

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 94-05  
(May 6, 1994)

**Propriety of a Judge Engaging in a Multi-level Distribution Business**

**Issue**

Is it a violation of Canon 4 of the Code of Judicial Conduct for a judge to engage in a multi-level distribution business?

**Answer:** Yes.

**Discussion**

In considering this issue, it does not matter if the judge proposes to sell vitamins, vacuum cleaners, household cleaning products, cosmetics, miracle weight loss drinks, knives that never need sharpening or similar merchandise in multi-level distribution schemes. The important fact is that this type of selling or solicitation would involve a judge directly in a commercial activity that would invariably affect the way the public regards the judiciary in the local community.

Obviously, it is neither illegal nor unscrupulous to sell such items or to distribute them through the multi-level marketing technique. We do believe, however, that the judicial office is demeaned when a judge presides in court by day and hawks beauty products by night. It is not immoral, but it is unseemly. Canon 4 prohibits judges from engaging in extra-judicial activities that "demean the judicial office," and under Canon 2A judges are required to "act at all times in a manner that promotes public confidence . . . ." A judge who moonlights as a door-to-door salesperson undermines public confidence in the judiciary, not because the activity is improper but because the public will find it difficult to separate the private and governmental roles of the judge.

Canon 4 also prohibits judges from engaging in business dealings that "may reasonably be perceived to exploit the judge's judicial position" or that may "involve the judge in frequent transactions or continuing business relationship with . . . persons likely to come before the court on which the judge serves." Multi-level marketing or distribution involves more than just the sale of "product." It involves the recruitment of others into the distribution network who become distributors themselves and, in turn, attempt to recruit new distributors and establish distribution networks of their own. Distributors earn profits not only from their own sales, but from sales made by their down-line distributors. When a distributor who is also a judge approaches another person to join the network, the judge's position will invariably and unintentionally influence the transaction. The person being asked to participate will not be able to evaluate the proposition without taking into consideration the fact that the judge is in a position of honor and trust in the community. Thus, the decision to participate will more likely be made on the reputation of the judge than on the merits of the proposition itself.

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We agree with the Maryland Judicial Ethics Committee when it opined on this subject as follows:

[J]udges are prominent community figures and the likelihood of recognition either by name or by face is great. The judge's activity as a sales/ marketing distributor may give rise to reasonable suspicion that the office is being used to persuade or coerce others to patronize him and his 'down-line' distributors.

Canon 4D recognizes that judges may hold and manage their own investments, and, "subject to the provisions of this code, manage and participate in . . . a business closely held by the judge or members of the judge's family." Judges are permitted to own and operate commercial establishments, even retail outlets, so long as the businesses do not "demean the judicial office," appear to exploit the judicial position, or unduly involve the judge in frequent transactions with likely litigants.

To distinguish permitted business activities from those that are prohibited, a judge should consider both the nature of the business itself, and the extent to which the judge personally solicits and closes sales or other transactions, such as distributorships. For example, we see no reason why a judge may not own and operate a retail bookstore, even if he or she is seen in the store during non-court hours and occasionally rings up purchases brought to the cash register. To do so is neither undignified nor does it involve the judge in one-on-one salesmanship. In contrast, we believe that the Code prohibits a judge from selling used cars, or moonlighting as a product sales representative, or real estate agent, because in those endeavors, the judge would be unduly involved in soliciting business and closing sales.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 2A and 4 (1993).

### **Other References**

Maryland Judicial Ethics Committee, Opinion 119 (April 26, 1989).