

**Colorado Supreme Court  
Judicial Ethics Advisory Board (C.J.E.A.B.)**

**C.J.E.A.B. ADVISORY OPINION 2006-07  
(Finalized and effective September 18, 2006)**

**ISSUE PRESENTED**

The requesting district court judge has asked for guidance as to whether, consistent with the Code of Judicial Conduct, he may engage in certain activities in connection with the pending citizens' initiative (Amendment 40), which would limit the terms of appellate judges, by contributing to organizations campaigning in regard to the initiative, speaking to civic groups about it, or taking a position on judicial term limits in the editorial pages. In his request, the judge suggests that there is some tension between Canon 4, which encourages judges to engage in activities to improve the law, the legal system, and the administration of justice, and Canon 7, which cautions judges to refrain from political activity inappropriate to the judicial office. Regarding his request to make a contribution to organizations concerned with Amendment 40, the judge observes that Canon 7A(1)(c), which prohibits a judge from making a contribution to a political organization, seems to conflict with Canon 7A(1)(d), which allows judges to engage in political activity on behalf of measures to improve the law, the legal system, the administration of justice, or the role of the judiciary as an independent branch of government. May the judge engage in the proposed activities?

**CONCLUSIONS**

The judge may engage in the proposed activities. The judge may make a monetary contribution to a group advocating for or against Amendment 40 so long as the group is not a partisan "political organization." Additionally, the judge may speak to civic groups about the measure and write editorials opposing or promoting it because such political activity implicates the law, the legal system, the administration of justice, and the role of the judiciary as an independent branch of government and thus is expressly permitted under Canons 4 and 7.

**APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL  
CONDUCT**

On the one hand, Canon 4 encourages judges to engage in activities to improve the law, the legal system and the administration of justice, provided that in so doing the judge does not compromise his or her ability to decide impartially any issues that may come before the judge. Specifically, Canon 4A provides that "A judge is encouraged to speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice, including the role of the judiciary as an

independent branch within our system of government.” Canon 4C encourages a judge to serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, the judicial branch or the administration of justice. Under Canon 4C, a judge may assist such an organization in its fund-raising efforts, but the judge shall not personally solicit funds for such an organization.

On the other hand, Canon 7 directs that a judge should refrain from political activity inappropriate to his or her judicial office. Canon 7A(1)(c) instructs that a judge shall not solicit funds for or make a contribution to a political organization or candidate, attend political partisan gatherings, or purchase tickets for political party dinners or similar functions. Canon 7A(1)(d) specifies that a judge “shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, the administration of justice, or the role of the judiciary as an independent branch of government.” And Canon 7C provides that a judge may attend and participate in nonpartisan gatherings at which legal or social issues are addressed, provided that the judge neither discusses cases in which he or she has participated which are not final nor states how the judge would rule on any case that might come before the judge.

## DISCUSSION

Provided that a judge’s impartiality is not endangered, Canon 4 supports a judge’s participation in activities designed to educate the public about the legal system, such as public speaking, writing, lecturing, and teaching, as well as a judge’s efforts to improve the law, legal system, administration of justice, or legal branch.

However, Canon 4’s broad call to judges to speak out on important issues concerning the law, the legal system, and the administration of justice appears to create some tension with Canon 7’s prohibitions against a judge engaging in political activity inappropriate to his or her office. Thus, the question becomes whether the activities about which the requesting judge inquired – making a monetary contribution to Amendment 40 groups, speaking to civic groups about the measure, or writing editorials addressing the amendment – constitute permissible activity within the meaning of Canon 4 or forbidden political activity that is inappropriate to the judge’s office within the ambit of Canon 7. We generally conclude that the activities are permissible under Canon 4 and fall within Canon 7A(1)(d)’s exception to the prohibition against political activity by judges because the subject matter of the activities is a proposal to change the tenure of appellate judges and thus is a matter that concerns the legal system and the administration of justice.

