

Ethical Problems Involving Judicial Fundraising

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Hypothetical #1: At an annual CASA dinner the local juvenile court judge is the featured speaker. The judge tells the audience how valuable the program is to the children the judge sees in juvenile court every day. The judge explains that each advocate develops a personal relationship with a child. “Advocates give the court critical information about the child, information that only an individual who sees the child weekly would know.” Immediately after the judge sits down, the director stands up and asks everyone to bid on auction items in order to raise money for the program.

Is the judge’s speech ethical, or is the judge using his or her judicial position to raise money for the program?

Hypothetical #2: During the same speech, the judge also urges those present to consider becoming a volunteer for the local CASA program.

Is it ethical for the judge to encourage members of the audience to become a CASA volunteer?

Hypothetical #3: In another situation the judge and a staff member from a national judge’s association meet with a foundation representative. The judge explains how the court system works and the needs of the children and families in the juvenile court system. The staff member then asks for money that would benefit the juvenile court.

Is the judge’s conduct ethical?

Resolving these issues has challenged judges nationwide. Judges support their local CASA programs, and many also support national judicial organizations such as the National

Council of Juvenile and Family Court Judges, the National Judicial College, the National Center for State Courts, and the American Judges Association. These institutions and programs need money in order to continue their existence. Understandably these organizations turn to judges for support, and they would like the judge to be visible when fundraising. On the other hand, judges must adhere to the law including their state Code of Judicial Conduct. That code prohibits the judge from using the prestige of the judicial office for fundraising.

THE LAW:

What Judges Can Do

“Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which he or she lives.”² Thus, it is ethically permissible for a judge to assist in fundraising activities so long as the persons being solicited are not made aware of the judge’s participation.³

Judges 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.”⁴ Judges can serve in official positions on an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice.⁵ Judges can assist in fundraising activities and participate in the management and investment of the organization’s funds,⁶ and a judge’s name may appear on a fundraising letter so long as other persons listed have comparable designations.⁷ The judge’s name may be shown as being on the Honor Role of Contributors to the organization.⁸ A

judge “may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canon 4A(1), (2), and (3).⁹ A judge may also encourage lawyers to provide *pro bono* public legal services.¹⁰ A judge is permitted to take any role in community and charitable organizations so long as it does not involve fundraising.¹¹

In addition, statutes and standards of judicial administration encourage juvenile court judges to:

“Provide active leadership within the community in determining the needs of and obtaining and developing resources and services for at-risk children and families;”¹²

“Educate the community and its institutions through every available means, including the media, concerning the role of the juvenile court in meeting the complex needs of at-risk children and their families.”¹³

Judges may “solicit membership or endorse or encourage membership for an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, service, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism.”¹⁴

What Judges Cannot Do

Judges “shall not personally participate in the solicitation of funds or other fundraising activities.”¹⁵ The principle reason for the

prohibition on judicial fundraising for civic and charitable organizations is that judges should not use their considerable power and prestige to advance a private interest even for nonprofit enterprises and good causes.¹⁶ There are no exceptions for “really worthy charities.”¹⁷ Another reason for the prohibition against fundraising is that persons who may appear before the judge might feel coerced to give funds, and lawyers may want to curry favor with the judge by making large contributions.¹⁸

A judge “shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fundraising mechanism.”¹⁹

Examples of improper fundraising activities include the following:²⁰

1. Using the judicial office to coerce membership in an organization.
2. Seeking in-kind charitable donations (raffle tickets).
3. Being shown or publicly recognized as a member of a fundraising committee.
4. Signing a letter appealing for funds.
5. Soliciting donations for charitable organizations at any time.

ANALYSIS

Hypothetical 1: The judge may speak at the event, but should not make any statements regarding fundraising. Otherwise the clear implication would be that judge is a part of the fundraising solicitation.²¹ The judge should take steps to separate the judge’s speech from the fundraising portion of the program. For example, the judge might be the first speaker of the evening, followed by dinner, and then the other portion of the program including fundraising can take place. The judge may wish to discuss the order of presentations with the event planning committee so that the judge’s participation is separate and distinct from any fundraising. In that way the judge will not be “lending the prestige of the office to the fundraising event.”²²

Hypothetical 2: The judge may explain the need for volunteers and suggest that

people in the audience consider becoming CASA volunteers. The judge should not be coercive in making this suggestion and should identify someone in the room who would meet with any interested person. The judge should make it clear that the judge does not run the program, but is only telling the audience about the program’s value to the court and to the children served by the court.

