



Ohio Board of Professional Conduct

OPINION 2023-01

Issued February 3, 2023

Withdraws 2004-13

Judge Soliciting Donations for Specialized Docket Court

SYLLABUS: A judge may not sign a letter soliciting local businesses to donate items for use as program rewards and incentives for participants in a specialized docket court. A court employee, at the direction of a judge, may not solicit local businesses to donate items for use as program rewards and incentives for participants in a specialized docket court.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

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APPLICABLE RULES: Jud.Cond.R. 1.2, 1.3, 2.4, 2.11, 2.12, 3.1, 3.7

QUESTIONS PRESENTED:

- 1). May a judge sign a letter soliciting local businesses to donate items for use as program rewards and incentives for participants in a specialized docket court?
- 2). May a judge direct a court employee to solicit such donations?

OPINION:

A municipal court judge has established a mental health court as a specialized docket certified under Supreme Court rule. Sup.R. 36.20. The judge desires to use items of *de minimis* value, such as umbrellas, gloves, hats, and gift certificates, as rewards and incentives for mental health court participants. The judge proposes to distribute a signed letter soliciting donations from local businesses and to also direct court employees to directly solicit businesses for the items.

Impermissible solicitation

Judges are prohibited from soliciting donations or contributions for organizations including governmental entities. Jud.Cond.R. 3.7 (A)(2). Because a court is a governmental entity, the solicitation of funds, services, or goods on behalf of a court by a judge for a specialized docket program is prohibited, even though the court would directly or indirectly benefit from the ensuing contribution or donation. ABA Op. 08-452 (2008). A judge's staff is also prohibited from soliciting donations from local businesses due to the judge's duty to ensure that staff subject to the judge's direction and control act in a manner consistent with the judge's obligations under the Code of Judicial Conduct. Jud.Cond.R. 2.12. A judge's staff cannot be directed to engage in a solicitation when the judge is prohibited from engaging in such conduct under the Code of Judicial Conduct.

By contrast, the Code of Judicial Conduct does not prohibit a judge from seeking grant funds to establish or support a specialized docket program in his or her own court. Jud.Cond.R. 3.7(A)(6); ABA Op. 08-45. Jud.Cond.R. 3.7(A)(6) specifically permits a judge to make a grant application in support of the operation of his or her court when the grant-making organization is concerned with the law, the legal system, or the administration of justice. *Id.*

Other ethical considerations

A judge must always act in a manner that does not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. Jud.Cond.R. 3.1(C). The solicitation of donations from businesses, especially those that may have matters before the court or that are seeking or doing business with the court, may raise reasonable questions as to the judge's impartiality, create an appearance of impropriety, and erode the public's overall confidence in the judiciary. Jud.Cond.R. 1.2. When engaging in any extrajudicial activity, a judge must not act in a manner that could be perceived as coercive. A solicitation by a judge for a donation to a court, while impermissible under the Code of Judicial Conduct, could be perceived as coercive by the recipient of the request. Jud.Cond.R. 3.1(D); Jud.Cond.R. 3.1, cmt.[4] (a judge's solicitation might create the risk that the person solicited would feel obligated to respond favorably or would do so to seek favor with the judge.) The solicitation and receipt of donations from frequent

parties in litigation before the court may also give rise to potential disqualification issues. Jud.Cond.R. 2.11.

Soliciting local businesses for donations when performed by a judge or employee on behalf of the court potentially implicates the prohibition against abusing the prestige of office or allowing others to do so. Jud.Cond.R. 1.3. When a judge makes a solicitation in his or her official capacity on behalf of the court, a prospective donor may feel compelled to contribute or, after donating, believe that he or she is able to influence the judge in the future or trade on the prestige of the judicial office. This is especially true if the business or business owner is a frequent party before, or does business with, the soliciting judge's court. An additional rule requiring a judge to avoid permitting others to convey an impression that a person or organization is in a position to influence the judge further reinforces the prohibition against solicitation of local businesses by judges. Jud.Cond.R. 2.4. Acting contrary to Jud.Cond.R. 2.4 also creates the potential for an appearance of impropriety. Jud.Cond.R. 1.2.

While neither a judge nor a member of his or her staff may solicit donations or contributions from local businesses under the Code of Judicial Conduct, this advisory opinion does not address a court's acceptance of unsolicited donations or contributions. *See Adv. Op. 2004-05* (the acceptance of unsolicited and generous donations by court prohibited under some circumstances.)

Inapplicability of Ohio Ethics Law

Judicial officers and employees are subject to the Ohio Ethics Law. R.C. 102.01(B). R.C. 102.03 prohibits the misuse of public office to secure, solicit, or accept a thing of value that is of such a character as to manifest a substantial and improper influence with respect to official duties. Because the donated items under the facts presented would be used as a reward or incentive for mental health court participants, and not result in any personal or economic benefit to the judge, the statutory prohibition does not apply to the solicitation or receipt of donations by a judge. This Board has previously opined that the donation of a thing "of value to a court [is] distinct from donations of things of value made to individual judicial officers and employees" and consequently is not prohibited under the Ohio Ethics Law. *Adv. Op. 2004-06*. Notwithstanding the inapplicability of

the Ohio Ethics Law to the questions presented, the Code of Judicial Conduct prohibits the solicitation of a donation or contribution to a court by a judge or his or her staff.