

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 00-06
(December 18, 2000)

Judicial Participation in Fund-Raising Activities

This omnibus opinion analyzes issues relating to judicial participation in fund-raising activities that the committee has previously addressed informally. Each issue is fully discussed in the text, and guidelines are prepared to help answer similar questions in the future.

Issues

1. A judge is a member of a musical group that is asked to perform for a charity benefit. The group's name, but not the judge's name or title, will be advertised in connection with the event. The event consists of a silent auction followed by dinner, then followed by the musical performance. The auction bids are closed during dinner and before the performance begins.
 - a. May the judge participate?
Answer: Yes, with qualifications.
 - b. Does the answer depend on whether the audience is likely to recognize the judge?
Answer: No.
 - c. If the audience does recognize the judge on sight, does it matter if the fund-raising was completed before the event was conducted, i.e., by ticket sales?
Answer: Yes.
2. A judge is a member of a civic group that sponsors an annual fashion show, the object of which is charitable fund-raising. The judge has been asked to serve as chair of the event, a position that would not be made known outside the organization. May she organize and conduct the event as an anonymous chairperson?
Answer: Yes, with qualifications.
3. A judge's church is holding a car wash to raise funds for needy families. The judge has been asked to pick up sponge and bucket and join many others in the wash line. May he participate?
Answer: Yes, with qualifications.

Advisory Opinion 00-06

4. A new courthouse has been built, but the budget lacks funds for new furnishings and decorative items. There is no prospect of any future funding. The presiding judge of the court believes the court's old furnishings are ill suited to the attractive new building. May he ask representatives of the bar association to conduct a fund-raising event or donate funds for these purposes?

Answer: No.

5. A judge agrees to attend a charity fund-raising event. After she arrives she is asked to sit at the head table with organizers and other distinguished guests.

- a. Can she agree?

Answer: Yes, with qualifications.

- b. If instead she is told that her presence will be recognized with an announcement that she is present, must she object to such an announcement?

Answer: No, with qualifications.

- c. If she is not forewarned that an announcement will be made, but it is made, must she immediately leave the event or take other action?

Answer: No, with qualifications.

- d. If no special recognition is made, may the judge attend the event if she is well-known to the public or her attendance is likely to later be reported by news media?

Answer: Yes.

6. A judge is a member of the board of directors of a charitable group. The group's stationery lists all its board members by name. The group uses its stationery for mailings to members and others, including fund-raising. Must the judge insist that the group not use the stationery for fund-raising activities or else resign her board membership?

Answer: No, with qualifications.

7. May a judge participate in an on-air fund drive for public television or radio if the judge's position is not mentioned?

Answer: Yes, with qualifications.

- a. Does it matter that the judge is neither named nor identified as a judge if his picture is broadcast?

Answer: Yes.

Advisory Opinion 00-06

- b. Does it matter if the judge is not named, identified or pictured and merely speaks on radio?

Answer: Yes.

- c. Is there a difference between the judge speaking on the air asking for community support for the station and merely being shown as one of many persons answering telephones and recording pledges?

Answer: Yes.

8. May a judge attend a fund-raising event for an organization that advocates a particular viewpoint on legal issues such as drunk driving, land use and conservation, gun ownership, or the legal rights of women?

Answer: Yes, with qualifications.

9. A judge plays on a softball team with other lawyers in a small community where he is well known as a judge. The team agrees to play in a tournament to raise money for needy families.

- a. May the judge play on the team?

Answer: Yes, with qualifications.

- b. Does it make a difference that the event is broadcast on local radio?

Answer: No, with qualifications.

- c. If the judge can play, can court employees sell tickets to the event?

Answer: No.

10. A university wishes to honor alumni as part of an effort to raise funds for scholarships. May a judge's name or picture be published in a booklet that would be produced in connection with a fund-raising dinner?

Answer: No, with qualifications.

11. A judge wishes to participate in a "walk-a-thon" for charity and obtain pledges for each mile he walks.

- a. May the judge participate?

Answer: The judge may walk but may not obtain pledges.

- b. Does it matter if someone else solicits the pledges?

Answer: No.

12. May a judge telephonically solicit attorneys to donate time for *pro bono* legal services?

Answer: No.

Advisory Opinion 00-06

13. A judge is asked to participate in a cake-baking contest. The entrants' names and photographs will be placed next to their cakes (although the judge's title would not be included) and the cakes will be sold or auctioned for charity. May he participate?

Answer: No.

Background

Over the years, the Committee has received numerous requests for advice about activities related to fund-raising for charitable causes and other organizations. With some exceptions, most of the requests have been answered informally. The recurring nature of inquiries about such activities suggests the need for a comprehensive published opinion. Accordingly, in the hope of offering some guidance to the bench in this difficult area, we provide this omnibus opinion.

The general issue we address is: to what extent may a judge participate in fund-raising activities without running afoul of the code, particularly Canon 4C(4)(b)? In addressing that issue, we first set forth some general principles underlying that canon. Next, in discussing the 13 specific issues outlined above, we apply those principles to various fact patterns that judges have presented to the Committee. Finally, we offer some guidelines for helping to differentiate prohibited from permissible conduct in this area.

