

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 92-12
(September 11, 1992)

**Indirect Endorsements of Computer
Products or Programs**

Issues

1. May judges knowingly permit their pictures to appear in a brochure published by a computer manufacturer that indirectly endorses or promotes the use of its equipment and services?

Answer: No.

2. Would it make a difference if the brochure focused exclusively on how the court uses a specific software program rather than serving as a direct or indirect endorsement of any particular manufacturer or product?

Answer: Yes, but see discussion.

3. Does it matter if the software used by the court is its own product, available to other courts free of charge, and not a product of the manufacturer?

Answer: No.

4. If the software is licensed by the court to a distributor for resale to other users, may judges endorse or promote the software in any way?

Answer: No.

5. May the court cooperate in the publication of a descriptive brochure about the software program without using the names or pictures of any judges?

Answer: Yes, but see discussion.

6. Do the ethical restraints applicable to judges in this situation apply to the members of their staff?

Answer: Yes.

Facts

A local juvenile court developed a software program to use as a statewide and possibly nationwide juvenile court information and case tracking system. The program was installed on equipment manufactured by a major computer corporation that uses "application briefs" or brochures to give information about the software to other potential users. While the software was developed by the court itself and would be made available to other users free of

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charge, the application brief also refers to proprietary software than can only be purchased from the company. The brief contains pictures of and quotes from judges, court commissioners and court employees who have used the software program. The company's logo is displayed on the front and back covers of the brochure, and company equipment and products are mentioned inside the publication. In addition, a prominent, national consulting firm described in the text as a business partner of the company is identified as the firm that successfully exported the application to other courts.

Discussion

Issue 1

The brochure could leave a person reading it with the impression that the judges were lending the prestige of their office to the promotion of the computer manufacturer's products. Canon 2B states in part that a judge "should not lend the prestige of his office to advance the private interests of others, nor should he convey or permit others to convey the impression that they are in a special position to influence him."

While the purpose of the brochure is laudable, the promotion of the software program, the prominent display of the manufacturer's logo and the pictures of judges and court personnel using the manufacturer's equipment clearly promotes the interests of the company.

Issue 2

If the brochure did not contain any references to a particular company and focused exclusively on the software program, the participation of the judges and court personnel would be acceptable. Canon 4 states, "A judge may engage in activities to improve the law, the legal system, and the administration of justice." The purpose of the brochure clearly fits within the ambit of the Canon.

Issue 3

The ownership of the software is immaterial. The brochure, as presently composed, clearly singles out one computer manufacturer.

Issue 4

If judges endorse software that is available only through one distributor who realizes a profit on the sale of the software, then the action would be proscribed by Canon 2B. This is the same situation as presented in Issue 1, with the interests of the distributor replacing those of the computer manufacturer.

Issue 5

If the brochure focuses solely on the software program without mention of any entity which would profit from the sale of equipment, then this issue is the same as Issue 2 and not only the court, but the judges and court personnel could cooperate.

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Issue 6

Canon 3B(2) clearly addresses this issue. The Canon states: "A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him." What a judge is precluded from doing, so is the judge's staff.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2B, 3B(2) and 4 (1985).