

California Judges Association

OPINION NO. 42

(Originally issued: 1989)

(Revised: 1998)

FUND-RAISING AMONG JUDGES

AUTHORITY: Canons 2, 4C(3) and Opinion 41

I. Background

The prohibition against the direct and indirect public solicitation of funds for charitable and civic organizations by judges applies equally to such activity as between judges when it appears to the public that judges are using the power and privilege of office to induce others to contribute. A judge is not precluded, however, from individually seeking contribution from among judges.

The Committee has received three inquiries concerning judges' participation in fund-raising activities where the focus is on the solicitation of funds or attendance at fund-raising events between judges only.

II. Questions

1. May two judges sign an invitation directed only to other judges to attend a fund-raising dinner sponsored by a charitable organization under the following circumstances?

Other persons, including attorneys who practice in the judge-invitees' courts, would receive publicly distributed invitations. At the dinner the judges and others in attendance would be asked to make public contributions to the charitable organization and to announce those contributions openly.

2. May a judge involved in a charitable organization and/or its fund-raising endeavors, solicit contributions to the organization privately from other judges?

3. May a judge send letters to each member of the California judiciary urging them to make annual contributions to the California Judges Foundation?

III. Answer

The answer to question No. 1 is no and the answer to questions 2 and 3, is yes.

IV. Discussion

Canon 2A provides:

A judge shall respect and comply with the law¹ and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 4 requires that "A judge shall so conduct the judge's quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations." In particular, Canon 4C(3)(d) provides:

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

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

(i) 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 judges²;

(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 solicitation 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).

Although in the first question the invitation given by the two judges is to other judges only, other persons will also be invited to the event and asked to contribute to the organization's purposes. Furthermore, those judges and others in attendance would be asked to announce their contributions before the entire group. This creates the classic and proscribed situation in which a public perception may be created that judges are using the power and prestige of office to induce others to attend an event and/or contribute to its purposes. In this situation, the Committee is of the opinion that it is improper for the two judges to invite their judicial colleagues to the event. (See Opinion 41.)

Since in the second and third questions the activity is entirely between judges as distinct from public solicitation, it is under Canon 4C(3)(d) allowed.

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

COMMITTEE ON JUDICIAL ETHICS
September 16, 1989

² Temporary Judge. 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.