

Maryland Judicial Ethics Committee

Opinion Request Number: 2011-31

Date of Issue: January 10, 2012

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Judge May Not Appear in a Video Discussing Divorce

Issue: May a recalled judge, upon the request of a collaborative divorce organization, appear in a video discussing the benefits of a particular modality of divorce?

Answer: No. The judge would be commenting on the benefits of a particular method of divorce to the presumable gain of a particular group.

Facts: A recalled judge has been asked by a collaborative divorce association to appear in a video and discuss the emotional stress and hurt that families experience in divorce. He/she has been asked to explain that there are multiple modalities for pursuing a divorce. One such method is collaborative divorce, in which each of the parties works with an attorney and a mental health professional, in a process designed to reduce the emotional damage that can occur during divorce. The judge has been further asked to explain that an individual considering divorce should examine all options by which to obtain a divorce before making a choice.

Discussion: A recalled judge is subject to the Maryland Code of Judicial Conduct, Maryland Rule 16-813, A-109, subject to certain exceptions not relevant to this request.

Rule 1.3 of the Code governs the duties of a judge with respect to promoting the personal or financial interests of others. The rule specifically prohibits a judge from using the prestige of judicial office to promote his or her personal or economic interests, that of others, or allowing another to do so. Comment [4] to Rule 1.3 specifically discusses contributions to publications of for-profit entities, noting that such circumstances should be given special consideration.

The central issue presented by this request is whether a judge promoting a particular modality of divorce proceedings lends the prestige of judicial office to the personal or economic advancement of a group. It is the opinion of the Committee that a statement by a judge that individuals should consider, even among others, a particular form of divorce, and that this particular modality reduces the emotional damage of a divorce, violates Rule 1.3.

Appearing in a video sponsored by a collaborative divorce association to discuss the benefits of a particular process of divorce implies a judicial endorsement of that method and lends the prestige of judicial office to the promotion of collaborative divorce.

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While it is unclear from the request whether the collaborative divorce association is a for-profit organization, nonetheless, the overall effect of the video is to promote the use of collaborative divorce and thus financially benefit those attorneys and mental health professionals who practice in that area. The judge's appearance in the video may imply preference for that method of resolving domestic disputes over other methods, and the disclaimer that one should consider all options before making a choice does not deter this impression.

Application: The 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 in 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.