California Judges Association
OPINION 53

(Issued: June 7, 2003)

DISCLOSURE AND DISQUALIFICATION CONSIDERATIONS STEMMING FROM JUDICIAL DONATIONS TO PUBLIC INTEREST LAW FIRMS AND ORGANIZATIONS

I. Introduction

Judges, as prominent members of the community, are encouraged to participate actively in community affairs and to support worthwhile nonprofit charitable and civic organizations. However, ethical constraints imposed by the Code of Judicial Ethics place limitations upon judicial participation in these organizations in terms of service as leaders, spokespersons, and fundraisers. Similar considerations come into play when judicial officers contribute their personal financial resources to the endeavors of these organizations.

This opinion seeks to provide guidance for judges who are contemplating contributions or have donated to nonprofit organizations or to public interest law firms in the jurisdiction, and who are concerned that these donations (monetary or in kind) may necessitate frequent recusal.

II. Authority

Canon 2A requires judges to act at all times "in a manner that promotes public confidence in the integrity and impartiality of the judiciary." This mandate of a constant public appearance of lack of bias is iterated several times in Canon 4, which governs judicial conduct outside the courthouse and in personal affairs:

Canon 4A(1): "A judge shall conduct all of the judge's extrajudicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially"
Canon 4A(3): "A judge shall conduct all of the judge's extrajudicial activities so that they do not interfere with the proper performance of judicial duties"
Canon 4D(4): "A judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification."

Canon 3A specifies that "all of the judicial duties prescribed by law shall take precedence over all other activities of every judge"; Canon 3B requires that "a judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified."

Disqualification is governed by Canon 3E which requires a trial court judge to disqualify himself or herself "as required by law." Code of Civil Procedure 170.1 lists seven legal grounds for disqualification; the only ground which would pertain to the situation in which a judge has made a financial or in-kind contribution to a party or a law firm in a case before the judge is CCP 170.1(a)(6) which requires disqualification if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. A similar provision in Canon 3E(3)(iii) requires recusal of an appellate justice if "the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial."

Finally, Canon 3E(2) requires a trial court judge to "disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification."

III. Disqualification

Opinion 45 of the CJA Ethics Committee delineates the steps for judges to take in determining disqualification and disclosure issues in situations such as that addressed by this opinion. The first step is for the judge to examine the situation to determine whether a judicial donation to a public service law firm or nonprofit organization appearing before the judge is per se disqualifying, i.e., whether a person aware of the contribution would reasonably entertain a doubt concerning the judge's impartiality. There are numerous factors to be considered in this determination:

1) Whether the law firm or nonprofit organization represents one side of litigation. (A donation to Legal Aid suggests support for the delivery of legal services to the poor, whereas a contribution to a tenants' advocacy law firm implies sympathy for the cause espoused by tenants)
2) The size of the donation with relation to the amounts of other charitable contributions made by the judge; the size of the contribution with relation to the financial worth of the donee organization; the size of the contribution with relation to contributions made by other donors
3) Whether the contribution is related to a scheduled fundraising function or whether it reflects an unsolicited or voluntary donation on the part of the judge
4) The judge's current assignment and the appearance of bias (e.g. a judge assigned to the Domestic Violence Court should not make non-nominal contributions to public interest law firms or organizations which are dedicated to representing or assisting victims of domestic violence)
5) Whether the proposed donation will necessitate frequent disclosure or disqualification analysis since the prospective donee organization frequently engages in litigation in the judge's court
6) Pertinent community standards

The above considerations are part of the analysis done by the judicial officer in a private determination of whether recusal is mandated. Judges may be loath to reveal private information such as that factoring into consideration #2 above. If the judge determines that the donation forms a large part of his or her charitable contributions, that decision should guide the judge to recusal, and a revelation of personal financial information is not required. If the donation is small or in proportion to other donations the judge has made, the judge should not disqualify (absent other factors), and need only disclose that the contribution was modest or proportionate to other donations made.

IV. Disclosure

Once a judge has determined that she or he is not disqualified based upon a donation to a public interest law firm or an organization which is a party in a matter pending in his or her court, the question of whether to disclose the contribution must be addressed. Again, several factors must be considered:

1) The manner in which the gift is made. Donations to organizations such as United Way, which distribute funding to public interest firms, need not be disclosed when recipient organizations appear before the judge, because the judge has no direct control over the disbursement of the funds. If the umbrella organization is a party in the case before the judge, disclosure of contributions should be made
2) The size of the donations
3) Whether the donee organization is dedicated to advocacy on a specific issue that is before the judge or is a public interest law firm, like Legal Aid, formed to provide legal services for indigents

Because a direct and voluntary contribution to a party or law firm on the part of the trial judge is clearly relevant to the question of impartiality, the judge should disclose all non-minimal contributions made directly by the judge or the judge's spouse or partner using community funds to any public service law firm or non-profit organization when that organization or firm appears before the judge.

V. Conclusion

Contributions to charitable and public interest organizations that have advocacy functions can be problematic for judicial officers. In donating significant funds to organizations or firms likely to appear in

the courts, judges should take care to examine the factors above to minimize the potential for disqualification. Judges should also be aware that while most donations will not require outright disqualification, such contributions might engender a requirement of disclosure depending on the amount and circumstances of the donation.

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