

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 04-01
(March 19, 2004)

Charitable Activities of Court Employees

Issues

1. May court employees organize charitable activities to help the poor and needy?

Answer: Yes, with qualifications.

2. If so, may court managers or judicial officers express their charitable interests?

Answer: No.

Facts

The presiding judge of a juvenile court and the court's administrator seek guidance about whether and to what extent probation officers and other court staff may volunteer to raise funds for local charities. Court employees would like to know whether they may organize charitable events, gather food and clothing for needy families and children in the court's jurisdiction, or establish a food bank or clothing bank for the same purpose. They also want to know if they may provide families with food baskets during times of need, and whether court managers or judicial officers are permitted to express their charitable desires.

Discussion

Issue 1

Nothing in our Code of Conduct for Judicial Employees ("employee code") was intended to prevent court staff from helping the poor and needy. Indeed, the charitable activities inquired about are highly commendable, and judicial employees are to be greatly praised for their generosity. The underlying ethical issue is not *whether* court employees may participate in service projects or other charitable endeavors, but *under what circumstances* they may do so.

Canon 4D of the employee code states "Judicial employees shall not use their positions or offices to solicit funds, but judicial employees, other than members of a judge's personal staff, courtroom clerks, or court managers, may solicit funds in connection with outside activities." We note, first, that Canon 4D applies to the present inquiry even though the quoted language refers to solicitation of "funds" and the court employees would be soliciting contributions of food and clothing. "Funds" are only important for what they can buy, and the use of the word "funds" implies anything of economic value. In Opinion 00-06, Issue 12, this committee stated that it would be impermissible for a judge to solicit lawyers to donate their time for *pro bono* legal services: "[A]dopting the adage that 'time is money,' at least with respect to professional services by attorneys, we see no meaningful

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distinction between judicial solicitation of funds and of time from lawyers.” Similarly, we find no meaningful distinction between solicitation of funds and of the things funds can buy.

The commentary to Canon 4D of the employee code explains the rule as follows:

Judicial employees should not personally request subordinates to contribute funds to any organization or activity but may provide information to them about a general fund-raising campaign. A member of a judge’s personal staff, the courtroom clerk, or a court manager should not request any judicial employee to contribute funds under circumstances where their close relationship to the judge could reasonably be viewed to give weight to the request.

The canon and its commentary are in accord with Opinion 94-15, Issue 2, decided before the adoption of the employee code. In that opinion, we stated that a *court* could not endorse a city’s program of charitable giving, but that individual *judicial employees* could promote it:

A court acting in its role as a division of local government may circulate the information [about the program] provided by the city as long as the administrator and the judges refrain from endorsing the program. Court personnel, other than judges, may solicit funds for charitable organizations, churches or civic projects as long as the prestige of the judges or the court is not used for this purpose and the employees act in an unofficial capacity and not on behalf of the court. The solicitation cannot interfere or conflict with the official duties of the court or court personnel and the appearance of impropriety must be avoided. [Citations omitted.]

From the foregoing we conclude that court staff may organize, promote, and participate in charitable projects—and may solicit contributions for those projects—subject to the following qualifications: (1) court employees themselves must undertake the charitable efforts voluntarily, and not at the direction or urging of judicial officers or court managers; (2) the employees must act as private persons, and neither use nor appear to use their official positions to further the charity; (3) employees in supervisory positions should not solicit contributions from their own subordinates, although they may give subordinates general information about the charitable efforts; and (4) court managers, courtroom clerks, and judge’s personal staff should not solicit contributions from any other judicial employee unless it is clear that they are not invoking the authority of the court or any judge.

Issue 2

Canon 4C(4)(b) of the Code of Judicial Conduct provides that “[a] judge should not solicit funds for any . . . charitable . . . organization, or use or permit the use of the prestige of office for that purpose” Under Opinion 97-10, “[t]his prohibition extends to judicial staff, court officials and administrators and others subject to the judge’s direction and control.”

A judge (or judicial staff under the judge’s direction and control) who expresses his or her charitable interests—that is, concerning which families or individuals should receive food baskets—may not be soliciting material assistance for a charitable *organization* but is soliciting

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assistance for a charitable *purpose*. We believe that such expressions of charitable interest are highly problematic. Court employees involved in the charitable effort may be reluctant to disagree with a judge's or judicial manager's charitable interests, and may feel pressured to comply with them. Also, litigants might try to curry favor with a particular judge if they believe that judge may be in a position to reward them. We therefore believe that judges and judicial managers, as well as judicial staff under the direction and control of a judge, must refrain from expressing their charitable interests and must leave the operation and management of the charitable activities to others.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 4C(4)(b) (1993).

Arizona Code of Conduct for Judicial Employees, Canon 4D and Commentary (1997).

Other References

Arizona Judicial Ethics Advisory Committee, Opinions [00-06](#) (Dec. 18, 2000); [97-10](#) (Aug. 8, 1997); [94-15](#) (Dec. 14, 1994).