

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

OF THE

DISTRICT OF COLUMBIA COURTS

ADVISORY OPINION NO. 8

(March 21, 2000)

**CRITERIA FOR USE OF JUDGE'S NAME ON LETTERHEAD
IN SOLICITATION OF FUNDS**

The Advisory Committee on Judicial Conduct has received an inquiry from a judge of the District of Columbia Court of Appeals. The inquiry requests an opinion on whether a judge may permit his or her to appear on the letterhead of the Council for Court Excellence (CCE) when that letterhead appears above a solicitation for funds for the CCE. The letterhead includes the judge's name and title.

In an informational sheet provided to the public, the CCE describes itself as follows:

[T]he Council for Court Excellence is a nonprofit, nonpartisan, civic organization. The Council works to improve the administration of justice in the local and federal courts and related agencies in the Washington metropolitan area and in the nation. The council accomplishes this goal by:

- Identifying and promoting court reforms,

- Improving public access to justice, and
- Increasing public understanding of our justice system.

We understand that the CCE makes requests of governmental agencies and private foundations for grants, and sends fund-raising letters to attorneys, judges and the general public. In addition, the CCE holds an annual dinner at which an award is presented; the CCE considers this occasion, at least in part, a fund-raising event.

The following provisions of the Code of Judicial Conduct of the District of Columbia Courts (1995) ("the Code") are pertinent to the inquiry:

Canon 2B:

A ... Judge shall not lend the prestige of judicial office to advance the private interest of the judge or others....

Canon 4C(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,¹ or of an educational, religious, charitable, fraternal or civil organization not conducted for profit subject to the

¹ In this opinion, we sometimes use "law-improvement organization" as a short hand for "organization or governmental agency devoted to the enforcement of the law, the legal system, or the administration of justice."

following limitations and the other requirements of the code.

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

(i) may assist such an organization in planning fund-raising..., but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may participate in solicitation of funds, other than from lawyers and from the general public, on behalf of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice, and may solicit funds from other judges over whom the judge does not exercise supervisory authority;

* * * * *

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

Under Canon 2B, a judge as a general rule may not lend the prestige of the judge's office to advance the private interest of anyone. Under Canon 4C(3)(b), however, a judge may serve as officer, director, trustee or non-legal

advisor of a law-improvement or charitable organization and may assist that organization in managing and investing its funds. A judge may not "personally participate in solicitations of funds or other fund-raising activities" for such organizations. Canon 4C(3)(b)(i), however, contains two exceptions to the prohibition on soliciting funds. First, a judge may "participate in the solicitation of funds, other than from lawyers and the general public, on behalf of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice...." Second, a judge may solicit funds from other judges over whom the judge exercises no supervisory or appellate authority.

In answering the inquiry, our first task is to construe the exceptions to the general prohibition on participation in fund-raising. The first exception is for a solicitation on behalf of a law-improvement organization. A judge may participate in such a solicitation so long as the solicitation is not "from lawyers and the general public." Our interpretation of this provision is aided by the commentary to Canon 4C(3)(b)(i), which states in relevant part:

Section 4C(3)(b)(i) of the ABA's
1990 Model Code of Judicial Conduct has

been amended here to incorporate a provision from the 1972 ABA Code of Judicial Conduct permitting judges to solicit funds for organizations or governmental agencies devoted to the improvement of the law, the legal system, or the administration of justice, provided judges do not solicit from the general public, including lawyers. The intention here is to authorize judges to help such organizations seek funding from private and governmental fund-granting agencies that would ordinarily be receptive to such requests and would not feel overreached or importuned improperly by an approach from a judicial officer.^[2]

The commentary makes clear that the first exception to the prohibition on participation in fund-raising extends only to solicitations on behalf of law-improvement organizations and then only to solicitations from private and public "fund-granting agencies." A judge may personally

[2] Canon 25 of the American Bar Association's 1923 Canons of Judicial Ethics prohibited a judge from soliciting for charities. The ABA's 1972 Code of Judicial Conduct permitted a judge to serve as an officer or director of a law-improvement organization and permitted the judge to "assist such organization in raising funds," but prohibited the judge from "personally participat[ing] in public fund raising activities." Canon 4C. Thus, a judge was allowed to assist a law-improvement organization in fund-raising but could not personally participate in "public" fund raising. A judge was also prohibited from soliciting funds for charitable organizations. Canon 5B(2).

