the validity of traffic regulations adopted by the association and, subject to judicial review, applicable in the subdivision.

The potential conflict here may be minimal, but it is apparent. Canon XXVIII states that a judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. Canon IV adds that a judge's official conduct should be free not only from actual impropriety but from "the appearance of impropriety." Although the judge may have no direct personal interest in the fate of the particular defendant now before him, he and his wife may well have an interest in the validity and continued effectiveness of the more restrictive traffic regulations. At the very least, the public may reasonably perceive that he has such an interest.

For that reason, we believe that he ought to recuse himself from all further participation in the matter.