

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 1982-05

**Date of Issue:** July 12, 1982

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

Judge May Request Zoning Change or Protest Activities of Others Relating to Judge's Property

A judge has requested the opinion of the Committee in establishing how far he may go in seeking relief before an administrative agency in matters involving his own property and in protesting the requests of others in matters involving his immediate neighborhood and the county in which he resides. Specifically, the judge inquires as to how far he may go in the administrative "office", in the administrative hearing and in any subsequent court hearings in seeking relief in rezoning his own land and in protesting (i) a neighbor's non-conforming illegal use which devalues the judge's property; (ii) attempts to obtain a liquor license in the judge's neighborhood; and (iii) attempts by the State of Maryland to place a hazardous waste site in the county in which the judge resides. In addition, the judge asks whether it is permissible for him to sign a petition opposing the placement of a hazardous waste site in his county.

These questions involve the difficult issues of the limits of non-judicial activity. In responding to the judge's inquiries, we find guidance in the decision of the Court of Appeals in In Re Foster, 271 Md. 449, 318 A.2d 523 (1974). The Court stated that "[I]n almost every case of this sort, there is no litmus test, but rather an elastic standard based on questions of degree" (271 Md. at 475). And the Court indicated that the critical question is whether a judge can maintain a "low profile" (Id at 474).

While a judge is entitled to entertain his own personal views and to protect his rights and property as a citizen and property owner, Rule 9 of the Rules of Judicial Ethics provides that a judge shall not, directly or indirectly, lend the influence of his name or the prestige of his office to aid or advance the welfare of any private business or permit others to do so. Furthermore, Canon IV states that a judge's conduct should be free from impropriety or the appearance of impropriety.

Therefore, a judge may not initiate or participate in personal contacts with the hearing officer or the administrative "office" which are designed or which may have the effect of influencing the decision. Such ex parte communications outside of the public hearing process would create the appearance of impropriety and give rise to the suspicion that the judge is attempting to use the power and prestige of his office to influence the outcome of the case.

Subject to the preceding limitation, a judge may protest a non-conforming use which devalues his home or protest an application for a liquor license in his neighborhood, as vigorously as any other homeowner, provided that any action taken by the judge is taken as a citizen and not in the judge's official capacity. The judge may attend administrative hearings and any subsequent court hearings and may offer testimony as a litigant or property owner regarding the property matters affecting his investment property, his neighborhood and his county. Nor is a judge precluded from signing a petition protesting the placement of a hazardous waste site in the county in which he resides, provided the signature does not include the judge's title or in any way indicate the judge's official position. The judge must, however, be cautious to heed the admonition of In Re Foster and maintain a low profile, clearly restricting his role to that of a private citizen. Furthermore, with

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regard to the rezoning of the judge's investment property, Foster dictates that the judge should take no active part in the management of the real estate or participation in negotiations looking toward a sale or other disposition.

While there appear to be no prohibitions against certain of the activities in question in either the Canons or the Rules, there can be judicial conduct which does not violate either the Canons or the Rules but which a judge would be wise to avoid depending upon the individual circumstances. In deciding whether it would be advisable to sign the petition or to offer testimony, the judge must consider the public's perception of these actions and whether the effect of the action would be prohibited.

For example, if the judge's action would result in the advancement of any private business, the judge by taking this action could be headed toward a collision with Rule 9 of the Canons of Judicial Ethics. In addition, Rule 12 mandates that a judge refrain from public comment about a pending or impending proceeding in any court. "Public Comment" would include the signing of a petition.

In the event the judge is called upon to hear a case involving these property issues in a subsequent action, Canon XXVIII, which provides that a judge should abstain from performing or taking part in any judicial acts in which his personal interests are involved, requires the judge's recusal from the case.