

Maryland Judicial Ethics Committee

Opinion Request Number: 2019-27

Date of Issue: November 08, 2019

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A judge may participate in a study focusing on judicial diversity in state courts subject to certain limitations.

Issue: Whether a judge may participate in a study focusing on judicial diversity in state courts.

Answer: Yes, subject to certain limitations.

Facts: The Requestor is a judge who received a letter from an assistant professor at a college asking that the judge participate in an interview being conducted for a study.¹ The study focuses on judicial diversity in state courts. The professor and a research team are surveying state court judges from all U.S. states and interviewing state court judges from ten cities. During the 2019-2020 academic year, the team will be surveying and interviewing Black state court judges. During the 2020-2021 academic year, the team will survey and interview American Indian, Asian American, Latino/Hispanic and White state court judges. Some of the questions inquire into the judge's background; while others ask about topics such as to what extent the judge believes that he/she represents group interests, whether the judge's race or gender affects his/her judging and behavior as a judge, and whether the judge believes that his/her race or gender influences the judge's perspective and issues that come before the judge. The study results would be aggregated and anonymized so that no individual judge can be identified in the study. The data would go into two books that the professor is writing, as well as research articles, law review articles, and presentations.

Analysis: The Maryland Code of Judicial Conduct ("the Code"), Title 18, Chapter 100 of the Maryland Rules, establishes standards for the ethical conduct of judges. Several Rules have potential implications to the issue presented to us.

Rules 18-103.1 through 18-103.15 address extra-official activities by judges. The general rule is contained in Rule 18-103.1, which states:

¹ The professor sent the same letter to many judges across the State. The interview requested is either in-person or by phone, with in-person preferred.

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Page 4 of 4

Rule 18-103.5. Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties. Nonpublic information means information that is not available to the public. It may include information that is (a) sealed or shielded pursuant to the Maryland Rules, other law, or court order, (b) impounded, (c) communicated in camera, or (d) offered in grand jury proceedings, pre-sentencing reports, dependency cases, or psychiatric reports.

The Requestor will need to keep the Rules set forth above in mind when engaging in the interview. Further, we believe that the Requestor should not respond to interview questions where he/she is asked to express views that could be perceived to suggest a predisposition to decide matters in a certain way, whether or not a case is pending or impending in any court. The fact that the study results would be aggregated and anonymized so that no individual judge can be identified in the study does not alter the Requestor's responsibility to comply with the Code. *See* Rule 18-101.1.³ In summary, we conclude that the Requestor may participate in the described interview for the study, with the limitations as set forth above.

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.

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 the Requestor engages in a continuing course of conduct, he or she 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.

³ **Rule 18-10.1. Compliance with the Law**

A judge shall comply with the law, including this Code of Judicial Conduct.