We approach this subject cautiously and with a recognition that reasonable minds may legitimately disagree on some of the conclusions presented here. Resolution of questions relating to fund-raising activities usually is very fact-intensive. Thus, every situation must be analyzed separately, based on its particular facts. Resort to any bright-line rules often is not possible or helpful.

Finally, we note that the code currently seems to prohibit activities that many judges, and for that matter many attorneys and laypersons, reasonably may view as innocuous or beneficial to the legal system and to the administration of justice. We also recognize the tension that may exist between the code's restrictions on fund-raising activities and the notion that "a judge should not become isolated from the community in which the judge lives." Commentary to Canon 4A. In view of that tension and our supreme court's recent efforts to encourage judges to actively involve themselves in civic affairs, it may be wise to carefully review and consider revision of the ethical rules pertaining to fund-raising activities. Common sense and flexibility rather than absolute prohibitions may be the best course to follow in this area.

General Principles

Canon 4C(4) permits a judge to "participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties." It also permits a judge to "serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members," subject to certain limitations. The limitation at issue here is found in Canon 4C(4)(b), which states:

Advisory Opinion 00-06

A judge should 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, but a judge may be listed as an officer, director or trustee of such an organization, so long as the listing is not used for fund-raising purposes. A judge should not be a speaker or the guest of honor at an organization's fund-raising events, but may attend such events.

In Ariz. Op. 96-08, Issue 5, we recognized that “[j]udicial support for fund-raising of any kind . . . is significantly circumscribed under the code.” Because the restrictions in Canon 4C(4)(b) relate to “solicit[ing] funds” and “fund-raising” purposes or events, we start with the meaning of those terms, which the code does not define. “Solicit” is variously defined as: “to make petition to,” *i.e.*, “to approach with a request or plea”; “to move to action”; “to strongly urge”; “to entice”; and “to endeavor to obtain by asking or pleading.” *Webster’s Third New Int’l Dictionary* 2169 (1971). *See also The American Heritage Dictionary* 1163 (2d college ed. 1991) (definitions of “solicit” include “[t]o seek to obtain by persuasion, entreaty, or formal application” or “[t]o petition persistently; importune”); *Black’s Law Dictionary* 1248 (5th ed. 1979) (definition includes “[t]o appeal for something; to apply to for obtaining something; to ask earnestly; to ask for the purpose of receiving; to endeavor to obtain by asking or pleading; to entreat, implore, or importune”).

Generally, “[a] charitable function is considered a fund-raiser if the guests are requested to donate money or if the tickets are priced to exceed the costs of the function.” Cynthia Gray, *A Judge’s Attendance at Social Events, Bar Association Functions, Civic and Charitable Functions, and Political Gatherings*, at 9 (paper prepared for American Judicature Society under grant from the State Justice Institute, 1996, as revised, August 1998) (citing Ark. Op. 94-03 (judge may not speak at church banquet when portion of proceeds from ticket sales that exceeds costs of banquet will go to church’s scholarship fund); N.Y. Op. 88-66 (judge may receive award at dinner sponsored by Boy Scouts if tickets are not priced to cover substantially more than costs of dinner); R.I. Op. 84-2 (judge may accept award from local civic group when price for dinner covers only expenses)). “[I]f the distribution of surplus proceeds to a charity is ‘merely a contingent, incidental aspect’ of the function,” the event is not a fund-raiser. Gray, *supra* at 9 (citing Md. Op. 74 (1980)).

In Ariz. Op. 95-20, Issue 1, we pointed out that Canon 4C(4)(b) “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 also* Jeffrey M. Shaman et al., *Judicial Conduct and Ethics* 295 (3d ed. 2000). In order to avoid those inappropriate results, as we also stated in Ariz. Op. 95-20, Issue 2, “judges cannot solicit funds for charities or other organizations because of the likelihood that the prestige of their judicial office might be misused.” *See* Canon 2B; Canon 4C(4)(b). Even if otherwise proper, activities relating to fund-raising are prohibited if they would “reflect adversely upon the judge’s impartiality or interfere with the performance of the judge’s duties.” Canon 4C(4); *see also* Canon 2A; Canon 4A(1).

Advisory Opinion 00-06

In view of those primary concerns, in determining the propriety of a judge's involvement in a fund-raising activity, one must ask two fundamental questions: (1) does the conduct amount to "solicitation" of funds; and (2) is the judge a speaker or guest of honor at a "fund-raising" event? Given the Code's directives for judges to avoid the appearance of impropriety, Canon 2, and to "participate in establishing, maintaining and enforcing high standards of conduct," Canon 1, a judge's participation in fund-raising activities should be evaluated by an objective, reasonable person standard. *See* Ariz. Op. 98-02; Canon 2A, Commentary. Thus, a particular activity may be prohibited even if the judge personally believes, subjectively, that it would not influence others to donate funds, would not cause them to believe that they might curry the judge's favor by contributing, or would not affect the judge's impartiality.