To more specifically answer the first part of the judge’s question – whether the judge may make a contribution to an Amendment 40 organization – we must determine, as a preliminary matter, whether such an organization constitutes a “political organization” within the meaning of Canon 7, which does not define this phrase. Indeed, the phrase is defined nowhere in the Canons. When read as a whole, however, Canon 7 suggests a narrow meaning of the phrase. See *People v. Yascavage*, 101 P.3d 1090 (Colo. 2004) (noting that in construing a statute, words and phrases are to be read in context). Canon

7A(1)(b) forbids a judge from making speeches for a political organization or candidate or publicly endorsing a candidate for public office. Canon 7A(1)(c) specifies that a judge shall not “solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political partisan gatherings, or purchase tickets for political party dinners or other similar functions.” Taken together, this list of prohibited activities evinces a concern with a judge’s participation in partisan political activity. Hence, we conclude that in prohibiting a judge from making a contribution to a “political organization or candidate,” the Canon is concerned with restricting a judge from engaging in partisan political activity.

Further, a construction of “political organization” that avoids judicial entanglement in partisan political activity would harmonize the term’s meaning as it is used in Canon 7 with its meaning in the ABA’s Model Code of Judicial Conduct, as well as in Colorado’s statutory scheme. The definition of “political organization” in the ABA Model Code of Judicial Conduct specifies that a “‘political organization’ denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to public office.” *See* ABA Model Code of Judicial Conduct (2004), Preamble- Terminology at [http://www.abanet.org/cpr/mcjc/pream\\_term.html](http://www.abanet.org/cpr/mcjc/pream_term.html) #TERMINOLOGY. Similarly, Colorado’s election code defines a “political organization” as “any group of qualified electors who, by petition for nomination of an unaffiliated candidate as provided in section 1-4-802, places upon the official general election ballot nominees for public office.” § 1-1-104(24), C.R.S. *See also* Colo. Const. Art. XXVIII (not addressing “political organizations,” but distinguishing between a “political committee,” which “support[s] or oppose[s] the nomination of one or more candidates,” and an “issue committee,” which “has a major purpose of supporting or opposing any ballot issue.”). The Secretary of State’s Office has developed rules regarding what an entity must do to qualify as a “political organization” within the meaning of the statutes, most of which are directed at ensuring that the organization regularly places a candidate on the ballot and prescribing how eligible electors may register themselves as affiliated with the political organization. *See* <http://www.elections.colorado.gov/WWW/default/Rule%20Making/2006/electionrules%206-14-06.pdf>.

In sum, the phrase “political organization” is uniformly defined to implicate partisan political activity. Hence, we conclude that groups whose *only purpose* is supporting or opposing Amendment 40 are not “political organizations” within the meaning of Canon 7 because such groups do not promote candidates but are devoted only to a specific initiative related to change in the judicial system. Further, we note that Amendment 40 is a nonpartisan issue, and organizations whose sole purpose is to promote or oppose its passage are not thereby engaged in furthering the agenda of a particular party. Accordingly, Canon 7 does not prohibit a judge from contributing to such an organization.

In considering the second part of the judge’s question – whether he may speak to civic groups and write editorials about the amendment – we determine that such activity is encouraged by Canon 4 and permitted by Canon 7A(1)(d). Canon 7A(1)(d) creates an

exception to its general ban on judicial participation in political activity. That subsection provides that the only permitted “political activity” involves measures to improve the law, the legal system, the administration of justice, or the role of the judiciary as an independent branch of government. Canon 4, as discussed above, encourages judges to involve themselves in such measures. Thus, both Canon 4 and Canon 7 recognize that, in light of a judge’s unique position and experience, the judge may engage in political activity involving measures that concern the law, the legal system, the administration of justice, or the role of the judiciary as an independent branch of government, so long as the judge’s impartiality is not compromised. This conclusion is consistent with those of our sister jurisdictions. *See* Kansas Ad. Op. JE5; Ariz. Ad. Op. 96-08.

In concluding that the judge may engage in the requested activities, however, we reiterate Canon 4C’s prohibition against a judge personally soliciting funds on behalf of an organization promoting or opposing Amendment 40. Although Canon 4C permits a judge to assist an organization devoted to improvement of the law, the legal system, the judicial branch, or the administration of justice in its fund-raising efforts, the judge shall not personally solicit funds for such an organization.

Finally, we note that our authority extends only to advising whether the proposed activity comports with the Colorado Code of Judicial Conduct.

**FINALIZED AND EFFECTIVE** by the Colorado Judicial Ethics Advisory Board this 18th day of September, 2006