

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 95-20
(October 27, 1995)

Soliciting Contributions from Peers

Issues

1. May a judge solicit support from other judges for a non-judicial cause, such as a charity?

Answer: No.

2. May a judge solicit support from other judges for a particular judicially-related cause?

Answer: Yes.

Discussion

Issue 1

The prohibition against a judge soliciting funds is contained in Canon 4C(4)(b) of the Arizona Code of Judicial Conduct. It provides, "[a] judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of office for that purpose. . . ." The rule addresses dual concerns that potential donors may be intimidated into making contributions when solicited by a judge, or they may expect future favors for their donations. *See* ABA Informal Op. 603.

The issue of judges soliciting their peers for charitable purposes involves several of the same concerns. The soliciting judge may be a senior member of the bench, a judge having assignment authority, or perhaps an aggressive judge. Likewise, the judge solicited may be new to the bench or one dependent on other judges for assistance. The potential of coerciveness clearly exists.

The 1990 Model Code of Judicial Conduct contains the following language:

[A] judge . . . shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority. ABA Canon 4C(3)(b).

In the process of adopting the model code, Arizona chose to delete the language permitting collegial solicitation. The clear reference is that this conduct is not approved.

The California Judges' Association in 1989, dealing with an issue similar to the one presented here, held that "a judge involved in a charitable organization and/or its fund-raising endeavors, may not solicit contributions privately from other judges." Cal. Op. 42.

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The next year the same group found it necessary to amend their ethical canon to allow solicitations such as the ones suggested here. If Arizona judges feel strongly about this issue, perhaps this process would be dispositive.

Issue 2

We do not believe that soliciting support from judicial colleagues for activities or organizations related to the judiciary involves the type of fund-raising generally prohibited by the judicial code in this state. As noted above, judges cannot solicit funds for charities or other organizations because of the likelihood that the prestige of their judicial office might be misused and that donors might feel intimidated or might expect future favors for their donations. However, these problems are greatly reduced—or even nonexistent—when judges solicit support from their peers, in a reasonable and moderate manner, for activities or organizations that pertain solely to the law, the legal system or the administration of justice.

The focus here is on private, peer-to-peer communications involving activities and organizations related to legitimate judicial concerns. Under Canon 4C(3) judges may join and serve in leadership roles in organizations “devoted to the improvement of the law, the legal system, or the administration of justice.” They may assist such organizations in raising funds but “should not personally participate in *public* fund-raising activities.” Canon 4C(3) (emphasis added). Privately, judges may encourage their colleagues to join judges’ associations and solicit support from their peers for judicial colleges or judicial education activities and programs. They may also invite judges to support organizations dedicated to court administration or improvement. It would not be appropriate under this canon, however, for judges to engage in public fund-raising or to contact attorneys or others to request their support of these organizations, even though the organizations may do so directly.

The only caveat to private communications among judges is that judges must avoid solicitations that are or appear to be coercive. Both the text and commentary to Canon 4C(3)(b) of the Model Code suggests that coercion is more likely to occur when the soliciting judge has supervisory or appellate authority over another judge. Absent such a relationship, there is nothing in the code that prevents judges from inviting their peers to contribute to or participate in judicially-related activities or organizations.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 4C(3) and 4C(4)(b) (1993).

Other References

American Bar Association, Model Code of Judicial Conduct, Canon 4C(3)(b) (1990).

American Bar Association, Informal Opinion 603.

California Judges' Association, Opinion 42/issue 2 (Sept. 16, 1989).