Discussion

Based on the foregoing general principles, we now address the specific questions raised above in the Issues section.

Issue 1

As long as the judge is one of several members of the musical group, is not identified or singled out for recognition before or during the event, and the judge's name or title is not mentioned, the code does not specifically prohibit the activity in question. *Cf.* Del. Op. 1998-3 (including a recording made by musical group, to which judge belonged, in larger collection for sale to raise funds for charity does not violate code, provided neither the recording nor offering specifically identified judge or his office). Although the judge is directly involved in a fund-raising event, the judge is not directly involved in soliciting funds. Nor could the judge's involvement be reasonably construed as lending prestige of judicial office for that purpose. *See* Ind. Op. 1-96 (judge may personally participate in fund-raising event for charitable organization if judge's participation is anonymous or behind the scenes or if judge's role at fund-raiser would have little to do with a donor's decision to make a contribution).

Our answer probably would be different if the judge were a soloist or other primary, featured performer. In that case, the judge would be akin to a "speaker" or "guest of honor" at the fund-raising event, a capacity which Canon 4C(4)(b) specifically prohibits. *See* Gray, *supra* at 10 (citing Texas Op. 41 (1979) (judge may not appear as operatic singer at fundraiser)). In addition, if funds were directly solicited or collected at the event itself, and assuming the judge's identity, role, and participation were readily ascertainable, that would give rise to concerns about the prestige of judicial office influencing donations. Under those circumstances, the judge should not participate. On the other hand, if all fund-raising were completed before the event, those concerns are alleviated. That appears to be the situation here, based on the timing of the silent auction and the manner in which it is conducted before the musical performance begins.

Advisory Opinion 00-06

Issue 2

The judge's participation as chair of the annual fashion show arguably could be construed as soliciting funds. But as long as the judge's role is truly and completely anonymous, and as long as the judge takes reasonable steps to ensure that remains so, the code does not clearly prohibit this conduct. *See* Ill. Op. 95-22 (judge may serve as chair of organization that raises funds for charitable arm of state bar association); Neb. Op. 96-1 (judge may serve as chair of committee organizing celebration where donations are only source of funding if judge can do so without appearing to raise funds for the event); S.C. Op. 19-1999 (judge may serve as coordinator for city's participation in benefit for American Cancer Society but should not solicit funds); Tenn. Op. 92-6 (to same effect). *But see* Wash. Op. 91-9 (judge may not chair fund-raising event for civic organization even if judge were not responsible for sale of individual tickets); Wash. Op. 94-8 (judge may not chair legal aid pledge drive committee because it involves personal participation in public fund-raising activities).

In addition, a judge may participate in the planning of fund-raising activities. Ark. Op. 91-5; Fla. Op. 95-28. If the judge's participation in the fund-raising event is not evident and if complete anonymity is maintained, "there is little chance of perceived coercion or exploitation of the office." Ind. Op. 1-96. Under these circumstances, in which neither the judge's name nor role in the fund-raising event is publicized or otherwise made known, there is little danger of the prestige of judicial office being misused for fund-raising purposes.

Issue 3

Washing cars at a charity car wash is similar to ushering and passing around the collection plate at church. *See* Ariz. Op. 96-13. It does not involve active solicitation. In addition, the judge's participation is not exceptional, but, rather, the same as everyone else involved in the event. Assuming the judge is just one of many people washing cars, it is very unlikely that people would choose to get their cars washed merely because of the judge's involvement. As the Gray paper points out, commentary to the Alaska code specifically states that "judges may participate as workers at fund-raising events such as car washes and carnivals." Gray, *supra* at 10. Although our code contains no such comment, we agree with that proposition. Our answer might be different, however, if the judge stood on a street encouraging drivers to go to the car wash, used his or her name in promoting it, or otherwise took a more active, visible role in the car wash that placed him or her apart from the other participants and attracted attention. *Cf.* Me. Op. 97-3 (judge may not act as cashier at used book sale held to benefit non-profit library or at food stand operated by charitable organization).

Issue 4

Under Canon 4C(3) a judge may assist "an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice" in "raising funds and may participate in their management and investment, but should not personally participate in public fund-raising activities." Even assuming that canon encompasses raising funds for courthouse furniture, asking individual attorneys to donate funds for that purpose

Advisory Opinion 00-06

would constitute “personal[] participa[tion] in public fund-raising activities,” Canon 4C(3), and direct “solicit[ation] [of] funds.” Canon 4C(4)(b). *See* Ariz. Ops. 97-10 (judicial staff and other court officials may not solicit contributions to a restitution fund for victims of juvenile crime); 96-08, Issue 5 (judges may not “participate directly in public fund-raising activities devoted to the improvement of the legal system.”); 95-20, Issue 2 (“[I]t would not be appropriate under [Canon 4C(3)] for judges to engage in public fund-raising or to contact attorneys or others to request their support of [law-related] organizations, even though the organizations may do so directly.”).