The ABA's 1990 Model Code of Judicial Conduct prohibits "personal participat[ion] in the solicitation of funds or other fund-raising activities" whether "public" or not, subject to the single exception that a judge may solicit funds from judges over whom the judge exercises no supervisory or appellate authority. Canon 4C(3)(b)(i). As stated in the commentary to the District of Columbia Code's Canon 4C(3)(b), the intention of the District of Columbia Code is to return to the 1972 Code's permission to solicit funds on behalf of law-improvement organizations where such solicitations are not directed to the "general public." In addition, under the District of Columbia Code, the solicitation cannot be directed to lawyers.

participate in fund-raising activities from such agencies, subject always to the general rule of Canon 4C(3)(b)(iv) that when the judge does so the judge not go beyond personal participation to the point of "us[ing] or permit[ting] the use of the prestige of the judicial office" in the fund-raising.

The second exception to the ban on participation in fund-raising is for soliciting funds, on behalf of charitable organizations, "from other judges over whom the judge does not exercise supervisory or appellate authority."³ This exception is contained in the 1990 Code of Judicial Conduct and thus represents no change in the rules as they existed when the District of Columbia Code was approved.

The question before the committee is whether the use of a judge's name on the CCE's letterhead in a fund-raising solicitation is governed by Canon 4C(3)(b)(i). If it is, that participation is subject to the prohibition on such fund-raising except where directed, on behalf of law-improvement organizations, to private and governmental fund-granting agencies, or except where directed to a judge over whom the judge whose name appears in the letterhead

³ This exception is not limited to solicitations on behalf of a law-improvement organization.

exercises no supervisory or appellate authority. In order to answer this question, we find it helpful to review the way in which prior codes have dealt with the issue of a judge's name appearing on a letterhead.

As noted, n. 2 above, Canon 25 of the 1923 Canons of Judicial Ethics prohibited solicitation for charities. This canon was construed to prohibit the use of the judge's name on a letterhead used for soliciting funds, though a judge was allowed under that code to be a member of charitable organizations and contribute to them. Advisory Opinion No. 22, American Bar Association 1923 Canons of Judicial Ethics. The 1972 Code permitted a judge to serve as an officer or director of a law-improvement organization, and allowed the judge to participate in fund-raising for such an organization so long as the judge did not "personally participate" in "public" fund-raising. Canon 4C. A judge could also serve as a director or officer of a charitable organization, but could not solicit funds for such an organization. Canon 5B(2). The 1972 Code did, however, explicitly allow the judge to "be listed as an officer, director, or trustee of such organization". Id. In light of this explicit permission, Advisory Opinion No. 35 concluded that there was "now no impropriety in the judge permitting his name to be used on stationery and

other material used for solicitation purposes provided that his name and office are in no way selectively emphasized by the organization." The 1990 Code of Judicial Conduct does not address the letterhead issue explicitly, but the commentary to Canon 4C(3) of that code states that "[u]se of an organization letterhead for fund-raising ... does not violate Section 4C(3) if the letterhead lists only the judge's name"

When the Advisory Committee on Judicial Conduct, established by the Joint Committee on Judicial Administration of the District of Columbia Courts, drafted the Code, it received a recommendation from the District of Columbia Judicial Tenure and Disabilities Commission concerning the letterhead issue. The commission recommended that "consideration...be given to adding a provision to make it clear that a judge's name may not be used on a civic or charitable organization letterhead that is used for fund-raising." The Advisory Committee adopted that recommendation, and drafted a proposal for public comment that would have prohibited use of a judge's name on a letterhead used for fund-raising. A comment on the draft suggested that the ban on use of a letterhead might prohibit judges from allowing their name to appear on letterheads addressed to government agencies providing

grants. In response to that comment, the Advisory Committee changed the language of the commentary to state an exception to the ban on using a judge's name on a letterhead. The commentary now states:

Use of an organization letterhead for fund-raising or membership solicitation will violate Section 4C(3)(b) if the letterhead lists the judge's name, unless the solicitation is directed to a governmental agency.

