

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 92-08
(June 4, 1992)

**Membership on Committee That Recommends
Funding for Court-related Programs**

Issue

May a Superior Court judge ethically serve as a member of a supreme court committee that makes recommendations for awarding grants to various programs in which the judge is a likely participant?

Answer: Yes.

Facts

The legislature created a fund to encourage the development of alternatives to litigation. The money for the fund comes from court fees or surcharges imposed on litigants to support experimental alternative dispute resolution (ADR) programs in the courts. The supreme court is responsible for administering this fund and has created a committee to review and evaluate the applicants and make recommendations. The committee has adopted a rule that its members cannot review grant applications submitted by the courts on which they serve.

Discussion

Canon 5G prohibits a judge from accepting an appointment "to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice." The committee in question is not a governmental body or commission. It was created by the supreme court to assist it in administering a fund established by the legislature. As such, it is part of the administrative apparatus of the court and not an independent agency for developing public policy or distributing public moneys. Moreover, the funds distributed through the program will not result in litigation in which a judge's participation on the commission could be called into question. In the unlikely event that something like that does happen, the judge could easily disqualify himself to avoid any violations of the Code of Judicial Conduct.

Canon 2 provides that a judge should avoid impropriety and the appearance of impropriety. It is the opinion of this advisory committee that the possibility of a conflict of interest has been adequately dealt with by the rule that members cannot review grant applications submitted by courts on which they serve. Moreover, the final decision to award a grant is made by the chief justice of the supreme court. We recognize the valuable benefit to the committee of having judicial input on ADR grant requests from the judges who have extensive knowledge in the area of ADR.

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Accordingly, so long as the supreme court committee operates in the manner described we are of the opinion that the Code of Judicial Conduct is not violated by service on said committee by a judge whose court may become a recipient of a grant.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2 and 5G (1985).