

Maryland Judicial Ethics Committee

Opinion Request Number: 2022-24

Date of Issue: July 21, 2022

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge's ability to give a historical presentation to a church on *Dobbs v. Jackson Women's Health Organization*

Issue: May a judge give a historical presentation to a church on the decision in *Dobbs v. Jackson Women's Health Organization*, __ S. Ct. __ (June 24, 2022), that includes a discussion of how *Dobbs* might relate to other rights?

Answer: A judge may give a historical presentation to a church on *Dobbs v. Jackson Women's Health Organization* that includes a discussion of the majority, concurring and dissenting opinions on the possible ramifications of the case, but may not offer any personal views.

Facts: The Requestor is a judge who is a member of a church in Maryland. The church has asked the Requestor to give a historical presentation on *Dobbs v. Jackson Women's Health Organization* and how it might relate to other rights. In *Dobbs*, the Supreme Court held that the federal constitution does not confer a right to abortion and that the authority to regulate abortion must be returned to the people and their elective representatives. *Dobbs* overruled *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and abrogated some other Supreme Court cases. The Requestor seeks advice on whether the presentation is permitted.

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 of the Code potentially are implicated in this request.

Rule 18-101.2(a) requires that “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.”

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 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.

Rule 18-103.7 provides that a judge may participate in activities “sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit.”

Comments (1) and (2) to Rule 18-103.1 help to explain the general rule permitting judges to participate in extrajudicial activities. Comment (1) provides in pertinent part:

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To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. 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.

Comment (2) provides that: “Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.”

While giving a historical presentation on *Dobbs* can be seen as speaking on a topic concerning the law and the legal system, the church has asked the Requestor to discuss how *Dobbs* “might relate to other rights.” Although the majority opinion in *Dobbs* emphasized that the “decision concerns the constitutional right to abortion and no other rights” and that “[n]othing in [the] opinion should be understood to cast doubt on precedents that do not concern abortion,”¹ at least one of the concurring opinions, as well as the dissenting opinion, disagreed with that pronouncement.

It is an understatement to say that *Dobbs* and the concurring and dissenting opinions have been the subject of much discussion, debate, and speculation. The Requestor did not provide information on the exact substance of what he/she would include in the presentation to the church. But we caution that the Requestor may not include in the presentation anything that could be seen as undermining the judge’s independence or impartiality. This is particularly important because the Supreme Court held in *Dobbs* that the regulation of abortions is the responsibility of individual states. Therefore, it is possible that cases could be brought in Maryland courts on this issue. A judge must be careful not to express any views that could be seen as manifesting a predisposition in deciding issues or cases that could come before Maryland courts. This is clearly prohibited by the Code.

Rule 18-102.10. Judicial Statements on Pending and Impending Cases provides:

- (a) A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome or impair the fairness of that proceeding and shall require similar abstention on the part of court personnel subject to the judge’s direction and control. This Rule does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.

¹ Opinion at *4.

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- (b) With respect to a case, controversy, or issue that is likely to come before the court, a judge shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office.
- (c) Notwithstanding the restrictions in sections (a) and (b) of this Rule, a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a non-judicial capacity.

In Opinion Request No. 2021-19 we noted that a judge’s teaching about the law “raises the often difficult to discern line between teaching the law and compromising impartiality.” In that Opinion we concluded that a judge could speak about the law and legal process to police recruits as a member of a community awareness panel, but the judge could not offer tips and legal opinions from the perspective of a police officer. While the program described in Opinion Request No. 2021-19 is different from giving a presentation to a church, the applicable rules and limitations on what the judge may speak about concerning the law remain the same.

The request presented in this Opinion can be divided into two parts: 1) giving a historical presentation on *Dobbs* that would include a discussion of the Supreme Court cases that were overruled and abrogated by the recent decision, as well as a discussion of the concurring and dissenting opinions, and 2) providing the judge’s personal views on *Dobbs* and how it might relate to other rights. Based on the analysis of the applicable Code provisions as discussed above, we conclude that the first part is permitted, the second part is not. This limitation must be conveyed to the church. If the church requires the second part to be included in any discussion of *Dobbs*, the judge must decline the request to give the presentation.

Subject to the limitations set forth above, if the judge gives the presentation, he/she may discuss the views discussed by the justices in the majority, concurring, and dissenting opinions in *Dobbs*, including their positions on the arguable ramifications of the majority opinion. Any further discussion risks violating the Code’s prohibition on actions that undermine a judge’s impartiality and independence, as well as the Code’s general prohibition against public comment on pending or impending proceedings as discussed previously in this Opinion. The judge may not offer his/her personal view on how the ramifications should or will be resolved or otherwise indicate agreement with any of the views expressed regarding potential ramifications of the decision..²

² In discussing the potential ramifications of the opinions in *Dobbs*, the Requestor should be mindful not to say, directly or indirectly, anything that could be seen as violating Rule 18-104.2 that prohibits a judge who is not a candidate from engaging in any partisan political activity.

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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.

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.