The commentary does not mention what provision of Canon 4C(3)(b) use of a letterhead will violate (subject to the exception named in the commentary). As we have discussed, Canon 4C(3)(b)(i) contains a general prohibition on "personal[] participat[ion]" in fund-raising. If use of a letterhead is considered "personal participation," then the exception for letterhead solicitations contained in the commentary would be both less and more restrictive than the exceptions to the prohibition on fund-raising in Canon 4C(3)(b)(i). Those exceptions permit personal fund-raising directed to judges over whom the judge exercises no appellate or supervisory authority, and also, as the commentary states, fund-raising on behalf of law-improvement organizations directed to private as well as governmental fund-granting agencies. The commentary's exception to the general ban on use of letterhead is not

restricted to fund-raising on behalf of law-improvement organizations, and in this sense is less restrictive than the exception contained in Canon 4C(3)(b)(i). At the same time, it is more restrictive in that it limits the object of the solicitation to governmental agencies, excluding judges over whom the judge exercises no supervisory or appellate authority and excluding private fund-granting agencies. Thus, if the commentary were addressed to Canon 4C(3)(b)(i), it would need modification.

If use of a letterhead is not-covered by Canon 4C(3)(b)(i) ("personal [] participat[ion]" in solicitation of funds or fund-raising), it would be prohibited only by Canon 4C(3)(b)(iv), which provides that a judge "shall not use or permit the use of the prestige of judicial office for fund-raising...." Use of the letterhead would be considered a use of the prestige of judicial office for fund-raising, and thus would be prohibited, subject to the exception stated in the commentary for fund-raising, on behalf of any charitable organization, directed to a governmental agency. This interpretation, however, yields an illogical incongruity. A judge who was on the board of directors of a law-improvement organization like the CCE could, under Canon 4C(3)(b)(i), personally solicit funds from a private fund-granting agency, but could not, under

Canon 4C(3)(b)(iv), allow his or her name to be used on a letterhead in a solicitation addressed to that same agency. A judge could personally solicit funds, on behalf of any charitable organization, from judges over whom the judge held no appellate or supervisory authority, but could not allow his or her name to appear on a letterhead in a statement directed to those same judges. Yet, the danger of use of the prestige of judicial office would, if anything, be greater in personal fund-raising than in use of the judge's name on a letterhead.

Faced with the difficulties in interpretation we have discussed above, the committee is of the view that use of a letterhead should be considered "personal participat[ion]" in fund-raising, subject to the general prohibition, with its exceptions, contained in Canon 4C(3)(b)(i). As we have recounted, this committee, when it drafted the present code, initially agreed with the Judicial Tenure and Disabilities Commission's recommendation that there be a total ban on use of a judge's name on a letterhead in fund-raising. This approach is consistent with the general rule in Canon 4C(3)(b)(i) banning personal participation in fund-raising. The drafters of the Code recognized a need for an exception to that ban for solicitations directed to governmental agencies. Canon 4C(3)(b)(i) also contains an

exception for solicitations, on behalf of law-improvement organizations, to governmental agencies. It is true that Canon 4C(3)(b)(i) contains additional exceptions for solicitations on behalf of law-improvement organizations directed to private fund-granting agencies and for solicitations directed to judges over whom the judge possesses no supervisory or appellate authority. Since solicitations by a letter containing a judge's name on the letterhead present less danger of misuse of judicial prestige than personal participation in fund-raising, applying those exceptions to letterhead fund-raising is consistent with the policies underlying Canon 4C(3)(b)(i). On the other hand, if fund-raising by letter with the judge's name on the letterhead were not considered personal participation, such a solicitation on behalf of an organization like the CCE would be more restricted than personal fund-raising. The committee considers this result inconsistent with the canon's intent to permit, in limited situations, fund-raising on behalf of law-improvement organizations, and to permit solicitation of funds from other judges over whom the judge exercises no supervisory or appellate authority.

Accordingly, we conclude that use of a judge's name on a letterhead accompanying a fund-raising solicitation is

prohibited, unless the solicitation is directed to a judge over whom the judge exercises no supervisory or appellate authority, or, if made on behalf of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice, is directed to private and governmental fund-granting agencies. Since the CCE is a civic, charitable organization, the express purpose of which is the improvement of the administration of justice, a judge may allow his or her name to appear on the CCE's letterhead in a solicitation for funds without violating 4C(3)(b)(i), so long as the solicitation meets the foregoing conditions.