

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 76-01
(January 6, 1976)

**Limits on Political Contributions; Board Membership;
and Speaking Engagements**

Issues

1. Is a judge precluded from making political contributions which collectively total more than the sum of \$100 in a given calendar year even though no single contribution exceeds the sum of \$100?

Answer: Yes, but see the note in the discussion of this issue.

2. In purchasing tickets for political dinners, is it necessary for a judge to determine the portion of the purchase price which constitutes a contribution to a given political party or candidate?

Answer: Yes.

3. May a judge's spouse make political contributions which equal or exceed that which the judge is entitled to contribute in a given calendar year, assuming that the income is community property?

Answer: Yes, if they do not exceed the judge's contribution.

4. Is it proper for a judge to serve as a director of Junior Achievement of Metropolitan Phoenix, Inc., a nonprofit service organization?

Answer: Yes, subject to certain limitations.

5. Is it proper for a judge to serve as a member of the Board of Directors of Blue Shield of Arizona, a nonprofit corporation?

Answer: Yes, subject to certain limitations.

6. Is it proper for a judge to serve the balance of her term as a member of the National Defense Advisory Committee on Women in the Service?

Answer: Yes.

7. May judges accept invitations to speak to political organization on nonpartisan subjects?

Answer: Yes, subject to certain limitations.

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Discussion

Issue 1

Canon 7A(1)(c) prohibits a judge or a candidate for election to judicial office from "making contributions to a political party or organization or to a non-judicial candidate in excess of a total of One Hundred Dollars per year." It is the conclusion of the Advisory Committee that the \$100 limitation applies as a collective total for *all* political contributions in a given year. **[Note: The Supreme Court increased the limit to \$250 in the 1985 version of the Code of Judicial Conduct.]**

Issue 2

The introductory paragraph of Canon 7 provides that "A judge may purchase tickets for political dinners or other similar functions." On the other hand, the provisions of Canon 7A(1)(c) prohibit a judge from making contributions to a political party or organization or to the non-judicial candidate in excess of a total of \$100 per year.

It is the opinion of the Advisory Committee that a political contribution must be so designated whether directly labeled as such or included as a part of the price of tickets for fund-raising dinners. It follows, therefore, that any payment over and above the estimated cost of the function (including food, entertainment, speakers and administrative costs) must be considered as a part of the judge's total allowable contribution for that calendar year.

Issue 3

Although the Code of Judicial Conduct does not purport to control the activities of a judge's spouse, there are several provisions of the Code which would have application to this area of apparent controversy.

Canon 7B(1)(a) provides that a judge "encourage" members of his family to adhere to the same standards of political conduct that apply to him. Canon 7B(1)(b) provides that a judge "[s]hould not allow any other person to do for him what he is prohibited from doing." Obviously, contributions by a spouse should not in any manner be used as a subterfuge to accomplish indirectly what the Code does not directly permit.

It is the opinion of the Advisory Committee that there would be no question of impropriety if the spouse were to contribute a sum which did not exceed the amount which the judge was permitted to contribute in a given calendar year. It is also the conclusion of the committee, however, that a judge should attempt to discourage his or her spouse from making contributions in excess of that amount.

Issue 4

The Advisory Committee can see no prohibition as long as the judge keeps in mind the fund-raising and investment counseling limitations of Canon 5B(1) and (2).

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Issue 5

The Advisory Committee's comments are the same as set forth in the discussion relating to Issue 4.

Issue 6

Members of the Defense Advisory Committee are appointed to three-year terms by the Secretary of Defense. The purposes of this civilian committee include:

- (1) To interpret to the public the need for the role of women in the Services and to promote public acceptance of Military Service as a career field for women;
- (2) To advise the Department of Defense on policies and matters relating to women in the Services;
- (3) To recommend measures to insure effective utilization of the capabilities of the women in the Services;
- (4) To make appropriate recommendations pertaining to the training, housing, health, recreation and general welfare of women in the Services.

One member of the Advisory Committee is of the opinion that continued membership is precluded by the provisions of Canon 5G and that the judge-member of the National Committee should resign forthwith. A second member of the committee is of the opinion that the national defense organization is a matter of such broad public interest that a judge should not be precluded from serving as a member thereof. The third member of the committee is of the opinion that the judge should be able to serve out the balance of the existing term but should not accept reappointment to the National Committee.

Issue 6 has, therefore, been answered in the affirmative by the majority vote of the Advisory Committee.

Issue 7

The answer to this issue is a qualified "yes." Certainly a judge should not make speeches under circumstances which would give the appearance that he or she is giving support to a particular candidate, a political party or a particular political issue. For example, a judge should not appear and make a speech before a political gathering that has for its purpose the advancement of the campaign of a specific candidate. Notwithstanding the fact that the judge might speak on a nonpartisan issue, there could certainly be the appearance of a violation of Canon 7A(1)(b) in that such speech would in effect be a speech *for* a political candidate. Also, there would be a possible violation of the provisions of Canon 7A(3) which provides that "A judge shall not actively take part in any political campaign . . . other than his own."

The provisions of Canon 7A(2) to the effect that a judge "may speak to political gatherings only on his own behalf," also prohibits a speech made directly on behalf of some other candidate or in support of a political issue.

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It is also important to keep in mind the admonitions of the introductory paragraph of Canon 7 to the effect that the judge "should avoid political activity which may give rise to a suspicion of political bias or impropriety," and which also provides that any attendance at a political gathering "should be restricted in such a manner as not to constitute a public endorsement of a cause or candidate otherwise prohibited by this Canon."

The Advisory Committee is of the opinion that a judge is not generally prohibited from speaking before political organizations on a nonpartisan subject. In doing so, however, the judge should keep in mind the provisions of the Canons quoted above. Indeed Canon 4 encourages a judge to engage in activities to improve the law, the legal system, and the administration of justice. This specifically includes the right to speak, write, lecture, and teach.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 5B(1) and (2), 5G, 7A(1)(b) and (c), 7A(2) and (3), 7B(1)(a) and (b) (1975).