

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 96-16
(December 6, 1996)

**Assigning Fines Collection to Court Employees Whose Performance
Ratings Are Tied to Quotas**

Issue

May a judge assign the collection of fines to court employees whose performance ratings are tied to the amount of payments collected regardless of a defendant's ability to pay?

Answer: No.

Facts

Under A.R.S. 13-808(A), a judge who orders a fine may designate a staff member to interview defendants and grant permission to pay fines by installment payments. In one court system, the collection staff is expected to follow minimum standards that require a fixed percentage of the fine to be collected on the sentencing day and an average monthly payment after that. The collection staff are court employees whose job ratings are based, at least in part, on their ability to achieve the standards.

Discussion

A judge may not order a staff member or judicial employee to do what the judge is prohibited from doing. The system of minimum collection requirements has the appearance of a quota system. A judge cannot base a fine, or installment payments toward it, on a quota. Canon 1 of the Code of Judicial Conduct requires every judge to uphold the integrity and independence of the judiciary. As the commentary points out, this means acting "without fear or favor." Sentencing practices based upon a quota system bring into consideration factors which are arbitrary and apart from the offense and the offender.

In the Arizona Code of Judicial Conduct for Judicial Employees, Canon 3B requires that "Judicial employees shall perform their duties impartially, and shall not be influenced by . . . fear of criticism or reprisal." A system in which employees are expected to obtain a predetermined amount or percentage of a fine in order to meet job performance standards contradicts this canon.

The committee recognizes that the collection of fines is an important function and that the court system has been found wanting in the past. The committee does not find aggressive fine-collecting improper per se. What it does find improper is rating staff by numbers which may or may not reflect a defendant's ability to pay, and placing staff under pressure to take action which may not allow for individual case assessment.

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Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 1 (1993).

Arizona Code of Conduct for Judicial Employees, Canon 3B (1996).

Other References

Arizona Revised Statutes, § 13-808(A).