

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 88-06
(May 11, 1988)

**Fee Sharing with Privately-owned Defensive
Driving School; Fees for Weddings**

Issues

1. Certain justices of the peace have arrangements with privately-owned defensive driving schools providing that either the judge or court receive a certain portion of the fee charged by the school for each defendant referred to that particular driving school. The portion of the fee returned to the judge or court appears to be about \$10 per defendant. Is it a violation of the code of judicial conduct for the judge to personally retain such fees?

Answer: Yes.

2. When judges perform weddings during regular court hours on court premises, do the fees *charged* for performing these weddings belong to the judge who performs the wedding?

Answer: No.

Discussion

Issue 1

The Advisory Committee has determined that the purpose for the remission to the court by the defensive driving school of a portion of the fee is to reimburse the county for costs to it of administration of the program as well as to reduce the impact of any revenue loss as a result of fines not being assessed. It is the committee's opinion that personal retention of any portion of such funds for the private benefit of a judge constitutes a misappropriation of the funds in clear violation of the Code of Judicial Conduct.

Applicable canons of the Code of Judicial Conduct include Canon 1, requiring that a judge "observe high standards of conduct so that the integrity and independence of the judiciary may be preserved." Canon 2 requires that a judge "respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

We deem further discussion unnecessary to clarify the obvious. Misappropriation of public funds is reprehensible conduct inimical to and condemned by the high standards of the Code of Judicial Conduct.

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Issue 2

The committee is of the opinion that a judge should not charge a fee for performing weddings during regular court hours on court premises.

The following guidelines approved by the Arizona Judges Association, the Arizona Municipal Judges Association and the Justices of the Peace, have been submitted for approval to the Arizona Supreme Court on October 16, 1987. The guidelines provide:

1. The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.
2. A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.
3. A judge shall not advertise his availability for performing wedding ceremonies.
4. A judge shall not charge a fee for performing a wedding ceremony during court hours, and a judge or any court personnel shall not demand, request or suggest that an honorarium or gratuity be given to the judge for the performance of a wedding ceremony during court hours at the courthouse. However, a judge may accept an honorarium or gratuity voluntarily offered for the performance of a wedding ceremony during court hours.
5. A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 1 and 2 (1985).

Arizona Code of Judicial Conduct, Canon 5H(5) (1993).

Notice

The Supreme Court approved these guidelines in June 1989 by adding a new Canon 5H to the *Arizona Code of Judicial Conduct*. This canon was revised and renumbered as Canon 4J in the 1993 version of the code.