

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman
Hon. Thomas A. Donnelly
Prof. William T. MacPhearson, Jr.
Hon. Marie A. Baca

March 5, 1999

Honorable

Re: Judicial Advisory Opinion 99-03

Dear

You have requested an advisory opinion from this Committee regarding whether there would be any ethical problems which would prevent you from accepting an invitation to serve on the Board of the _____. We are advised that the Foundation is the fund-raising arm of the _____ and that the Foundation is dedicated to encouraging charitable activities, conducting research, developing alliances, promoting education, and preserving the court reporting heritage.

You have indicated that the Foundation has asked you to serve a three-year term as a public member and that as a member of the Board, you would, among other things, help formulate policies for the distribution of funds consistent with the mission statement of the Foundation. As we understand it, the Foundation would not expect you to personally solicit any funds. The Foundation does, however, ask its members to support its fund-raising programs by purchasing tickets to special events or playing in its annual golf tournament. As a member of the Board, your name and judicial designation would appear on the Foundation's letterhead that would be used for fund-raising and membership solicitation.

The information provided to us also indicates that the Foundation is a charitable, nonprofit organization and it does not appear likely that either the Foundation _____ would ordinarily appear before you as a _____ in any court subject to the _____ jurisdiction of the _____.

The following provisions of Canon 21-500(C) of the Code of Judicial Conduct are pertinent to your inquiry:

C. Governmental, civic or charitable activities.

...

(3) A judge may serve as an officer, director, trustee or non-legal advisor of [a] charitable organization not conducted for profit, subject to the following limitations and other requirements of this Code:

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge; or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member .

(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 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;

...

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

The Commentary for Paragraph 21-500C(3)(b) provides:

A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: (1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority...

Use of an organization letterhead for fund-raising or membership solicitation does not violate Paragraph C(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 New Mexico Judicial Advisory Opinion 97-03, we concluded that a part-time municipal judge, who was subject to the requirements of Canon 21-500(C)(3) could properly participate as a member of an advisory board for a fund-raising project to send high school students to an international drama festival. In that instance, we were advised that the municipal judge's name and judicial designation would appear on letterhead with the other board members and would be sent out for fund solicitation, but that the judge's position would not be selectively emphasized.

Our research indicates that an Ohio Advisory Committee, in Ohio Advisory Opinion 90-16, also considered an inquiry similar to that posed here. The Committee determined that a judge could serve as a trustee of a charitable nonprofit foundation and that the judge's name could be listed as a trustee along with similar information about the other trustees, so long as the judge's name and office were not selectively emphasized. The committee recognized that "potential donors to the foundation are entitled to know the names of the trustees." (Citing Thode, Reporter's Notes to Code of Judicial Conduct 80 (ABA 1973)). We believe that a similar result applies here. Thus, in our opinion, it would be ethically permissible for you to serve as a member of the Board, and your name and judicial designation could properly appear along with the other Board members to solicit funds, provided your name and judicial office are not selectively emphasized, and your signature is not the sole signature on such fund-raising correspondence or publications.

Canon 21-500(C)(3)(b) requires, however, that judges not personally participate in the solicitation of funds or other fund-raising activities. Accordingly, we do not believe it would be proper for you personally to directly participate in the Foundation's annual phone-a-thon, or other similar fund-raising events. This would not, however, foreclose you personally from making donations to or from participating in the planning or organizing of such fund-raising activities, so long as the prestige of your judicial office is not used for fund-raising purposes. See Canon 21-500(C)(3)(b)(iv) & Commentary.

In sum, it is our opinion that you are not ethically prohibited by the Code of Judicial Conduct from serving on the Board of the Foundation, subject to the requirements of Canon 21-500 and as noted above.

Respectfully yours,

Frank H. Allen, Jr.
Chairman, Judicial Advisory Committee