

California Judges Association  
**OPINION NO. 33**

(Originally issued: 1986)

**SOLICITATION OF FUNDS FOR DEFENSE BEFORE THE CJP**

**AUTHORITY:** CCP SECTION 170.9, Canon 4D(5) and Canon 5

I. Background

Through his attorney, a judge has inquired whether it is permissible under the California Code of Judicial Ethics to raise funds to defend himself or herself before the Commission on Judicial Performance. According to the attorney's letter, the defense costs will be very substantial, as the attorney anticipates the evidentiary hearing will take over a month. In addition, the attorney has been required to hire an investigator, conduct several depositions, and make several overnight trips to interview witnesses prior to the hearing. Also according to the attorney's letter, the judge and the judge's family live on his judicial salary and possess insufficient net worth to afford legal expenses.

The judge asks whether it is ethically permissible to "directly...solicit contributions to a defense fund from individuals who have substantial resources but who are very unlikely ever to come before his or her Court;" and to provide a list of potential donors, both inside and outside the jurisdiction in which he presides, to an individual unlikely ever to come before the court, who will, in turn, solicit donations to a "blind trust" set up for his defense in such a manner that the judge will not voluntarily know the name and amounts.

**A. DISCUSSION OF JURISDICTIONAL ISSUES**

Question No. 1

May the Ethics Committee consider the inquiry since it came from the judge's attorney rather than the judge?

Answer

Since the identity of the judge is confidential and the Committee is satisfied that the questions come from a judge, the Committee may answer.

Discussion

As a matter of policy and practice, the Judicial Ethics Committee of the California Judges Association only responds to queries personally submitted by judges. An attorney has submitted an inquiry on behalf of a judge whose identity is confidential. We deem this equivalent to a request from a judge.

The identity of judges subject to Commission proceedings is confidential, and we should not compel a judge to breach that confidentiality in order to obtain an opinion from this body. The Committee has no doubt the attorney who lodged the inquiry has done so on behalf of a sitting judge. In keeping with the confidentiality surrounding Commission proceedings the Committee elects to consider this request without requiring the judge involved to reveal his or her identity.

Question No. 2

May our Committee render a legal opinion on the question whether a judge or his attorney are prohibited by law from disclosing to a potential donor the fact that there are proceedings before the Commission on Judicial Performance?

Answer

The Ethics Committee does not interpret the Constitution or statutes.

Discussion

We take as a given that the judge or his attorney would disclose to potential donors the reason their donations are sought, i.e., the pendency of Commission proceedings. Article VI, Section 18, provides, “the Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.” This language has been the subject of judicial interpretation (see, e.g., Mosk vs. Superior Court (1979) 25 Cal.3d 474) and is the legal basis for rules of court applicable to Commission proceedings. (See Cal. Rules of Court, rules 901-922.)

If disclosures under these circumstances violates the law, it could also constitute a violation of the Code of Judicial Ethics (Canon 2A) which provides in pertinent part, “A judge should respect and comply with the law...” However, it is not the appropriate scope of this Committee’s work to render opinions on whether or not an activity violates a Constitutional or statutory provision. The Ethics Committee is limited to interpretation of the California Code of Judicial Ethics, not the law. We shall, therefore, render an opinion on the application of the California Code of Judicial Ethics upon the assumption the judge’s conduct involves no violation of law.

**B. RESPONSES TO INQUIRY**

Question No. 1

May a judge ethically accept contributions to a defense fund to defend himself before the Commission on Judicial Performance?

Answer

A judge may accept contributions for his or her defense, but only from those whose interest have not and are not likely to come before the judge.

Discussion

Canon 4D(5) prohibits a judge from taking any gift from a “party whose interests have come or are reasonably likely to come before the judge.”

There is presently no exception for legal defense costs from the “gift” limitations in 4D(5) (but see footnote 2.).<sup>1</sup>

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<sup>1</sup> CANON 4D, FINANCIAL ACTIVITIES

(1) A judge should not engage in financial and business dealings that (a) may reasonably be perceived to exploit the judge’s judicial position, or (b) involves the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court.

The Commentary to Canon 4D(5) points out that Canon 5 specifically exempts contributions to a judge's campaign for judicial office from the gift limitation of Canon 4D(5). For this reason campaign gifts are not prohibited by Canon 4D(5).<sup>2</sup>

The Commentary, however, does not specifically allow any other form of gift to the judge from those whose "interests" have come or are likely to come before the judge. The effect of this Canon is to prevent the judge from accepting solicited – or unsolicited – gifts to his legal defense from any person or institution whose interests have come or are likely to come before the judge. This includes lawyers representing litigants before the judge as well as the litigants themselves. In either case, the donor's "interests" are involved in the proceeding before the court.

