

Maryland Judicial Ethics Committee

Opinion Request Number: 2015-10

Date of Issue: March 27, 2015

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Use Campaign Funds Donated for and Used to Run for Elected Political Office Prior to Being Appointed as a Judge

Judge May Receive Campaign Contributions from a Non-Judicial Slate of Which the Judge Was a Member While Holding Political Office

Issues: 1. May a judge, a former legislator, while a candidate for election to a court, use campaign funds that were donated to and used by the judge to run for elected political office prior to being appointed as a judge?

2. May a judge receive campaign contributions from a non-judicial slate of which the judge was a member while a legislator?

Answers: Yes, as to both questions.

Facts: The requestor, a former legislator and now circuit court judge, has maintained a campaign account called “Friends of [the requestor]” since 1997. The requestor used funds from the account to run for legislative offices. While a legislator, the judge was a member of a non-judicial slate comprised of the requestor and two other legislators.¹ The slate issued a check drawn on its account payable to the requestor’s “Friends of” account after the requestor’s appointment to the bench and before the requestor took the oath of office. The requestor intends to deposit the funds in the “Friends of” account.” The requestor removed his/her name from the slate’s account. The requestor has advised this Committee that all election laws, regulations and legislative ethics rules have been complied with and that using the funds in the manner requested is not a violation of election laws.

Discussion: Preliminarily, we note that this Committee does not have jurisdiction to interpret or administer this State’s election laws, regulations, legislative ethics rules, or other applicable law. The Committee assumes, without deciding, that the requestor’s statement of compliance is correct. We note that it is the requestor’s obligation to ensure compliance.

Pursuant to the Code of Judicial Conduct (Maryland Rule 16-813), a “candidate for election” includes an incumbent judge of a circuit court who seeks to retain that office

¹ Pursuant to the Maryland Code, Election Law Article § 1-101(oo), a “slate” means a political committee of two or more candidates who join together to conduct and pay for joint campaign activities.

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through an election. Rule 4.1(c)(1)(B). The requestor became a “candidate for election” when he/she took the oath of office. Rule 4.1(c)(2)(A).

Rule 4.4 provides:

A candidate for election:

(a) shall comply with all applicable election laws and regulations;

(b) shall act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary and maintain the dignity appropriate to judicial office;

(c) subject to the other provisions of this Rule, may engage in partisan political activity allowed by law with respect to such candidacy and, in that regard:

(1) may publicly endorse or oppose candidates for the same judicial office;

(2) may attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office; and

(3) may seek, accept, and use endorsements from any person or organization; but

(4) shall not act as a leader in or hold office in a political organization, make a speech for a candidate or political organization, or publicly endorse a candidate for non-judicial office.

(d) As to statements and materials made or produced during a campaign:

(1) shall review, approve, and be responsible for the content of all campaign statements and materials produced by the candidate or by the candidate’s campaign committee or other authorized agents;

(2) shall take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities that the candidate is prohibited from doing by this Rule;

(3) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with

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the impartial performance of the adjudicative duties of the office;

(4) shall not make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court;

(5) shall not knowingly, or with reckless disregard for the truth, misrepresent the candidate's identity or qualifications, the identity or qualifications of an opponent, or any other fact, or make any false or misleading statement;

(6) may speak or write on behalf of the candidate's candidacy through any medium, including advertisements, websites, or other campaign literature; and

(7) subject to paragraph (b) of this Rule, may respond to a personal attack or an attack on the candidate's record.

Rule 4.4 thus makes it clear that the requestor must comply with all election laws and regulations. Subject to other provisions, Rule 4.4(c) expansively provides that a candidate may engage in partisan political activity allowed by law. This includes fund-raising. Election laws govern campaign contributions, expenditures, and reporting. Assuming compliance with all applicable laws and with legislative ethics rules, we see nothing in the Code of Judicial Conduct that prohibits the maintenance and use of campaign funds while a "candidate for election" as defined in the Code. Similarly, we find no prohibition on receipt of the funds from the non-judicial slate's account.

Unlike a non-judicial candidate for elected office, however, a judge who is a candidate for election remains subject to all applicable provisions of the Code of Judicial Conduct, including the general requirement of maintaining impartiality and independence. *See e.g.*, Rule 4.4(b).

Application: The Maryland 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 amendments 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.