Issue 5

Canon 4C(4)(b) permits a judge to attend an organization’s fund-raising events, but he or she “should not be a speaker or the guest of honor” at such events. Merely sitting at the head table does not violate this provision. *See* Gray, *supra* at 11 (citing Ill. Op. 96-3 (a judge may sit at the head table of a charitable fund-raiser provided the judge is not a speaker or the guest of honor)). Although this activity is not specifically prohibited, the better practice would be for the judge to respectfully decline the request. If sitting at the head table would create an objective impression that the judge is more than an attendee, is directly involved in the fund-raiser, or is being honored at the event, that impression may encourage others to donate funds to the sponsoring organization. *See* Ala. Op. 98-712 (judge may not serve on host committee for fund-raising banquets when duties include serving as host at banquet tables to help develop relationships). But if funds already have been collected, or if neither the head table nor the judge’s presence there clearly stand out, those concerns are minimized. The mere fact that the judge’s presence at the event is recognized with an announcement does not necessarily make her a “guest of honor.” But because such an announcement may be construed as permitting others to use the prestige of judicial office for fund-raising purposes, in violation of Canon 4C(4)(b), it should be avoided if possible.

If announcement of the judge’s presence is made without prior warning, her leaving the event would not solve the problem because any damage already would have been done. In addition, unless it were done publicly and with an explanation, the judge’s departure would not change any inappropriate impression created by the announcement. If the judge’s presence is announced along with many other names, any further statements or actions might draw more attention to the judge’s presence than the actual announcement itself. But if the announcement is significant and calls special attention to the judge, the judge probably should ask the announcer or host to make a public disclaimer of the judge’s involvement in the event, as awkward as that might be.

Provided no special recognition is made, the judge may attend the event despite being a well known public figure. So long as she does not use or permit the use of prestige of judicial office for the event, her mere presence is permitted under the code, even if that presence is widely recognized and later publicized.

Advisory Opinion 00-06

Issue 6

Canon 4C(4)(b) clearly states that a judge may not be listed as an “officer, director, or trustee” of an organization if the listing is “used for fund-raising purposes.” Merely listing the judge by name only, without title, on an organization’s stationery that is generally used for all purposes, however, does not necessarily equate to a use of such list “for fund-raising purposes.” Nor does it automatically constitute solicitation of funds by the judge or permitting the use of prestige of the judicial office for fund-raising purposes. *See* Ariz. Op. 97-09, Issue 1 (no violation when judge, who served as president of board that solicited funds, was “not directly involved in the solicitation of funds” and no indication that listing of judge as officer was “being used for fund-raising purposes”); Haw. Op. 3-98 (judge who serves as officer of non-profit organization may allow his or her name to appear on organization’s stationery if another officer signs fund-raising letter); Ind. Op. 1-96 (judge may be listed as committee member or honorary committee member in conjunction with fund-raising activity or event provided, if judge’s title is listed, titles of all committee members are listed and judges do not make up majority of committee). *But see* N.M. Op. 99-03 (judge’s “name and judicial designation could properly appear along with the other Board members to solicit funds, provided [his] name and judicial office are not selectively emphasized, and [his] signature is not the sole signature on such fund-raising correspondence or publications”). *Compare* Ariz. Op. 94-15 (ethically improper to use court or judicial stationery to solicit funds for charitable organizations).

Our conclusion probably would be different if only the judge’s title, but nobody else’s, were included on the stationery listing; if a special letterhead listing of names or titles were created or used solely for fund-raising purposes; if the judge’s name were more prominently listed in fund-raising mailings than other mailings; or if her name were otherwise treated differently than the names of other board members. *See* Ala. Op. 98-712 (judge may not lend name to fund-raising banquet invitations and programs); N.Y. Op. 96-78 (judge may not allow his or her name to be listed on letterhead of bar association committee letter when sole purpose of committee and letter is solicitation of contributions for memorial scholarship fund); N.Y. Op. 97-12 (judge who serves as president of board of trustees of public library may be listed the same as other officers of organization on invitation to fund-raising event). *But see* Or. Op. 98-3 (judge’s name and position may be identified on stationery or other materials listing officers, directors, or others involved in charitable committee’s fund-raising for legal services to low-income persons).

Issue 7

Canon 4C(4)(b) expressly prohibits judges from “solicit[ing] funds.” Strict interpretation of that provision may prohibit a judge from participating at all in an on-air fund drive for public television or radio, even if the judge is not named, identified, or pictured. *See* N.M. Op. 99-03 (not proper for judge to “personally [and] directly participate in the Foundation’s annual phone-a-thon, or other similar fund-raising events”); *cf.* Fla. Op. 95-28 (judge may not appear in videotape produced for purpose of advertising the YMCA when video could be used for fund-raising purposes). Under that view, there is no significant difference

Advisory Opinion 00-06

between the judge asking for donations on the air, conduct which the code clearly proscribes, or just answering telephones or recording pledges; both actions would be viewed as soliciting funds and encouraging others to donate money, activities prohibited by the code.

