

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 10-01
(October 22, 2010)

**Participation in Political Campaigns in Other States and
Contributions to Political Candidates**

Issues

1. May Arizona judges actively participate in judicial campaigns in other states?

Answer: No.

2. May Arizona judges participate in campaigns of candidates for national public office?

Answer: No.

3. May judges contribute to political or judicial candidates outside Arizona as long as they follow applicable federal and state requirements?

Answer: Yes.

4. Are contributions to political parties treated differently from contributions to candidates?

Answer: Yes.

5. Where can judges find up-to-date information about permissible political contributions under A.R.S. § 16-905?

Answer: The Arizona Secretary of State's website.

6. What resources are available to judges regarding contributions to national candidates, political organizations, and political parties?

Answer: The Federal Election Commission's website.

Facts

The 2009 Arizona Code of Judicial Conduct contains new and amended rules governing campaign activities and contributions. Some judges have asked if they may campaign for friends or classmates running for judicial office in other states, and others want to know if they can take a leave of absence to work on a national candidate's campaign in Arizona or in other states. Still others have raised questions about the applicable amounts for calculating campaign contributions and where to find the most current information on contribution limits. These questions all relate to Rule 4.1 of the judicial code and are consolidated in this opinion.

Discussion

Issue 1

Judges have inquired whether they may campaign on behalf of judicial candidates in other states. Campaign activities might include making speeches or helping to raise money for the out-of-state candidate. We conclude that such activities are impermissible under the Arizona Code of Judicial Conduct.

Rule 4.1(A)(3) states that a judge shall not “publicly endorse or oppose another candidate for any public office.” Rule 4.1(A)(4) provides that a judge may not solicit funds for, *inter alia*, a political candidate. Rule 4.1(A)(5) prevents a judge from actively taking part “in any political campaign other than his or her own campaign for re-election or retention in office.”

The language of Rule 4.1 is broad and makes no exception for judicial elections outside Arizona. Even if a judge took a leave of absence to participate in an out-of-state campaign, he or she would still be an Arizona judicial officer and, as such, a representative of his or her office. *See, e.g., Matter of Marquardt*, 161 Ariz. 206, 221, 778 P.2d 241, 256 (1989) (Claborne, J., concurring) (“[A] judge, whether on or off the bench, is bound to strive toward creating and preserving the image of the justice system as an independent, impartial source of reasoned actions and decisions. Achievement of this goal demands that a judge, in a sense, behave as though he is always on the bench.” (quoting *In the Matter of Bennett*, 403 Mich. 178, 186, 267 N.W.2d 914, 922 (1978))).

Issue 2

Participation in national political campaigns raises the same ethical concerns discussed in connection with Issue 1. The plain language of Rule 4.1 prohibits such involvement.

Issue 3

Nothing in the Arizona Code of Judicial Conduct prohibits judges from contributing to political and judicial candidates outside Arizona, provided they comply with applicable state and federal limitations. *See* Rule 4.1(A) (4) (a judge shall not “make contributions to any candidate or political organization in excess of the amounts permitted by law . . .”).

It is beyond the scope of this opinion to interpret and apply specific state and federal laws. Dollar limits on political contributions are set by statutes and federal regulations, not by the Code of Judicial Conduct. The discussion below regarding Issue 6 includes resources that judges may consult to independently determine any limitations on their contributions. Additionally, the Arizona Attorney General has issued opinions over the years regarding permissible campaign contributions and may be a resource for a judge who desires interpretation of a specific statute. *See, e.g., Op. Ariz. Att’y Gen. No. I87-039* (addressing application of Arizona campaign contribution limits to non-federal offices within the state).

Issue 4

Contributions to Arizona state and county political parties (as defined by A.R.S. § 16-901(21)) are treated differently from contributions to individual candidates under state law. *See* A.R.S. § 16-905(E) (“Contributions to political parties and contributions to independent expenditure committees are exempt from the limitations of this subsection.”). There are, however, federal limitations on contributions to both state and national political parties. *See* 2 U.S.C. § 441a.

Issue 5

Information about permissible political contributions under A.R.S. § 16-905 may be found at the Arizona Secretary of State's website:

http://www.azsos.gov/election/2010/Info/Campaign_Contribution_Limits_2010.htm.

Contribution limits are subject to biennial adjustment by the Secretary of State to account for inflation. *See* A.R.S. § 16-905(H). Judges should be aware that revised limits may be approved too late to appear in hard copies (or pocket parts) of the Arizona Revised Statutes. They will, however, be posted on the Secretary of State's website.

A.R.S. § 16-905 governs both individual and aggregate contributions; judges must be aware of both limits. The limit on aggregate contributions is for the calendar year and is not governed by the election cycle. *See* A.R.S. § 16-905(E). Rule 4.1(A)(4) limits the amount of aggregate contributions otherwise allowed by A.R.S. § 16-905. It states that a judge may not "make total contributions in excess of fifty percent of the cumulative total permitted by law."

Issue 6

The Federal Election Commission website has a number of helpful pages, including:

<http://www.fec.gov/pages/brochures/citizens.shtml>

http://www.fec.gov/ans/answers_general.shtml#How_much_can_I_contribute

http://www.fec.gov/ans/answers_general.shtml.

Applicable Code Sections

Arizona Code of Judicial Conduct, Rules 4.1, 4.1(A)(3), (4) and (5) (2009).

Other References

Arizona Revised Statutes §§ 16-901(21), 16-905, 16-905(E) 16-905(H).

Matter of Marquardt, 161 Ariz. 206, 221, 778 P.2d 241, 256 (1989).

Arizona Attorney General Opinions, No. I87-039

2 United States Code Annotated § 441a.