

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 06-06
(Reissued December 15, 2006)

**Serving as Honorary Chair of Campaign to
Raise Funds for Public Law School**

Issue

May a judge serve as honorary chair of a fund-raising campaign intended to benefit a public institution of legal education?

Answer: Yes.

Facts

One of the two public law schools in Arizona has established a campaign to raise money for law school projects and scholarships. An Arizona state judge has been invited to serve as honorary co-chair of the campaign, along with a federal judge. The co-chairs would not directly solicit contributions, but their names would appear on the campaign's letterhead and in related publications and media releases.

Discussion

This committee has previously noted that tension exists between the requirements of the Code of Judicial Conduct restricting judges from participating in fund-raising efforts and the necessity for judges to remain part of the communities they serve. As we stated in Advisory Opinion 00-06, *Background* ¶ 4:

[W]e note that the code currently seems to prohibit activities that many judges, and for that matter many attorneys and laypersons, reasonably may view as innocuous or beneficial to the legal system and to the administration of justice. We also recognize the tension that may exist between the code's restrictions on fund-raising activities and the notion that "a judge should not become isolated from the community in which the judge lives." Commentary to Canon 4A. In view of that tension and our supreme court's recent efforts to encourage judges to actively involve themselves in civic affairs, it may be wise to carefully review and consider revision of the ethical rules pertaining to fund-raising activities. Common sense and flexibility rather than absolute prohibitions may be the best course to follow in this area.

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In resolving this matter, we must interpret and apply Canon 4C(3), which states:

A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. 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 except that a judge may be an announced speaker at a fund-raising event benefitting indigent representation or public institutions of legal education. A judge may make recommendations to public and private fund-raising agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Under this canon, organizations or governmental agencies dedicated to improving the law, the legal system, or the administration of justice are in a category apart from other charitable causes. The obligation of judges to avoid fund-raising for a charity not covered by Canon 4C(3) is set forth in Canon 4C(4)(b):

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, but a judge may be listed as an officer, director, or trustee of such an organization, so long as the listing is not used for fund-raising purposes. Except as permitted by paragraph (C)(3) above, a judge should not be a speaker or the guest of honor at an organizations fund-raising events, but may attend such events.

The two canons apply to different fund-raising activities and set forth different standards. Canon 4C(3) allows a judge to “assist” an organization or governmental agency for the improvement of the law, legal system, or administration of justice in raising funds, provided that the judge does “not personally participate in public fund-raising activities” By contrast, under Canon 4C(4)(b) a judge may not “solicit” funds for a charity, a proscription that clearly applies to direct solicitations, and may also apply to indirect solicitations. *See* Advisory Opinions 00-06 and 94-15. Further, under Canon 4C(4)(b), a judge may not allow the prestige of the office to be used for fund-raising purposes, but that prohibition does not apply to judges’ activities in behalf of organizations or agencies covered by Canon 4C(3).

The present inquiry is governed by Canon 4C(3). A state law school surely qualifies as a governmental agency or organization designed to improve the law, as well as the legal system and the administration of justice. It is hard to conceive of any other valid function of a state-owned and -operated law school. Thus, a judge may assist a state law school in raising funds, although not to the extent of personally participating in public fund-raising activities. That much is clear. What is less clear is whether serving as an honorary co-chair of a public law school’s fund-raising campaign amounts to personal participation in public fund-raising activities.

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Arizona's version of the code contains an exception to Canon 4C(3), allowing a judge to "be an announced speaker at a fund-raising event benefitting indigent representation or public institutions of legal education," an exception added by our supreme court several years ago that does not appear in the American Bar Association's Model Code of Judicial Conduct. The language of the exception is significant, and it could be interpreted in two entirely different ways.

Under one reading, but for the exception, a judge could not speak at a fund-raiser to benefit public legal education or indigent legal representation. The mere act of speaking at a fund-raiser would be considered improper personal participation in public fund-raising. Acting as honorary co-chair of a fund-raising campaign is the functional equivalent of speaking at a fund-raiser; the difference is in the means of communication, not the nature of the information communicated. Under this reading, serving as honorary co-chair of a law school's fund-raising campaign would be prohibited because such service is similar to speaking at a fund-raiser, but lacks the benefit of an explicit exception to cover it.

The language of the exception can, however, be read more broadly to establish a policy that public legal education and indigent representation are so important to the legal system that the ordinary rules forbidding participation in public fund-raising do not apply to activities undertaken to support these causes. Under this broader reading of the 4C(3) exception, our supreme court has determined that judges may assist fund-raising activities for public law schools or indigent representation if those activities are the functional equivalent of speaking at a fund-raiser. Both the speaker at a fund-raiser and an honorary co-chair of a fund-raising campaign are removed from actually soliciting contributions. No reasonable person would think that an "honorary co-chair" of a fund-raising campaign would ever be directly involved in asking for money or accounting for it after its receipt. We accept the second interpretation and conclude that judges should be allowed to help the fund-raising efforts of public law schools so long as their efforts are no more extensive than those contemplated here.

Because the language of the exception is unique to Arizona, opinions from other states can provide little guidance. Unfortunately, there is also little guidance to be obtained from within this state, for there are no opinions from this committee applying Canon 4C(3) in the scenario presented here. We note that Advisory Opinion 00-06, Issue 10 (judge may not allow judge's name or picture to be published in a booklet used in connection with fund-raising dinner for a university unless the university has "separate, independent reasons for honoring the judge as an alumnus, unrelated to the judge's position"), may appear to be relevant, but it is not. Issue 10 did not deal with a fund-raiser for the benefit of a public law school nor any organization or agency covered by Canon 4C(3).

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We believe the second, broader interpretation is the better one. We conclude that the exception sets forth the public policy of this state that judges should be allowed to help the fund-raising efforts of public law schools so long as their efforts are no more extensive than those contemplated here. A judge who remains merely an *honorary* co-chair of the law school's fund-raising campaign—and does not personally solicit funds, receive contributions or account for donations—does not violate Canon 4C(3).

Applicable Code Sections

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

Other References

Arizona Judicial Ethics Advisory Committee, Opinions 94-15 (Dec. 14, 1994) and 00-06 (Dec. 18, 2000).

Revision History

Originally issued November 7, 2006.

Revised and reissued on December 15, 2006.