We believe, however, that the propriety of these activities depends on the nature and extent of the judge's involvement. For example, if the judge's role is limited to merely taking phone calls from fund drive donors without actively soliciting funds and without being identified by name or title, such conduct is not prohibited. In contrast, it would be inappropriate for the judge's name or title to be used in the fund drive, for the judge to ask for contributions, or for the judge to speak in support of the effort.

Concluding that "a judge may help with telephone solicitations if the judge acts anonymously," the Indiana Commission stated:

Lesser degrees of participation in fund-raising . . . are . . . permissible under circumstances which do not raise reasonable concerns about perceived coercion or the exploitation of the judicial office, so long as the activities do not cast reasonable doubt on the judge's capacity to act impartially, do not demean the judicial office, and do not interfere with the proper performance of judicial duties.

. . . .

Even if a judge's participation will bring the judge into direct contact with potential donors, participation is not necessarily prohibited. The dangers lie in active solicitation, and not necessarily in participation which may happen to involve contact with donors or the receipt of their donations. Participatory roles which have little to do with a donor's decision to make a contribution are most likely to be consistent with the spirit of the rule.

Ind. Op. 1-96. We generally agree with those observations.

Issue 8

As noted above, Canon 4C(4)(b) specifically permits judges to attend an organization's fund-raising events. But a judge is required to conduct his or her extra-judicial activities so that they do not "cast reasonable doubt on the judge's capacity to act impartially as a judge." Canon 4A(1); *see also* Canon 4C(4); Canon 2A. In addition, although not directly implicated in this request, we note that Canon 5A(5) prohibits judges from engaging in "political activity" except as permitted in the code or "on behalf of measures to improve the law, the legal system, or the administration of justice."

Whether a judge may attend a particular organization's fund-raising event depends largely on evaluation of multiple factors. Thus, the more active the organization is in advocating positions on disputed legal issues, in regularly engaging in adversarial court proceedings, or in filing amicus briefs on disputed issues, etc., the more caution the judge should exercise in attending that organization's fund-raising events. *See* Ariz. Op. 94-15,

Advisory Opinion 00-06

Issue 3 (judges should avoid even indirect participation in fund-raising on behalf of “individuals or groups [that] have the potential of becoming litigants or parties before the court”).

The critical issue is whether, from an objective standpoint, the judge’s attendance at the fund-raiser may give the appearance that the judge is lending the prestige of the office to support a position that would impair the judge’s impartiality. *See Gray, supra* at 12-13 (citing Wash. Op. 91-28 (judge may not attend fund-raiser for organization that advances legal rights of women, the activities of which include lobbying and participating in litigation); W. Va. Op. (April 24, 1997); (judge may not attend functions sponsored by victim assistance programs, sexual assault centers, family violence prevention programs, police agencies, and similar organizations); Fla. Op. 96-10 (judge may attend function sponsored by pro-life organization with speakers from both parties, but should be careful not to give appearance of adopting the organization’s agenda); Wash. Op. 96-16 (judge may attend “A Day of Remembrance” ceremony to honor victims of domestic violence, but should take care that his or her mannerisms, actions, or speech do not cast doubt on judge’s impartiality); Maine Op. 93-1 (judge may attend Civil Liberties Union annual awards dinner unless judge knows in advance that speakers will advocate positions relating to specific cases and judge’s attendance might reasonably be interpreted as endorsing those positions)). As Indiana’s Commission has stated, “if the beneficiary or host of the fund-raising event is a controversial group or is connected with disputed social or legal issues, participation probably is inappropriate.” Ind. Op. 1-96.

Issue 9

Our answer to the question of whether a judge may play in the softball tournament parallels our answer to question one, above. Merely playing on a team in the tournament does not involve any direct solicitation of funds. If the judge’s involvement is the same as that of all other players involved in the tournament, the judge’s participation would not likely intimidate or encourage others to donate. Nor would such participation lend the prestige of judicial office to the fund-raising purpose. *But see Gray, supra* at 16 (“in most states, the restriction on being a speaker or guest of honor at a fund-raiser extends to other types of participation as well, such as playing ball in a charity baseball game”).

As long as the judge’s title is not mentioned and his or her participation is not singled out or specifically used to support the fund-raising effort, it should not matter that the event is broadcast on local radio. *Compare Gray, supra* at 10 (citing Ark. Op. 93-03 (judge may not play on softball team that would play against teams of the executive and legislative branches of state government where judge’s participation would be highly publicized and spectators would support their favorite teams or players by agreeing to contribute money to a charitable organization)).

Requiring or encouraging court employees to sell tickets to the event essentially would constitute judicial solicitation of funds and lending the prestige of judicial office for fund-raising purposes, which Canon 4C(4)(b) prohibits. *See Ariz. Ops. 97-10* (“Courts and judges

Advisory Opinion 00-06

cannot accomplish through surrogates what they cannot themselves do.”); 97-08 (“a judge cannot employ staff as surrogates in fund-raising activities—such as selling scout cookies—which are forbidden to the judge”); 94-15 (“Judges or the court should not be involved with solicitation or fund-raising either directly or by implication.”). If court employees wished to sell tickets on their own, however, without any encouragement or involvement by the judge, their actions would be governed by the employee code of conduct. *See* Ariz. Op. 94-15, Issue 2.