Hypothetical 3: The judge should not accompany the CEO or staff member to the meeting with the foundation representative. It is true that the judge can ethically explain the needs of the court and how support by the foundation will enhance court operations. But the intimacy of a meeting with just a few persons gives the impression that the judge is a part of the fundraising team and that the judge’s presence is intended to support the fundraising process.²³ One approach would be for the judge to meet separately with the foundation representative and explain how the court system works and how the foundation support would benefit the court. The staff member or CEO could then meet separately with the foundation representative. The judge should plan to have these meetings at separate times so it does not appear that the judge is a part of the fundraising effort. Of course the judge may ethically write a letter to the foundation explaining the value of a particular program.²⁴

CONCLUSION

Tension exists between a judge’s duty to educate the community about the needs of the children and families who appear in the court and the ethical prohibition against judicial fundraising. The judge should attempt to separate the two. Each time someone asks the judge to participate in an event or meeting where fundraising may take place, the judge should learn of the details and take appropriate action. It may be that the judge will decline to participate, but if the judge does participate, it should be with the understanding that the judge’s participation will be separated from any fundraising activity. As stated in the California Judges Association Formal Ethics Opinion: “The judge is ultimately responsible for structuring his or her participation to avoid the appearance of

increasing donations by lending the prestige of office, and at all times to promote public confidence in the integrity of the office.”²⁵

Endnotes:

- 1 The author is indebted to Judges James Dabney, Barbara Kronlund, Katherine Lucero, and Thomas Hornsby (Illinois, Ret.) for their comments. The conclusions reached in the article are the author’s own.
- 2 Advisory Committee Commentary to Canon 4A.
- 3 California Judges Association, Ethics Opinion No. 41.
- 4 CJE canon 4C(3)(d)(ii)
- 5 CJE canon 4C(3)(a)
- 6 CJE canon 4C(3)(d)(i); Cal. Judges Assoc., Formal Ethics Opinion No. 41 (1989).
- 7 CJE canon 4C(3)(d) Advisory Committee Commentary
- 8 Rothman, D., California Judicial Conduct Handbook, 3rd Ed., § 10.50.
- 9 CJE canon 4C(3)(d)(iv). Judge David Rothman notes that even though the code allows this activity, that “does not prevent a judge from following a higher standard.” Rothman, D., op.cit. footnote 8 at § 10.48
- 10 CJE canon 4C(3)(e)
- 11 Cal. Judges Assoc., Formal Ethics Opinion No. 41 (1989).
- 12 Welfare and Institutions Code §202(d) and Standard of Judicial Administration §5.40 (e)(1)
- 13 Id.; SJA § 54.0(e)(7).
- 14 CJE canon 4C(d) Advisory Committee Commentary
- 15 Cal. Code Jud. Ethics, canon 4C(3)(d)(i) – except that judges may privately solicit from other judges, but not subordinate judicial officers.
- 16 Cal. Code Jud. Ethics, canon 2B; Rothman, op.cit., footnote 8 at §10.43.
- 17 CJE canons 2A 2B(1), & 2B(2); Rothman, Id, at §10.42.
- 18 Rothman, Op.Cit., footnote 5 at §10.43
- 19 CJE canon 4C(3)(d)(iii)
- 20 These examples are taken from Rothman, D., op.cit., footnote 8 at §10.44.
- 21 California Judges Association, Opinion #41.
- 22 CJA Formal Ethics Opinion No. 41 at p. 4, and see Judge Rothman’s comment in footnote 9.
- 23 Judge Rothman addresses this issue by saying: “...a judge should not be present at a small private solicitation meeting where, even without the judge’s speaking, the potential donor could not help interpreting the judge’s presence as intended to influence the donation.” Rothman, op.cit., footnote 8 at §10.53
- 24 CJE canon 4C(3)(d)(ii).
- 25 CJA Formal Ethics Opinion #41 at p. 5. ●