

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 27th day of August, 2019.

On June 14, 2019, came the Judicial Ethics Advisory Committee and presented to the Court Opinion 19-2 pursuant to its authority established in this Court's order of April 18, 2019. Upon consideration whereof, the Court approves the opinion as set out below.

Judicial Ethics Advisory Committee Opinion 19-2

A judge may wear a judicial robe while attending the retirement ceremony for another judge to be held in a courtroom.

ISSUE:

May a judge wear a judicial robe while attending the retirement ceremony for another judge held in a courtroom?

Answer: Yes. A judge may wear a judicial robe while attending the retirement ceremony for another judge held in a courtroom, because the judge is attending the service in an official capacity in an official ceremony and doing so does not improperly lend the prestige of the judicial office to advance the private interests of the judge or others.

FACTS:

A retirement ceremony and portrait presentation has been planned for a retiring judge, to be held in a courtroom in a local courthouse. Judges attending the retirement ceremony have been requested to wear judicial robes. The requesting judge has been invited to attend the ceremony and has asked whether wearing a judicial robe to the retirement ceremony violates the Canons of Judicial Conduct for the Commonwealth of Virginia (the "Canons").

DISCUSSION:

In Virginia JEAC Op. 19-1, this Committee discussed generally the Canons and principles associated with the propriety of wearing judicial robes at events other than an event that encompasses the judge's official duties. This Committee concluded that a judge should not wear a judicial robe to the funeral service of another judge. A judge is not attending the service in an official capacity, and thus may improperly lend the prestige of judicial office to advance the private interests of the judge or others in violation of Canon 2. *Id.*

The question submitted in this matter raises questions similar to those addressed in that earlier Opinion. The analysis is similar and is governed by the same Canons and principles. In

addressing the present question, the Committee relies upon the analysis provided in Va. JEAC Op. 19-1 and will not revisit that detailed analysis here.

The question presented is governed by Canon 2.

The commentary to Canon 2B explains the importance of maintaining the prestige of, and respect for, the judicial office. Canon 2B prohibits judges from lending that prestige of the judicial office “to advance the private interests of the judge or others.” Canon 2B. More generally, under Canon 2: “A judge shall avoid impropriety and the *appearance* of impropriety in all of the judge’s activities.” Canon 2 (emphasis added). When read together, it is apparent that a judge must safeguard the public trust and not use the prestige of the judicial office to advance the judge’s own private interests or the interests of others, and that judges must avoid even the appearance of improperly using the prestige of the judicial office.

Furthermore, the commentary to Canon 2A explains that “[t]he prohibition against behaving with impropriety or the appearance of impropriety applies to *both* the professional and personal conduct of a judge.” Canon 2A Commentary (emphasis added). The commentary to Canon 2B provides a similar caution, noting that “[j]udges should distinguish between proper and improper use of the prestige of office in *all* of their activities.” Canon 2B Commentary (emphasis added).

As the Committee noted in Va. JEAC Op. 19-1, without explicit written guidance as to when (or where) the wearing of judicial robes is required, permitted, or prohibited, time-honored practice and tradition in the Commonwealth has been for a member of the judiciary to wear a judicial robe only when acting in an official capacity in court proceedings or official ceremonies, or in conjunction with professional, as opposed to personal, conduct on the part of the judge.

The precise question of the propriety of a judge wearing a judicial robe to a retirement ceremony has not been considered previously by the Committee. The current question stands in contrast to the circumstances in Va. JEAC Op. 19-1, where the focus of the funeral was paying respect to the entirety of an individual’s life who happened to be a judge. In this case, the focus of the retirement ceremony is honoring the judge’s service to the Commonwealth. Furthermore, the retirement ceremony is to be held in a courtroom, making the ceremony analogous to a ceremonial session of court. Accordingly, wearing a judicial robe to the retirement ceremony does not lend the prestige of the judicial office to the private interests of the judge or others in violation of Canon 2B, nor invoke even the appearance of impropriety to be avoided in accordance with Canon 2.

CONCLUSION:

The Committee finds that the facts presented distinguish this case from the facts of Va. JEAC Op. 19-1. Based on the facts presented, a retirement ceremony for a judge held in a courtroom constitutes attendance at an official ceremony of the court. As such, a judge may wear a judicial robe to the retirement ceremony of another judge held in a courtroom without violating the Canons.

A Copy,

Teste:

A handwritten signature in black ink, appearing to be the initials 'JBRH' followed by a flourish.

Clerk

REFERENCES:

Va. JEAC Op. 19-1 (2019).

Canons of Judicial Conduct for the Commonwealth of Virginia, Canon 2, Canon 2A, Canon 2B.

AUTHORITY:

The Judicial Ethics Advisory Committee is established to render advisory opinions concerning the compliance of proposed future conduct with the Canons of Judicial Conduct. . . . A request for an advisory opinion may be made by any judge or any person whose conduct is subject to the Canons of Judicial Conduct. The Judicial Inquiry and Review Commission and the Supreme Court of Virginia may, in their discretion, consider compliance with an advisory opinion by the requesting individual to be a good faith effort to comply with the Canons of Judicial Conduct provided that compliance with an opinion issued to one judge shall not be considered evidence of good faith of another judge unless the underlying facts are substantially the same. Order of the Supreme Court of Virginia entered April 18, 2019.