

Supreme Court Advisory Committee on the Code of Judicial Ethics

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INVITATION TO COMMENT

SP19-06

Title

Proposed Amendments to Canon 4C(3)(d)(i)
of the Code of Judicial Ethics

Action Requested

Review and submit comments by
December 2, 2019

Proposed by

Supreme Court Advisory Committee on the
Code of Judicial Ethics
Hon. Richard D. Fybel, Chair

Proposed Effective Date

April 1, 2019

Date

October 1, 2019

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Summary

The Supreme Court Advisory Committee on the Code of Judicial Ethics proposes amendments to canon 4C(3)(d)(i) and its commentary. These proposed amendments would allow a judge to solicit funds for an organization from retired judges who are not serving in the Temporary Assigned Judges Program, practicing law, or providing alternative dispute resolution services. Currently, a judge may solicit funds only from family members or “other judges,” but not from subordinate judicial officers, temporary judges, or any retired judges. After receiving and reviewing comments on this proposal, the committee will make recommendations to the Supreme Court regarding the proposed amendments. The full text of the proposed amendments is attached.

Discussion

Canon 4C(3)(d)(i) states that a judge “shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from members of the judge’s family or from other judges (excluding court commissioners, referees, retired judges, court-appointed arbitrators, hearing officers, and temporary judges).” Thus, under the canon, a judge may not solicit funds from retired judges. The committee considered whether the prohibition against soliciting funds from retired judges should be limited to retired judges serving in the Temporary Assigned Judges Program (TAJP) (formerly the Assigned Judges Program), practicing law, or providing alternative dispute resolution services (ADR).

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

The justification for including judges in the TAJP in the ban is that an assigned judge's livelihood could theoretically be affected if he or she declined to donate money at the request of a judge in the court. A retired judge in the program may feel pressured to contribute to ensure he or she will be given future assignments to that court. There is no corresponding concern with regard to retired judges who are not involved in the TAJP.

In 2018, the court adopted a different canon that distinguished between assigned judges and other retired judges based on this same reasoning. Canon 5B(4) prohibits judges from soliciting campaign contributions and endorsements from retired judges in the TAJP, but allows solicitation of other retired judges. The committee proposed adoption of that distinction in the campaign solicitation context because no pressure can be brought to bear against retired judges not participating in the TAJP. Similarly, in the context of fundraising, the committee proposes amending the canon to allow judges to solicit funds from retired judges not serving in the TAJP.

Regarding retired judges who have returned to the practice of law or who provide ADR services, judges may not solicit charitable contributions from lawyers, so ADR providers and attorneys who were never judges may not be solicited. There is no basis for distinguishing between those who are former judges but are now active in the law and those who are not former judges in terms of who may be solicited. In addition, former judges who have returned to the practice of law may appear before the judge who is engaged in fundraising or the court on which that judge serves.

Canon 4C(3)(d)(i) and its commentary would be amended to read:

CANON 4

**A JUDGE SHALL SO CONDUCT THE JUDGE’S QUASI-JUDICIAL AND
EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF
CONFLICT WITH JUDICIAL OBLIGATIONS**

A. – B. * * *

C. Governmental, Civic, or Charitable Activities

(1) – (2) * * *

(3) Subject to the following limitations and the other requirements of this code,

(a) – (c) * * *

(d) a judge as an officer, director, trustee, nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization’s funds. However, a judge shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from members of the judge’s family or from other judges (excluding court commissioners, referees, ~~retired judges~~, court-appointed arbitrators, hearing officers, ~~and~~ temporary judges, and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services);

(ii) – (iv) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(d)

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice, or a nonprofit educational, religious, charitable, service, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds or memberships for an organization similarly involves the danger that the person solicited will feel obligated to respond favorably if the solicitor is in a position of influence or control. 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 other judges (excluding court commissioners, referees, ~~retired judges~~, court-appointed arbitrators, hearing officers, ~~and~~ temporary judges, and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services) for funds or memberships; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated

45 *are likely ever to appear before the court on which the judge serves; and (3) a judge who is an*
46 *officer of such an organization may send a general membership solicitation mailing over the*
47 *judge's signature.*

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51 (e) * * *

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53 **D. -H.** * * *