

Maryland Judicial Ethics Committee

Opinion Request Number: 2013-14

Date of Issue: August 23, 2013

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Not Appear on Talk Shows to Provide Legal Commentary

Issue: May a sitting judge appear on national talk shows, whether on radio or televised, to discuss legal cases?

Answer: No.

Facts: The Requestor has asked for an opinion regarding whether a sitting judge would be permitted to appear on national talk shows, without compensation, to comment on famous legal cases not occurring in Maryland.

Discussion: Rule 3.1 of the Maryland Code of Judicial Conduct (Md. Rule 16-813) governs extrajudicial activities in general, and provides that a judge may not participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality. Appearing on a national television or radio show is an extrajudicial activity, and the purpose is to provide expert legal commentary in a public, non-governmental forum; as drafted, the request indicates that the program would be hosted by a for profit, non-governmental entity.

While the Code recognizes that judges are uniquely qualified to engage in extrajudicial activities concerning the law, judges are prohibited by Rule 1.3 from lending the prestige of the judicial office to advance the economic interests of others. Providing commentary on "for profit" media on controversial legal cases clearly violates that Rule, as the judge's expertise and impartiality could and would be used to promote the interests of the program utilizing that judge's services. It is the prestige of the judge's office that, more likely than not, is the basis for the request to act as a commentator, and the program's sponsor would hope to attract more viewers based on the judge's presence.

Although the Requestor specifies that commentary would only be offered on cases occurring in other jurisdictions, the issues brought forth could easily be presented to that judge in a case in his or her court. In Opinion Request No. 1989-05 (unpublished), the Committee concluded that it was improper for a judge to participate in a radio interview program sponsored by local attorneys. The Committee opined that there was "a distinct possibility, if not the probability, that a judge may be put into a position of expressing an opinion or become involved in a matter upon which he may be required to deal with in the future course of his judicial duties," and that violated Canon II [now Rule 1.2(b)], which requires a judge to avoid the appearance of impropriety.

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Page 2 of 3

While the Rules permit a judge to offer his or her expertise outside of the courtroom, they also specify when, where, and under what circumstances such appearances are permitted. Special care must be taken to insure that these appearances comply with the entire Code of Judicial Conduct.

The Comments to Rule 3.2 (Appearances Before Governmental Bodies and Consultation with Government Officials) and Rule 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities) reflect the Committee's concerns regarding the appearance of impropriety and lending the prestige of judicial office. They state, in pertinent part:

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of the office to advance ... others' interests ... [Comment, Rule 3.2].

[1] The activities permitted by paragraph (a) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether ... the judge's participation ... would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality. [Comment, Rule 3.7].

Accordingly, the proposed talk show appearance would be improper both for a sitting judge and for a recalled judge on temporary assignment.

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.

Additionally, this opinion should not be considered to be binding indefinitely. The passage of

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Page 3 of 3

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.