Issue 10

If the judge is being honored primarily because of his or her position as a judge, permitting the judge’s name or picture to be used in a published booklet for scholarship fund-raising purposes “could be construed as lending prestige of judicial office to advance the private interests of others” and “to assist in the solicitation of funds for a charitable organization.” Ariz. Op. 94-04. Such conduct is proscribed by Canon 4C(4)(b). *See* Del. Op. 1997-5 (judge may not furnish photograph and testimonial as prominent alumnus for use in law school’s capital campaign because it would constitute improper “use of the prestige of the judicial office to solicit funds for an educational organization”); Ill. Op. 99-5 (placement of judge’s name on inside of invitation to high school benefit, together with names of other honorees receiving awards, improperly involves judge’s name in solicitation of funds for high school). On the other hand, if the university has separate, independent reasons for honoring the judge as an alumnus, unrelated to the judge’s position, this activity may be permissible, particularly if the judge is only one of many honored alumni and his or her title and position are not publicized.

Issue 11

A judge may participate in a walk-a-thon. The judge may not obtain pledges, however, because that would constitute direct solicitation of funds. *See* N.Y. Op. 96-147 (judge may participate in bicycle ride for AIDS and offer assistance as crew person, but may not solicit contributions in connection with event). Nor may the judge use others to solicit pledges for him. As noted in question 9, above, a judge may not accomplish indirectly through others that which he or she is prohibited from doing directly. *See* Wash. Op. 99-7 (judge may not permit court staff to solicit contributions for a charity’s silent auction).

Issue 12

For several years, our supreme court has urged attorneys to make *pro bono* contributions of time to help those who cannot afford counsel. A non-profit organization, founded to help provide counsel for the poor, plans to sponsor a telephone bank to solicit such contributions from attorneys. The callers will only solicit donations of time, not money. Several judges sit on the board of the organization. They question whether they or other judges can make telephone calls to ask attorneys to donate time.

Canon 4C does not directly resolve this issue because it addresses judicial solicitation of “funds,” Canon 4C(4)(b), and “fund-raising activities.” Canon 4C(3). Nonetheless, adopting

Advisory Opinion 00-06

the adage that “time is money,” at least with respect to professional services by attorneys, we see no meaningful distinction between judicial solicitation of funds and of time from lawyers. Accordingly, the principles and factors discussed in response to questions 4 and 7 above apply to this issue as well.

Because the non-profit organization is “devoted to the improvement of the law, the legal system, or the administration of justice,” a judge may assist it in “raising funds . . . but should not personally participate in public fund-raising activities.” Canon 4C(3). Telephoning attorneys to seek contributions of *pro bono* services arguably constitutes a “public fund-raising activit[y],” *id.*, which a judge should avoid. *See* Ariz. Op. 95-20, Issue 2; Fla. Op. 2000-6 (a chief judge may not author a letter to lawyers within the circuit soliciting them to join legal aid organizations, perform *pro bono* work, or contribute \$359 in lieu of services to the organizations); Nev. Op. 99-001 (a judge who is an officer of a *pro bono* foundation may not sign a letter to attorneys soliciting them to contribute to the foundation as a means of fulfilling their voluntary goal of providing legal services or monetary donations); Wash. Op. 94-8 (judge may not chair legal aid pledge drive committee because it involves personal participation in public fund-raising activities); W. Va. Op. (March 10, 2000) (a judge may not write a letter on behalf of the *pro bono* domestic violence project to local attorneys asking them to participate in the program). *But see* Or. Op. 98-3 (judge may serve on charitable organization’s committee that raises funds from lawyers and the public to support entities that provide civil legal services to low-income persons, educate the public about the need for effective legal services for such persons, and obtain matching grants from other sources to accomplish those purposes). Even if the activity is not deemed “public” because it is limited to attorneys, however, strict interpretation of Canon 4C(4)(b)’s prohibition against judges “solicit[ing] funds” precludes judges from personally phoning attorneys for donations of time. *Cf.* Ark. Op. 91-5 (judge may not solicit funds in person, by telephone, or by letter from individuals or corporations to support reception to be held following CLE seminar sponsored by state’s women lawyers association).

In response to question 7 above, we expressed general agreement with Indiana’s Commission that “a judge may help with telephone solicitations if the judge acts anonymously.” Ind. Op. 1-96. As that commission also noted, however, “[i]f the potential donors . . . include lawyers or litigants who have or who are likely to appear before the judge, and if the judge will have any contact with them, the greatest caution is indicated.” *Id.* And, if the judges identify themselves or their identity otherwise becomes known in the course of the telephone calls, “reasonable concerns about perceived coercion or the exploitation of the judicial office” arise. *Id.*

In addition, even if anonymity of the telephoning judge is maintained, the judge presumably would know the identity of at least those attorneys whom he or she contacts. Thus, at least as to those attorneys, the judge would know which lawyers agreed and refused to donate time for *pro bono* services. That knowledge could “cast reasonable doubt on the judge’s capacity to act impartially as a judge” toward those attorneys. Canon 4A.

