

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 94-06  
(June 10, 1994)

**Propriety of Accepting Inducements Offered by Service  
Providers to Obtain Contracts with the Courts**

**Issue**

Is it ethically improper for a judge or a court to enter into a contract with a service provider that offers to provide special services or to pay all or part of the costs of the program as an inducement for being named the primary provider?

**Answer:** Yes, depending on the circumstances.

**Facts**

State law allows local courts to identify and enter into written agreements with private organizations that provide defensive driving programs for traffic offenders. As a result of this legislation, several providers solicited business from the courts and offered to pay the cost of bond cards and envelopes if the courts agreed to designate their organizations as primary providers. Some courts accepted this offer and printed the names and telephone numbers of the service providers on the bond cards. Other courts have been reluctant to accept free supplies or services because of the potential appearance of favoritism or some other type of impropriety.

**Discussion**

In 1990, the state legislature enacted a statute that allows traffic offenders to attend defensive driving schools approved by the courts. A.R.S. Section 28-492 allows a court to select one or more primary providers for defensive driving schools that meet the certification criteria established by the Arizona Supreme Court. The statute also requires the Supreme Court to monitor driving schools and audit their performance.

Although the ultimate authority for the selection of the primary providers rests with the presiding judge of each court, the Supreme Court requires all courts to follow the procurement codes and regulations of their respective courts or local governments. *See*, Administrative Order No. 90-51, Section B, Court Requirements, subsection 1. In addition, the Court provides specific guidelines for the certification and monitoring of service providers. *See, Defensive Driving School Certification Criteria*, Part II, Section E, beginning on page 12. Among other things, these criteria prohibit a service provider from doing the following:

Offering a premium, prize, other inducement to traffic offenders for selecting the school;

Operating in a manner that would reflect adversely on the judiciary, the courts or other agencies involved in the administration of justice; or

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Permitting a conflict of interest or any appearance of a conflict of interest, such as offering incentives to a court employee to enroll students or select a specific school as a primary provider.

Taken as a whole, these provisions require defensive driving programs to meet specific criteria for qualification and to avoid any inducements, conflicts of interest or operations that would reflect adversely on the judiciary. It appears, therefore, that the structure and intent of the program is consistent with the applicable provision of the Code of Judicial Conduct, which states in Canon 2A, that "[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

The procedure for establishing qualification criteria and the process for approving primary providers of defensive driving schools must be open and above board in all aspects. While it is up to the local courts to designate primary service providers in accordance with the guidelines established by the Supreme Court, the program requirements should be applied fairly and evenhandedly in order to avoid any appearance of misconduct in the administration of the program. As long as the court establishes reasonable criteria, that is, criteria that are not designed to qualify a specific provider to the exclusion of all other providers, it can require a service provider to pay some of the costs related to the program. It would be improper, however, for a court to accept any free services or materials that were not included in the criteria applicable to all applicants.

To illustrate the potential ethical (and legal) pitfalls of special inducements, consider the specific prohibitions described above in the Supreme Court's guidelines. It would be improper under any of these provisions for a service provider to offer a court employee a cash inducement or premium for enlisting traffic offenders in the provider's program. If a service provider cannot offer such inducements to court employees, then it follows that the service provider cannot offer similar inducements to the court itself. It would be improper, for example, for a court to accept an offer from a service provider to pay for bond cards and envelopes or to provide an employee at the court to sign up participants as inducements for the court to designate the provider as the exclusive primary provider, unless these conditions are part of the contract criteria applicable to all providers.

In the traditional bidding process, the organization seeking bids establishes specifications for the services, and all providers have an opportunity to accept or reject the conditions. Competition among providers focuses on costs and the quality of services, as well as intangible factors such as the provider's reputation. In the case of defensive driving schools, however, the court is not the recipient of the services, but the broker, responsible for assuring that the legislatively authorized services are widely available to the public. The court can designate one or more primary providers that meet the qualification criteria established by the Supreme Court and the local court. These criteria should apply equally to all providers

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in open negotiations with the court. It would not be appropriate for the court to award an exclusive contract to a single provider because of a special inducement that no one else could match. In this situation, it would be unethical for a judge or a court to accept any special inducements, discounts or services that are not required of all service providers.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canon 2A (1993).

### **Other References**

Arizona Revised Statutes, § 28-492.

Arizona Supreme Court Administrative Order No. 90-51.

Arizona Supreme Court, *Defensive Driving School Certification Criteria* (April 1, 1993).