

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 97-10
(August 8, 1997)

**Solicitation of Contributions for
a Juvenile Restitution Fund**

Issue

Under what circumstances may judicial officers of the juvenile court, staff of the Administrative Office of the Courts, probation officers or employees of the juvenile court, or members of a juvenile court's advisory board solicit contributions to the restitution fund for the victims of juvenile crime?

Answer: None.

Facts

The legislature recently passed Senate Bill 1446 (A.R.S. § 8-252) which authorizes the county board of supervisors to establish a fund for the payment of restitution in juvenile delinquency proceedings. Juveniles who are unable to pay or earn money for restitution can work at court-supervised public service and "earn" payment from the fund for victims. The fund would contain money from "state and local appropriations and grants, gifts, devises and donations from any public or private source."

The juvenile court is concerned about its role in encouraging or soliciting gifts and other donations to the restitution fund. While judges cannot solicit donations personally, the court created a juvenile court community advisory board pursuant to A.R.S. § 8-237 that is authorized to "enlist community involvement and support in addressing issues related to juvenile crime." Under this broad mandate the board might be able to solicit grants, gifts and other donations on behalf of the court.

Discussion

Under Canon 4C(4)(b), it is clear that "a judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of office for that purpose. . . ." This prohibition extends to judicial staff, court officials and administrators and others subject to the judge's direction and control. By definition and necessity, the list of individuals enumerated in this inquiry are included, i.e., judicial officers of the juvenile court, staff of the Administrative Office of the Courts, probation officers or other employees of the juvenile court. The members of the juvenile court's community advisory board, while not per se employees of the court, should nevertheless likewise be included in the list of persons similarly prohibited from such solicitations based upon their relationship to the court. (See Maricopa County Superior Ct., Juv. Ct. Adm. Order 95-01).

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A.R.S. § 8-237 authorizes the juvenile court to establish a public council or committee having as its object the prevention of juvenile delinquency and may cooperate with, or participate in, the work of any such council or committee for the purposes of preventing or decreasing juvenile delinquency, including the improving of recreational, health and other conditions in the community affecting juvenile welfare. As part of the administrative order, it is anticipated that active communication between the community advisory board and the juvenile court take place wherein the possibility exists that the board and the court may be in a mutual position of influence one to the other. The juvenile court appoints the members of the board and, therefore, the members are subject to its control. Because of that potential of influence anticipated in the interaction of these entities, the community advisory board necessarily falls within the proscribed group of individuals who are prohibited from soliciting funds on behalf of the juvenile court.

Additionally, Canon 2B provides that, “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey the impression that they are in a special position to influence the judge. . . .” Because the intended goals and purposes of the community advisory board contemplate having some influence upon the juvenile court and conversely, the juvenile court contemplates having some influence upon the action of the community advisory board, the application of Canon 2 applies to the board membership as well. Therefore, based upon the appearance of impropriety, the community advisory board should likewise not solicit funds on behalf of the juvenile court as they are subject to the control of the court. It is in essence an extension of the court having been created by the same. Courts and judges cannot accomplish through surrogates what they cannot themselves do.

In answer to the issue presented, the funding of the juvenile restitution fund remains primarily the responsibility of the legislative and executive branches of government. However, this does not prohibit the court, its staff and employees, and its community advisory board from participating in the appropriate and lawful application of grants, nor does it prevent the active participation of these persons or entities in educating or assisting the appropriate persons or organizations, including the county board of supervisors or the county attorney’s office, in their efforts to solicit funding from any public or private source. Canon 4C(3) states, “A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund-raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.” (See also Ariz. Op. 96-08, Issue 5; Minn. Op. April 7, 1989; N.Y. Op. 88-47; and Tex. Op. 58.)

We believe it is inappropriate for the community advisory board of the juvenile court to solicit funds on behalf of a juvenile restitution fund created by legislation. However, this prohibition to solicitation of funds does not extend to the appropriate assistance and education that the court and others on its behalf may provide to further the funding of the same.

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Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2B, 4C(3) and 4C(4)(b) (1993).

Other References

Arizona Revised Statutes §§ 8-252 and 8-237.

Arizona Judicial Ethics Advisory Committee, Opinion [96-08](#), Issue 5 (Aug. 15, 1996).

Minnesota Board on Judicial Standards (April 17, 1989).

New York Advisory Committee on Judicial Ethics, Opinion 88-47 (June 13, 1988).

Texas Committee on Judicial Ethics, Opinion 58 (1982).

Maricopa County Superior Court, Juvenile Court Administrative Order No. 95-01 (Jan. 7, 1995).