



Supreme Court — Commission on Judicial Conduct — THE JUDICIARY • STATE OF HAWAII

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FORMAL ADVISORY OPINION #03-98

MAY 4, 1998

QUESTION PRESENTED

What are the limitations on a judge who serves as an officer of a non-profit organization and participates in activities related to fund development and grant applications?

CONCLUSION

In general, a judge may not personally participate directly in fundraising but Canon 4C(3)(b)(i) of the Hawaii Revised Code of Judicial Conduct ("HRCJC") permits a judge to serve as an officer of a non-profit organization that does not practice invidious discrimination and to engage in limited participation in planning and similar activities which do not use the prestige of the judge's office for fundraising. Specific situations are addressed in the discussion which follows.

DISCUSSION

1. **QUESTION:** May a judge serve on a committee whose focus is fund development?

RESPONSE: Yes—Canon 4C(3) provides:

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an education, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code. . .

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

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(i) may assist such an organization in planning fundraising 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 solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(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, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism.

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

2. QUESTION: May a judge represent an organization in presenting its financial condition (information) if the judge does not actually request any funds?

RESPONSE: Yes.—The HRCJC does not prohibit a judge from presenting information about an organization when the presentation does not directly involve solicitation of funds. When the presentation of information, financial or otherwise, is a part of a presentation that solicits funds, the judge must not participate in that portion of the presentation which makes the solicitation. This Commission recognizes that there may be circumstances under which the judge's presentation of financial information is so closely interwoven with the solicitation of funds, that the judge's conduct may be considered to be indirectly making the solicitation. In determining whether a judge is actually doing indirectly what the judge is prohibited from doing directly, other circumstances such as the factors which went into selection of the judge to make the presentation of information would be considered.

Advisory opinions from other states are helpful in determining whether mere presentation of information is considered direct solicitation of funds.

For example, in Arizona, a judge who was a member of the Board of a non-profit corporation since its inception, eventually became its president. When the judge was called upon to respond to informational questions which arose in connection with a grant application, the Arizona Judicial Ethics Advisory Committee, giving weight to the fact that the judge was with the organization since inception, concluded that the choice of this judge to do the responding was a

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logical one. See Arizona Advisory Opinion 97-9 (1997). See also, A Judge's Attendance at Social Events, Bar Association Functions, Civic And Charitable Functions And Political Gatherings, American Judicature Society (Gray), pp 8-10 (1996).

3. **QUESTION:** May a judge sign a grant application for that non-profit organization, on behalf of the organization as an officer?

RESPONSE: No--The signing of a request for a grant is personal participation in the solicitation of funds, and is therefore prohibited by Canon 4C(3)(b)(i).

4. **QUESTION:** If another officer signs a fundraising letter, is it appropriate for the judge's name to appear on the stationery?

RESPONSE: Yes--Although signing a letter requesting contribution violates the prohibition against personal solicitation of funds as set forth in Canon 4C(3)(b)(i), the commentary to Canon 4C(3)(b) explains:

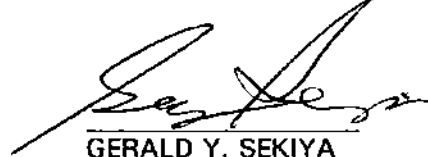
Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and if comparable designations are listed for other persons, the judge's judicial designation. 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.

5. **QUESTION:** May a judge attend functions whose purpose is fundraising?

RESPONSE Yes--Commentary to Canon 4C(3)(b) provides:

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

FOR THE COMMISSION
ON JUDICIAL CONDUCT



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