

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: March 9, 2007

ADVISORY OPINION 07-880

### A JUDGE'S DIRECT SOLICITATION OF OTHER JUDGES FOR A CHARITY AND PUBLICATION OF THE DONORS

#### ISSUE

May a judge solicit charitable contributions from other judges, where the fact of said contributions will be disclosed in the charity's publicity campaign? Answer: No.

#### FACTS

A district judge is a board member of a charity that raises contributions through its "Heroes"-for-the-charity fund-raising campaign. Each "hero" commits to raise \$1,000 and will be spotlighted in the local newspaper and highlighted in the charity's publicity efforts. Each board member is encouraged to enlist as a "hero." The judge proposes to raise his \$1,000 commitment by soliciting contributions from other judges – municipal judges and state court judges – and to have all contributing judges collectively recognized as a "hero," as well as individually by name and judicial title.

#### DISCUSSION

Canon 5B(2) states that "[i]t is desirable that a judge not solicit funds" for any charitable organization and that a judge may not "use or permit the use of the prestige of his office" for such activities. In applying the Canons, the Commission has consistently stated that a judge is prohibited from directly soliciting charitable contributions. See Alabama Advisory Opinions 97-682 ("the judge should not directly solicit ... donations"); 93-492 (Canon 5B(2) provides that "a judge should not become personally involved in the direct solicitation of funds"); 86-262 (a judge "should not himself solicit funds"); 04-834 ("the judge should refrain from personally asking

for contributions when he has been identified as a judge"). See, e.g., Alabama Advisory Opinions 07-878 (a judge may not send a letter on judicial letterhead stationary directly soliciting start-up supplies for his proposed sentencing program); 00-768 (a judge may not ask, by letter, members of the local bar association for support for the Legal Aid program even if the letter is on plain paper and mailed in a plain envelope with the judge's home address, the judge pays for postage, and he does not use his judicial title). But see Alabama Advisory Opinion 88-324 ("direct solicitation of funds is to be discouraged").

In determining whether the direct-solicitation prohibition encompasses peer solicitation, i.e., judge-to-judge solicitation, it is noteworthy that Alabama's Canons do not contain a judge-to-judge exception to the prohibition of personal, direct solicitation. Compare American Bar Association, Model Code of Judicial Conduct, Canon 4C(3)(b) (1990) ("[A] judge ... shall not personally participate in the solicitation of funds ..., except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority."). Without an exception in the Alabama Canons, it would be inappropriate for a judge to directly solicit from other judges for donations to charitable causes. Cf. New York Advisory Opinion 96-83.

Moreover, we are persuaded by the rationale of Arizona Judicial Advisory Opinion 95-20. After observing that Arizona's applicable canon prohibiting solicitation for charitable organizations addresses dual concerns that potential donors may be intimidated into making contributions or may expect future favors for their donations, the opinion states:

The issue of judges soliciting their peers for charitable purposes involves several of the same concerns. The soliciting judge may be a senior member of the bench, a judge having assignment authority, or perhaps an aggressive judge. Likewise, the judge solicited may be new to the bench or one dependent on other judges for assistance. The potential of coerciveness clearly exists.

Cf. Advisory Opinions 06-862 and 03-808 (a judge's participation in fund-raising activities presents a danger that the prestige of the judicial office will be used and that the person solicited will feel obligated to respond favorably).

Finally, the judge's proposed plan, particularly the publication of the results of the solicitation for the purpose of encouraging others to contribute, would violate the rule that a judge may not use his official position, judicial title, or official letterhead stationary in any fund-raising activity. Alabama Advisory Opinion 06-862. See, e.g., Alabama Advisory Opinion 00-753. Such recognition would lend the prestige of his judicial office, as well as that of the other judges, to the charity for the purpose of soliciting funds, contrary to Canons 2 and 5B(2). See Advisory Opinion 82-166 (a non-judicial officer, rather than the judge who founded a juvenile facility and serves as its director, must accept a donation to the building fund because the judge's acceptance would create an unnecessary risk that the prestige of his office would be used, albeit indirectly, for fund-raising). See also Florida Advisory Opinion 2003-15 (even in a jurisdiction allowing judge-to-judge solicitation, the results of that solicitation may not be published if the purpose is to use the prestige of the judicial office to encourage

others to contribute). In addition, public recognition of judicial donors collectively as a "hero" for the charity would portray the campaign as a project of local judges and thus place an official imprimatur upon the charity and its campaign. See Florida Advisory Opinion 96-27.

In conclusion, a judge may not directly solicit charitable contributions from other judges, with the plan that a list of the donors would be promoted and publicized in future fund-raising activities.

#### REFERENCES

Alabama Canons of Judicial Ethics, Canons 2 and 5B(2)

Alabama Advisory Opinions 07-878, 06-862, 04-834, 03-808, 00-753, 97-682, 93-492, 88-324, 86-262, and 82-166

American Bar Association, Model Code of Judicial Conduct, Canon 4C(3)(b) (1990)

Arizona Judicial Advisory Opinion 95-20

Florida Advisory Opinion 2003-15 and 96-27

New York Advisory Opinion 96-83.

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This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: [jic@alalinc.net](mailto:jic@alalinc.net).