

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 88-04
(May 11, 1988)

**Propriety of Conducting an Educational Seminar
in Another State Involving an Actual
Settlement Conference**

Issue

Is it a violation of the Codes of Judicial Conduct for an Arizona judge to conduct a continuing judicial education seminar in another state in which the judge would direct an actual settlement conference?

Answer: No.

Discussion

Even though Canons 5E and 5F directly prohibit a judge from acting as an arbitrator or mediator, or from practicing law, the purpose behind the canons must be examined to understand if it is applicable to the situation presented here. A judge conducting a continuing judicial education seminar for other trial court judges is doing so with an educational purpose in mind, rather than with the purpose of "practicing law." Because the decisions of arbitrators are generally subject to judicial review, Canon 5E was written to eliminate the possibility that a judge would be placed in a position to rule upon the correctness of his own prior arbitration decision. S. Lubet, *Beyond Reproach: Ethical Restrictions on the Extrajudicial Activities of State and Federal Judges* 22, American Judicature Society (1984). However, in a situation such as the one before us, where an Arizona judge is participating in a conference in another state, involving non-Arizona parties, there is no risk that the judge will subsequently find that same case before him in an Arizona court. Further, it is unlikely that one conference involving arbitration skills would detract from the judge's commitment to full-time judging in Arizona. Of course, that might not be the case if a judge were to participate regularly in such seminars; however, those are not the facts before us. Upon examination of the apparent purposes behind the construction of Canons 5E and 5F, there is no violation of those canons based on the facts presented.

Additionally, neither is Canon 4 violated under the instant facts. It permits a judge to partake in quasi-judicial activities to "improve the law," allowing him to participate and teach in activities concerning the law as long as he "does not cast doubt on his capacity to decide impartially any issue that may come before him." As noted above, participation in a conference in another state, not involving parties from Arizona and unrelated to Arizona subject matter, won't come before an Arizona judge in an Arizona court at a later date. The conflict anticipated by the authors of the Code of Judicial Ethics will not be realized under the instant facts. Indeed, the Commentary to Canon 4 provides that, "[t]o the extent that his

Advisory Opinion 88-04

time permits, he [the judge] is encouraged to do so, [contribute to the improvement of the law]. . .through a . . .judicial conference. . . ." Accordingly, we find no violation of the Code of Judicial Ethics by the participation of an Arizona judge in a judicial conference involving an actual settlement conference in another state.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 4, 5E and 5F (1985).

Other References

Stephen Lubet, *Beyond Reproach: Ethical Restrictions on the Extrajudicial Activities of State and Federal Judges*, American Judicature Society (1984).