Advisory Opinion 00-06

Accordingly, the best and safest course of action is for judges to avoid direct telephonic contact with prospective attorney donors. Only if the judge's name and position are not disclosed to the attorneys and are not otherwise discernible should the judge even consider personally participating in this activity.

Issue 13

Although the judge's cake-baking activity and participation in a bake sale or auction borders on being trivial and *de minimus*, it technically constitutes direct judicial involvement in a fund-raising activity. It is similar to a judge agreeing to have lunch with the successful bidder at a charity auction, which we found was prohibited. *See* Ariz. Op. 94-04. Even if the judge's title is not included with his name, the contest is not anonymous and, as in Ariz. Op. 94-04, his or her status as a judge may already be known to many potential bidders. Although we certainly question whether this type of activity should be proscribed, the current code seems to prohibit it.

Guidelines

Based on the foregoing discussion and application of the general principles, we set forth some specific guidelines as an aid to determining whether specific types of judicial fund-raising activities are or are not prohibited.

A. Direct, active involvement in solicitation is prohibited.

The clear wording of Canon 4C(4)(b) prohibits judges from directly or personally soliciting funds. Thus, this Committee has concluded that a judge may not agree to have lunch with the successful bidder at a charity auction for two reasons: (1) it "could be construed as lending prestige of judicial office to advance the private interests of others"; and (2) it "would involve the solicitation of funds and the use of prestige of judicial office to assist in the solicitation of funds for a charitable organization." Ariz. Op. 94-04. *See also* Ariz. Op. 97-09, Issue 2 (as president of board of non-profit corporation, judge may not serve as contact person or sign grant application to another charitable organization because that would "directly involve[] [the judge] in the solicitation of funds or could be viewed as using the judge's judicial position to influence fund-raising for the charitable organization"); Ind. Op. 1-96 ("a judge may not personally contact potential donors and ask for contributions and . . . may not act as the guest of honor at a fund-raising event"); Ill. Op. 99-1 (based on different but analogous code, judge may not serve as "celebrity bagger" at supermarket as part of charitable event because "judge's activity would be directly and solely intended to assist a charity's fund-raising efforts"); N.Y. Op. 98-33 (based on analogous provision, judge may not serve as clothing model at charity event because "the role of the judge at the event would constitute being an active participant in a fund-raising activity"); Wash. Op. 99-7 ("a judicial officer may not permit the use of court stationery to solicit items for donation to an auction to raise money for various non-profit agencies as it would lend the prestige of judicial office to solicit contributions for a charitable purpose").

B. Indirect connection to actual solicitation may be prohibited.

As this committee stated in Ariz. Op. 94-15, “[j]udges or the court should not be involved with solicitation or fund-raising either directly or by implication.” Conduct short of direct solicitation of funds, speaking, or being honored at a fund-raising event may raise ethical concerns. To determine whether a judge’s indirect involvement in fund-raising activities is prohibited or permissible, the following factors should be evaluated:

1. Is the judge’s identity and role in the fund-raiser easily ascertainable and prominent?

“In determining whether participation in fund-raising is acceptable, one inquiry is whether the judge’s participation will be evident.” Ind. Op. 1-96. The more visible and prominent the judge’s role in a fund-raising activity, the more likely the code prohibits it. As the Gray paper observes: “One way that organizations have attempted to avoid the appearance that a judge is using the prestige of office to raise funds is to omit the judge’s name from any announcements or advertisements about a fund-raising function in which the judge will participate. That approach has been sanctioned by several advisory committees.” Gray, *supra* at 11.

2. Does the judge’s involvement lend the prestige of judicial office to the solicitation of funds such that others are likely to be encouraged or influenced to donate funds on that basis?

Canon 4C(4)(b) prohibits judges from using or permitting the use of the prestige of office for purposes of soliciting funds. In addition, Canon 2B states that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.” As noted above, this committee has concluded that a judge may not have lunch with the successful bidder as one of the items to be auctioned at a charity, in part because doing so “could be construed as lending prestige of judicial office to advance the private interests of others.” Ariz. Op. 94-04. Similarly, as noted in our discussion of Issue 6, above, we have concluded that the use of court letterhead to solicit funds for a charitable organization, even without any judges’ names displayed, suffers from that same defect. Ariz. Op. 94-15, Issue 1; *see also* Ariz. Op. 95-20, Issue 2; Ala. Op. 98-712 (judge may not serve as member of host committee for benefit banquets when expected to lend use of name to banquet invitations and programs). Thus, if a judge’s participation in a fund-raising event, from an objective standpoint, is likely to encourage others to donate funds, the code probably prohibits it.

