



Commission on Judicial Conduct — THE JUDICIARY • STATE OF HAWAII

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**FORMAL ADVISORY OPINION #01-01
JUNE 28, 2001**

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QUESTIONS PRESENTED

If a judge sanctions an attorney or litigant with a monetary fine for civil contempt or for other sanctionable conduct, may the judge (1) order that payment of the fine be made to a specific charity, or (2) order payment to a charity or worthy cause to be selected by the person being sanctioned?

ANALYSIS

The code of judicial conduct provides that a judge “shall not personally participate in the solicitation of funds or other fund-raising activities” (Canon 4C(3)(b)(i)) and “shall not use or permit the use of the prestige of judicial office for fund-raising solicitation” (Canon 4C(3)(b)(iv)). In intent and result, ordering an attorney or litigant to make a charitable contribution as a monetary sanction is indistinguishable from soliciting funds for charitable organizations and would use not only the prestige but also the power of the judicial office to raise funds for charities. Cases from other jurisdictions that have addressed this issue support this conclusion. For example, the Michigan Supreme Court censured a judge for using money received from attorneys that were sanctioned for the late filing of pretrial statements, tardiness, or failure to appear on court dates to maintain a fund to assist indigent drug and alcohol abusers. The court held, “[i]n essence, the respondent’s conduct, whether well intentioned or not, gave the appearance of using the powers of his judicial

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office to solicit monies from attorneys for the...fund." *In the Matter of Merritt*, 432 N.W.2d 170 (Michigan 1988).

The purpose of imposing a fine for civil contempt or other sanctionable conduct is to compel compliance with court rules and orders, not to raise funds for charities. Ordering payment of a fine to a charity may even dilute its effectiveness as a punishment or deterrent if the payee is able to claim a charitable deduction. Given the discretion judges have when imposing a monetary fine for civil contempt or other sanctionable conduct, allowing such payments to go to charities would reasonably lead to creating the appearance that the judge is abusing that discretion to help charities or to increase his or her popularity by helping charities.

Although the impropriety is more apparent when the judge chooses the charity, allowing the litigant or attorney being sanctioned to choose the charity does not fundamentally change the fact that the judge is personally raising funds for a charity and using the power of the office to do so.

Furthermore, ordering a payment to charity, whether chosen by the judge or by the person sanctioned, may not be authorized by law and may therefore be inconsistent with a judge's duty to "be faithful to the law and maintain professional competence in it" (Canon 3B(2)). No matter how well intentioned, a judge should not under these circumstances, create procedures for handling cases that are not prescribed by statute, rule, or case law. *See Michigan Advisory Opinion JI-55 (1992)* (judge may not impose sentences requiring criminal defendants to pay moneys that are allocated to educational, religious, charitable, fraternal, or civil activities, unless the sentencing practice has been authorized by law, even where the payments are part of the original sentence and not in lieu of community service or jail time and the judge does not exercise any discretion regarding disbursement of the

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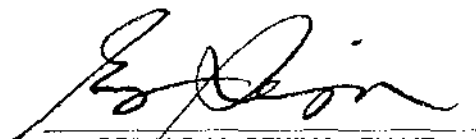
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funds); *Missouri Advisory Opinion 172* (1998) (absent a state statute or constitutional provision, a judge may not impose as a condition of probation payments to the county treasury, a county crime reduction fund, or a specified charity, even if the judge is just acquiescing in a plea bargain); *In the Matter of Davis*, 946 P.2d 1033 (Nevada 1997) (judge removed for, among other misconduct, directing or suggesting to persons who had been found guilty to contribute money to certain charities in lieu of paying fines to the city); *Public Warning of McDougal* (Texas State Commission on Judicial Conduct June 30, 1999) (public warning to judge who had provided defendants in traffic cases with option of making donations to private charity in exchange for dismissal of tickets).

CONCLUSION

If a judge imposes a monetary fine on an attorney or litigant for civil contempt or other sanctionable conduct, absent a statute or rule permitting the practice, a judge may not order that a fine be contributed to a charity or worthy cause to be selected either by the judge or by the person being sanctioned.

FOR THE COMMISSION ON
JUDICIAL CONDUCT


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