

California Judges Association

**OPINION NO. 41**

(Originally issued: July 8, 1989)

(Revised: 1998)

**FUND-RAISING**

**AUTHORITY:** Canons 2B, 4C(3)(d) and Opinion No. 27

I. Background

A judge may participate in fund-raising activities for charitable or civic organizations only if there is no solicitation, directly or implied by the judge, unless the judge solicits another judge.

II. Discussion

The Committee has received a number of inquiries concerning judicial participation in charitable fund-raising. These inquiries originate primarily from judges who have been approached by organizations seeking to have judges fill various roles in their fund-raising effort. The large number of inquiries, and the consistent concern in this area of extra-judicial activity, demonstrates the need for clear guidelines which judges may apply to the recurrent variations of fund-raising requests.

In formulating guidelines, Canons 2 and 4C are primary authorities. Canon 2 specifically provides:

A. A judge shall respect and comply with the law<sup>1</sup> and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B(1). A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

B(2). A judge shall not lend the prestige of the judicial office to advance the pecuniary or personal interests of the judge or others;

Canon 4C(3)(d) directs as follows:

(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

(1) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may privately solicit funds for such an organization from other judges (excluding court commissioners, referees, retired judges, and temporary judges<sup>2</sup>;

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<sup>1</sup> Law denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (Commentary), 2A, 2C (Commentary), 3A, 3B(7), 3E, 4B (Commentary), 4C, 4D(6)(a)-(b), 4F, 4H, and 5D.

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism, except as permitted in Canon 4C(3)(d)(I);

(iv) shall not permit the use of the prestige of his or her judicial office for fund-raising or membership solicitations but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canon 4A(1), (2), and (3).

In Opinion 27, this Committee concluded:

In any correspondence directed to fund-raising, however, the judge should not be a signatory, nor should the judge be listed on any announcement prepared expressly for a fund-raising event, except in the judge's usual capacity as an officer, director, or trustee of the organization.

After review of these authorities and consideration of the several inquiries submitted, the Committee has discerned two basic principles.

A. A judge may assist in fund-raising efforts in a variety of ways that do not promote attendance at the event or donations.

It is arguable that the presence of judges as officers, directors or trustees, in and of itself, may lend an aura of legitimacy to any charitable or civic organization, and would contribute substantially to the group's fund-raising activities. Notwithstanding that potential, the Canons have not sought to isolate judges from those extracurricular activities which do not conflict with judicial duties. The Commentary to Canon 4A provides:

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

As noted previously, Canon 4C expressly permits judges to pursue their charitable and civic interests through service associated with the management of those agencies. Inherent in the nature and purpose of charitable and civic organizations is their continuing need for, and involvement in, raising funds to facilitate their programs. The Committee is of the opinion that it would be an unduly restrictive construction of Canon 4C to prohibit judges who are associated with the management of charitable or civic groups through service as director, officer, trustee or the like, from carrying out those activities, including assisting in fund-raising, which does not feature their role as a fund-raiser, nor bring them in direct public contact with the appeal for, or receipt of contributions.

In the opinion of the Committee, therefore, a judge may assist in fund-raising activities so long as the persons being solicited are not made aware of the judge's participation; under these circumstances, there can be no reasonable implication of pressure to donate, or of judicial favor in return for the donation. For example, a judge can help write a solicitation letter as long as the judge does not sign it. A

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<sup>2</sup> A temporary judge is an active or inactive member of the bar who serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard. See Canons 4C(3)(d)(I), 6A and 6D.

judge may also serve on a planning committee for a fund-raising event so long as the judge's name is not listed on the solicitation request. Further, a judge may work in the kitchen or serve food, may work at a booth, or encourage others who are making phone calls at a phone bank, or act as an announcer, may make introductions, or lead an invocation, be the speaker or guest of honor, or the recipient of an award for public or charitable service. The mere act of participating in any of these capacities would not constitute a prohibited solicitation.

The commentary to Canon 4C(3)(d) in pertinent part, provides that:

...(1) a judge may solicit other judges (excluding court commissioners, referees, retired judges, court-appointed arbitrators, and temporary judges) for funds or memberships; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Canon 4C(3)(d), provided the letterhead lists only the judge's name and office or other position in the organization, and designates the judge's judicial title only if other persons whose names appear on the letterhead have comparable designations. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

B. A judge may not publicly lead fund-raising efforts, nor assist in such efforts, in any way that appears to be a public endorsement of the solicitation.

Judges are sometimes asked to serve as the featured entertainer, or as a "celebrity server" at fund-raising events. The Committee has determined that the advertisement of any such service is prohibited by the Canons. If participation by the judge is designed to encourage donors to buy beverages, or leave "tips" for the organization, or increase donations, there is clearly implied indirect solicitation of funds by the judge, which is inappropriate. However, the Canons do permit a judge to be a speaker, guest of honor, or recipient of an award for public or charitable service at such an event, provided the judge does not personally solicit funds and complies with Canon 4A(1), (2) and (3).

There are other services which a judge may be asked to fill that may raise the same concern as, for example, serving as auctioneer at a benefit auction or collecting the money or receipts of a fund drive. Without reviewing all of the many variations of services in this opinion, the Committee recommends that a judge consider the circumstance of any fund-raising participation with a basic inquiry: Is it reasonable to expect that participation by the judge may increase donations? If so, (and it is not one of those limited activities spelled out and approved in Canon 4C(3)(d)(iv)) or if under the circumstances of the particular community service activity, the judge's participation can be interpreted as a public endorsement of the fund-raising effort, then it is inappropriate. The community circumstances must, of course, be evaluated with regard to the specific community or activity, to determine whether there is the reasonable appearance that the judge is lending the prestige of office to the fund-raising event.

One form of service commonly requested of a judge is to contribute items to be auctioned at charitable fund-raising events. Consistent with the guidelines discussed above, the Committee is of the opinion that an anonymous donation, or an auction that does not advertise the item as donated by the judge is permissible and does not run afoul of Canon 4C(3). However, if the donation derives a special value from the fact that it is donated by a judge, or if the fact that a judge donated the item would

reasonably be expected to increase its value as an auction item, then the donation may be inappropriate. For example, a piece of art donated by a judge would probably not attract more vigorous bidding because of the identity of the judge as donor. Such a donation is appropriate in the opinion of the Committee, and the judge's identity as the donor may be listed. However, lunch with the judge, or jogging with the judge, or dunking the judge in a tub of water are inappropriate because the prestige of office is part of the thing of value. Further, these activities may convey the impression that others are in a special position to influence the judge in violation of Canon 2B. Again, the circumstances of the particular activity and the particular community appearances are critical to an evaluation of the judge's participation.

The judge is ultimately responsible for structuring his or her participation to avoid the appearance of increasing donations by lending the prestige of office, and at all times to promote public confidence in the integrity of the judiciary.

This opinion is advisory only. The Committee acts on specific inquiries submitted, and its opinion is based on facts as set forth in the submitted inquiries.

COMMITTEE ON JUDICIAL ETHICS

July 8, 1989