

ADVISORY OPINION

**Code of Judicial Conduct
Canon 4C**

#1-96

The Indiana Commission on Judicial Qualifications issues the following advisory opinion concerning the Code of Judicial Conduct. The views of the Commission are not necessarily those of a majority of the Indiana Supreme Court, the ultimate arbiter of judicial disciplinary issues. Compliance with an opinion of the Commission will be considered by it to be a good faith effort to comply with the Code of Judicial Conduct. The Commission may withdraw any opinion.

ISSUE

The issue is the appropriate interpretation of Canon 4C(3)(b), which states that a judge "shall not personally participate in the solicitation of funds or other fundraising activities" and "shall not use or permit the use of the prestige of judicial office for fundraising or membership solicitation". Canon 4C(3)(b)(i); Canon 4C(3)(b)(iv), Code of Judicial Conduct.

ANALYSIS

Strictly interpreted, Canon 4C(3)(b) prohibits any "personal participation" in fundraising activities, even where the participation is indirect, or bears no relationship to the judicial office, or cannot reasonably raise concerns about coercion or exploitation of the office or the appearance of impropriety. Strictly construed, the rule prohibits a judge from any involvement other than attendance at a charity event, and prohibits a judge from allowing the judge's name to be listed with others as an honorary committee member for a fundraiser. In fact, ethics advisory committees in other jurisdictions have strictly interpreted the fundraising rules, finding that a judge should not, for example, serve as an honorary member of a committee to raise money for a national memorial, or appear as Father Christmas at a fundraising event. See Shaman, Lubet, and Alfini, Judicial Conduct and Ethics, 2nd Edition, page 291. These prohibitions appear to this Commission to be overly restrictive and unrelated to the dangers the rule is meant to address.

The restrictions in Canon 4 on judicial participation in fundraising activities are meant to address "the dual fears that potential donors either may be intimidated into making contributions when solicited by a judge, or that they may expect future favors in return for their largesse". *Id.* at 289. Thus, a judge may not personally contact potential donors and ask for contributions and, as the commentary to Canon 4C(3)(b) specifically states, a

judge may not act as the guest of honor at a fundraising event.

Lesser degrees of participation in fundraising, however, are, in the Commission's view, 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. Canon 4A, Code of Judicial Conduct. Whether or not a judge should participate in or allow the judge's name to be used in conjunction with a fundraising activity is a decision the judge should make on an ad hoc basis, as a blanket rule is impossible. The Commission offers the following suggestions.

In determining whether participation in fundraising is acceptable, one inquiry is whether the judge's participation will be evident. If not, obviously, there is little chance of perceived coercion or exploitation of the office. Therefore, a judge may help with telephone solicitations if the judge acts anonymously. Or, a judge's participation "behind the scenes" at a fundraising event, such as by preparing decorations for a banquet, likewise raises little concern about perceived coercion and should be permissible.

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. For example, a judge should not participate in "jail and bail" fundraisers if he or she is asked to call friends and colleagues asking for "bail" donations, but the judge may participate in other capacities, such as by playing another of the roles in the mock proceedings. A judge may sell refreshments at a festival fundraiser, or sell Christmas trees for a service organization, or crafts at a school benefit, but should not ask for donations from individuals who otherwise would not contribute.

Again, an essential inquiry is whether it is likely donors will be motivated to contribute by the fact that the judge is a participant. Thus, a judge may not be the guest of honor at a fundraising event, as, typically, the presence of the guest of honor is meant to motivate potential donors to attend. However, because Canon 4C(3)(b)(i) specifically states that a judge may assist an organization in planning its fundraising activities, the Commission members believe a judge may be listed as a committee member or honorary committee member in conjunction with a fundraising activity or event. To militate against the possibility that potential donors will be motivated to contribute by virtue of the judge's participation, all the committee members' titles should be indicated if the judge's title is listed, and judges should not make up the majority of committee members.

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.

The judge's decision whether to participate in fundraising, either directly or by allowing the judge's name to be listed as a committee member on an invitation or solicitation letter, should be made after carefully considering whether the judge's participation could be perceived as coercive or exploitive of the judicial office and whether the activity would affect the judge's impartiality, would demean the judicial office, or would interfere with judicial duties. The Commission members encourage judges to contact Commission staff for advice.

CONCLUSION

Personal participation in fundraising events is not necessarily prohibited so long as the activity does not raise concerns about coercion or exploitation of the judicial office, and does not demean the office, cast doubt on the judge's impartiality, or interfere with the performance of judicial duties.