#### Question No. 2

May a judge solicit funds for legal defense costs?

#### Answer

Judges may privately and discreetly solicit contributions to their own legal defense funds and may allow others to do so, but only from those whose interest have not and are not likely to come before the judge.

#### Discussion

The California Code of Judicial Ethics does not contain any specific authorization for or prohibition against a judge making a solicitation of this sort. The Code makes it clear that judges are severely restricted in soliciting contributions to meet their own expenses. The Code only mentions two purposes for which judges may raise contributions: an organization devoted to the administration of justice and the judge's own election campaign.

There are several reasons for the limitations on solicitation by judges. It demeans the judicial office for a judge to ask others for money for any purpose, even a charitable one. It also puts undue pressure to contribute on those the judge approaches, especially among lawyers and others with an interest before the court. It likewise may create an impression that those who heed the judge's solicitation are in special favor with the judge.

These policy considerations are not involved when a judge privately and discreetly solicits persons who have not and are not likely to have interests before the judge, as these persons will not feel undue pressure to contribute nor will they or others perceive they have acquired an advantage when appearing in the judge's court.

### **C. QUESTIONS SPECIFICALLY ASKED BY THE INQUIRING JUDGE**

#### Question No. 1

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<sup>2</sup> The Advisory Committee Commentary to Canon 4D(5) reads "Canon 4D(5) does not apply to contributions to any judge's campaign for judicial office, a matter governed by Canon 5." Although we do not conclude that fund-raising for defense before the Commission on Judicial Performance is permissible judicial political activity in terms of Canon 5 (and thus exempt from the gift limits of Canon 4D(5), we see no ethical distinction between fund-raising for a judge's campaign and fund-raising for legal defense. Modifications of the Canons may be appropriate to exempt from Canon 4D(5), contributions to a defense fund for a defense before the Commission on Judicial Performance and any other litigation related to the judicial office.

May the judge directly solicit contributions from individuals who are “very unlikely ever to come before his or her court”?

Answer

Our answer is “Yes” with qualifications.

Discussion

The Committee approves this form of solicitation with three caveats. First, the judge may not direct his solicitation to persons who have had their interests before the court in the past even though it is “highly unlikely” they will ever come before the judge in the future. A contribution from a former litigant may give the appearance of being “compensation for a past decision favorable to the donor just as a contribution from a future litigant may appear to be advance payment on a forthcoming decision favorable to him or her. Canon 4D(5) specifically prohibits judges from receiving gifts from any “party whose interests have come...before the judge.” Since the judge may not accept even unsolicited contributions from former litigants, he or she may not solicit from them. Secondly, the judge must be careful in his solicitations with no indication of anything which might lead the person solicited or anyone else to believe the judge’s judicial performance could be affected in any way by the decision to contribute. Thirdly, the gift limitation of \$250 set forth in CCP Section 170.9 must be adhered to.

Question No. 2

May the judge have someone else solicit donations to a “blind trust” from persons both inside and outside his or her jurisdiction?

Answer

Our answer is “NO.”

Discussion

To the extent that prospective donors include persons who have come before the judge, or are likely to do so, this proposal could violate Canon 4D(5). The “blind trust” does not cure this problem. In all probability, the judge would be required to disclose the “blind trust” donors on his personally prepared and executed Statement of Economic Interest which must be filed with the Fair Political Practices Commission. Thus, voluntarily or involuntarily, he could learn who had contributed to his legal defense and who had not. The Committee is unwilling to create a “blind trust exception” to Canon 4D(5) because the contributions are likely to become known to the judge, and if the contributors are those within the limitations of Canon 4D(5), there is no need for a blind trust.

It is permissible for a third person to solicit funds on behalf of the judge so long as that person is subject to the same limitations to which the judge is subject.

1997 Note:

Although the foregoing opinion was based on the 1974 Code of Judicial Conduct, the substance of the opinion is supported under the 1996 California Code of Judicial Ethics, Canon 4D(5). (From the original opinion the first footnote has been deleted as it is no longer a correct statement of the applicable rules.) References to the earlier authority in the body of the opinion have been changed to current citations.

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

COMMITTEE ON JUDICIAL ETHICS  
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