

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 92-15  
(Reissued December 15, 1992)

**Reporting Illegal Activities Disclosed  
During Court Proceedings**

**Issues**

1. If a litigant testifies in court that he or she has failed to pay income taxes, is the presiding judge ethically required to report this probable felony to the appropriate federal authorities?

**Answer:** No, but see discussion.

2. When a litigant repeatedly violates the Landlord-Tenant Act and various building codes, can the judge who observes this conduct alert an appropriate government agency?

**Answer:** Yes, but see discussion.

3. Is it ethical for a judge to alert a "public interest" lawyer when a landlord continues to operate what can only be characterized as slums?

**Answer:** Yes, but see discussion.

**Discussion**

Whether judges may—or must—report illegal activity to which they have become privy is not addressed in the Code of Judicial Conduct. Consequently, a judge may report suspected violations, or decline to report them, as his or her judgment and conscience dictate. It is a matter within the judge's sound discretion.

Some caveats may be helpful in deciding how to exercise this discretion. One of a judge's general responsibilities is to adjudicate only the controversy before the court and "not to allow the proceedings to be used for any other purpose." *A.B.A. Standards Relating to the Function of the Trial Judge*, June 1972, at 25. In deciding whether to report suspected criminal violations, a judge may wish to consider whether one party's disclosure of another party's illegal activities was designed to embarrass the other side or gain a tactical advantage in the lawsuit extraneous from the merits.

On the other hand, Canons 1 and 2 impose on judges the duty to uphold the integrity of the judiciary and promote public confidence in it. A courtroom is not a "duty free zone" in which serious crimes may be admitted with impunity. A blanket judicial attitude of "hear no evil, see no evil, report no evil" does not inspire public confidence. Depending on the circumstances, there may be occasions in which the sound exercise of discretion requires a judge to report criminal wrongdoing which has surfaced in court.

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A judge should consider, for example, the severity and recentness of the matter. Surely, a judge has no duty to report each and every witness who has admitted to having once smoked marijuana. On the other hand, a judge is under an obvious imperative to notify the police of a witness who, in court, admitted committing recent, unsolved serial murders. Between these two extremes lies the twilight zone of discretion. It is the nature of discretion that it can be abused both by action and inaction.

The Code of Judicial Conduct contains numerous reminders that judges should be cautious when acting extra-judicially. For example, a judge should not pursue extra-judicial justice to such an extent that judicial justice is tainted. Canons 3 and 5A. Likewise, judges must not use the prestige of their offices to pursue their own personal or political agendas. Canon 2B.

A related question deals with whether judges may bring to the attention of a public interest law firm repeated instances of consumer fraud, abusive landlord-tenant practices, etc., which have come to the judge's attention in the official course of business.

Canon 2 requires judges to conduct themselves so as to inspire confidence in the impartiality of the judiciary. Judges are not ombudsmen-at-large or roving fighters of injustice. It is not the business of a judge to stir up litigation. However, the code does not prohibit a judge from informing litigants of their rights to contact law enforcement officials, administrative agencies, or to pursue other civil remedies.

Nor does the code prohibit judges from informing public interest law firms of matters of public record which have come to the judge's attention. Obviously, judges should proceed carefully in these circumstances, and not abuse their positions or become a litigation referral service. Before making a referral, the judge should consider such factors as the gravity of the matter, whether the public interest is substantially affected and whether the situation is likely to be redressed if the judge does not notify someone.

In the final analysis, however, it is in the judge's discretion whether to report suspected crimes, building code violations and the like, subject to the broad limitations suggested.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 1, 2, 2B, 3, 5A and 5C (1985).

### **Other References**

American Bar Association, *Standards Relating to the Function of the Trial Judge* (June 1972).

### **Revision History**

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