

Maryland Judicial Ethics Committee

Opinion Request Number: 2021-19

Date of Issue: October 12, 2021

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge's ability to participate in a police department's entry level training program for police recruits

Issue: As a member of a panel comprised of "community leaders," may a judge participate in a discussion with police recruits as part of an entry level training program for recruits?

Answer: Yes, with limitations.

Facts: The Requestor was asked by the leader of a police department entry level training program for recruits to be a member of a "Community Awareness Panel." The Panel will meet with the recruits on a scheduled day and participate in "questions, answers, and discussions" for approximately two hours. The program is part of the training given by the department's training academy.

The request contains the following:

With the help of a moderator, we are able to have open and honest two-way conversations about police and community concerns. I hope the recruits hear the good and the bad of what our panelists have experienced and seen with police officers. I expect the recruit officers to ask questions of the panel. In the end, my hope is this class of future police officers has a better understanding of what they need to do in order to best serve our community. I also hope relationships are built between the panelists and the recruit officers so the partnership to community-police relations can continue to strengthen.

Discussion: The Code of Judicial Conduct (Code), codified as Title 18, chapter 100 of the Maryland Rules, does not expressly address the requested activity. The following Code Rules are pertinent.

Rule 18-101.2(a) provides that a judge shall act in a manner that "promotes public confidence in the independence, integrity, and impartiality of the judiciary."

Rule 18-101.3 provides that a judge may not lend the prestige of judicial office to advance the "personal or economic interests of the judge or others."

Rule 18-103.1 provides that a judge may engage in extrajudicial activities provided that such participation shall not interfere with performance of the judge's duties; lead to

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frequent disqualification of the judge; appear to undermine the judge’s independence, impartiality, or integrity; appear to be coercive; or make inappropriate use of court resources. If judicial independence and impartiality are not compromised, “judges are encouraged to engage in appropriate extrajudicial activities.” Rule 18-103.1 Comment (1). Judges “are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects.” *Id.* Participation in law related activities “helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.” Rule 18-103.1 Comment (2).

Rule 18-103.7, arguably relevant, provides that a judge may participate in activities sponsored by “organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit.” Subsection (a) of that Rule describes certain included and excluded activities. The activity that is the subject of this opinion is not expressly addressed in the Rule. The closest reference to a permitted activity is found at (a)(5):

making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice.

The activities permitted by section (a) of Rule 18-103.7 generally include those undertaken or sponsored by not-for-profit organizations. Rule 18-103.7 Comment (1).

Teaching the law is ethical. Consistent with that statement, in a published opinion, 2010-01, we opined that a judge could teach a course in law to a class of Maryland State Police recruits.

The instant request raises the question of identifying the often difficult to discern line between teaching the law and compromising impartiality. Even if a request is by a law-related organization, a judge should “refrain from activities that reflect adversely upon a judge’s independence, integrity, and impartiality.” Rule 18-103.7 Comment (2).¹

Facially, the request herein is different from teaching a course on the law. The request, by its terms, is not limited to speaking about the law or legal process. It may anticipate a

¹ Rule 18-103.12 addresses whether a judge may accept compensation for extra-judicial activities. Our understanding is that the Requestor would receive no compensation for the Requestor’s participation.

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discussion that is geared to principles of police conduct, including conduct that is within the law, often referred to as community relations.

The request can be read as contemplating a discussion of what the Requestor has seen in court. It carries with it an expectation that recruits may ask questions relating to their credibility and overall effectiveness as a witness. Police officers appear in court frequently. Generally, they are witnesses for the prosecution in a criminal case. A discussion of conduct to improve their effectiveness that goes beyond discussion of the law and legal process reflects adversely on the impartiality of the judiciary. Because the request contemplates a Socratic dialogue with the Panel members, aided by a moderator, the Requestor may not have control over the content of the discussions. The request appears to contemplate a continuing relationship between Panel members and recruits.

We have discussed the nature of the request in detail because we are aware that topics of police reform and community-police relations are the subject of much debate. We do not know the identity of other panelists. Thus, we do not know if “community activists” will be included. We do not know what topics will be discussed.

Nevertheless, ethically, judges may speak about the law and legal process and may so in this instance. But the Requestor may not go beyond that. The Requestor may not offer “tips” and legal opinions from the perspective of a police officer.”

We cannot foresee the details of the discussion during the training program and cannot compile an exhaustive list of activities that are not ethically protected. By way of example only, the Requestor may not give tips relating to demeanor, decorum, or other aspects of witness credibility; cannot criticize the law or otherwise comment on topics from the perspective of a police officer; cannot discuss community policing principles that go beyond principles of law; and cannot comment on topics related to police reform.

If the Requestor chooses to participate in the activity in question, we suggest that the Requestor disclose the ethical restrictions to attendees so that, if the Requestor declines to comment or answer a question or remains silent while others speak, the attendees will understand why the Requestor engaged in that conduct.

If the Requestor chooses to participate in the activity in question, the Requestor should be open to appropriate requests from other groups or organizations whose interests may not be fully aligned with those of a police training academy.

Application: The Maryland Judicial Ethics Committee cautions that this Opinion is applicable only prospectively and only to the conduct of the Requestor described herein, 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.

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The passage of 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 the request for advice involves a continuing course of conduct, the Requestor 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.