3. Will the judge’s participation in a fund-raising event, from an objective standpoint, cast or create an appearance of reasonable doubt on the judge’s impartiality?

Canon 4A states that a judge shall conduct all of his or her extra-judicial activities so that they do not “(1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial

Advisory Opinion 00-06

duties.” *See also* Canon 2A; Charles W. Wolfram, *Modern Legal Ethics* 982 (1986) (“two general restrictions on a judge’s civic or charitable activities [in the ABA Code] are that they must not adversely reflect on the judge’s impartiality and they must not interfere with judicial duties”). As stated in the Gray paper: “A judge may be precluded from being a guest of honor at a non-fund-raising event or from even attending a fund-raiser if the judge’s identification with the event or the sponsoring organization might compromise the judge’s independence or impartiality.” Gray, *supra* at 12. The following factors should be considered in evaluating those concerns: whether the organization advocates positions on disputed issues, regularly engages in adversarial proceedings in court, files amicus briefs on disputed issues, endorses non-judicial political candidates, or subscribes to a particular legal philosophy or position that would give the appearance of partiality, *i.e.*, imply commitment to causes that may come before the court for adjudication. Gray, *supra* at 12 (citing Wash. Op. 93-19).

Similarly, Indiana’s Commission has stated:

Another essential inquiry is whether participation in a fundraising event will cast reasonable doubt on the judge’s impartiality. If the potential donors to an event include lawyers or litigants who have or who are likely to appear before the judge, and if the judge will have any contact with them, the greatest caution is indicated. If the contributions are substantial, or the group of donors small, participation probably is inappropriate. Also, if the beneficiary or host of the fundraising event is representative of a faction of lawyers or litigants, the judge should assess whether the contributions will be substantial, whether the proceeds of the event will significantly enhance the group’s power or position or significantly impair their opponent’s position or power, and whether the judge’s participation reasonably could be perceived as evidence of favoritism or bias. Finally, if the beneficiary or host of the fundraising event is a controversial group or is connected with disputed social or legal issues, participation probably is inappropriate.

Ind. Op. 1-96; *see also* Gray, *supra* at 12-13. We generally concur with those comments.

4. Who is the fund-raising target and for what purpose are funds sought?

In some limited circumstances, the purpose of the fund-raising activity and the make-up of the prospective donor class are relevant factors in determining the propriety of the activity. For example, in Ariz. Op. 95-20, this committee concluded that, although a judge could not solicit support from other judges for a non-judicial cause, such as a charity, a judge could solicit support from other judges for a particular judicially-related cause. In permitting the latter, we noted that “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 concerns arising from fund-raising generally “are greatly reduced—or even nonexistent.” Ariz. Op. 95-20, Issue 2. We carefully noted, however, that it would not be appropriate “for judges to engage in public fund-raising or to contact attorneys or others to request their support of . . . organizations [related to the judiciary], even though the organizations may do so directly.” *Id.*

5. Does the judge's involvement interfere with proper performance of judicial duties?

If a judge's participation in fund-raising activities, though indirect and otherwise permissible, interferes with the performance of judicial duties, it would be prohibited. *See* Canon 3A; Canon 4A(3); Canon 4C(4).

C. Passive, indirect and de minimus involvement in fund-raising activities is permissible.

Canon 4C(4)(b) specifically permits a judge to attend an organization's fund-raising events, so long as no other code provisions are violated. That someone may choose to give money to an organization based, somewhat irrationally, on the mere fact that a judge attends or minimally participates in the organization's fund-raising event, in a manner no different from that of other non-judicial attendees, does not implicate Canon 4C(4)(b)'s prohibition. Nor does the fact that a judge sits on the organization's board in a capacity not related to fund-raising. Thus, a judge's minimal, passive, or indirect connection to a fund-raising event generally is permissible.

For example, this committee has concluded that a judge may serve as a church usher and pass a collection plate for donations during church services "without words of solicitation," because the judge "act[ed] in a non-judicial capacity while serving the church in a customary manner as an unidentified usher." *Ariz. Op. 96-13*. Under such circumstances, "[t]he risk of conflict with the judge's judicial obligations and the risk that a person would feel pressured by the prestige of the judge's office is minimal[,] . . . even if some members knew that the usher was a judge or considered the act of passing the basket as a solicitation." *Id.*

Unlike some states, our code does not have an exception for *de minimus* fund-raising activities. *See Gray, supra* at 10-11. Nonetheless, judges should be permitted "to engage in *de minimus* activities at fund-raisers, such as working in the kitchen or serving food at a fund-raising dinner, so long as the judge's participation is not designed to entice people to attend or to increase donations." *Gray, supra* at 16-17; *see also* N.Y. *Op. 95-123* (judge may wrap presents for children and escort underprivileged children during church fund-raising event).

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 1, 2, 2A, 2B, 3A, 4A, 4A(1), 4C(3), 4C(4), 4C(4)(b) and 5A(5) (1993).

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Advisory Opinion 00-06

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Advisory Opinion 00-06

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