

Colorado Supreme Court
Colorado Judicial Ethics Advisory Board (CJEAB)

C.J.E.A.B. Advisory Opinion 2013-04
(Finalized and effective August 19, 2013)

ISSUE PRESENTED:

The requesting judge has been asked to contribute a handcrafted mask to be displayed at a shopping mall and sold in an online auction for The Mask Project, an annual fundraiser for The Denver Hospice. Artists, celebrities, sports figures, and community leaders contribute masks to The Mask Project, and the gallery exhibit and online auction identify who contributed each mask. The judge indicated that her mask would identify her as a judge, but that she would not directly solicit bids or contributions. She requested an opinion addressing whether she may contribute a mask to The Mask Project or whether doing so would violate Rule 3.7 of the Colorado Code of Judicial Conduct (Code).

CONCLUSIONS:

Contributing a mask to be sold at a fundraising event for The Denver Hospice is the equivalent of soliciting a contribution or fundraising for the organization, and is therefore prohibited by Rules 3.7(A)(2) and (4).

APPLICABLE PROVISIONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Rule 1.3 provides that a judge “shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”

Rule 3.1(C) and (D) provide that when engaging in extrajudicial activities, a judge shall not “participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality,” or “engage in conduct that would appear to a reasonable person to be coercive.”

Rule 3.7(A)(2) provides that a judge may solicit contributions on behalf of “educational, religious, charitable, fraternal, or civic organizations not conducted for profit . . . , but only from members of the judge’s family, or from judges over whom the judge does not exercise supervisory or appellate authority.”

Rule 3.7(A)(4) provides that judges may appear or speak at, receive an award or other recognition at, be featured on the program of, and permit his or her title to be used in connection with an event of a non-profit charitable organization, “but if the event serves a fundraising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice.”

DISCUSSION:

The issue raised by the judge’s request is the extent to which a judge may indirectly solicit contributions from the public on behalf of a non-profit organization that is not law-related. We conclude that the clear language of Rules 3.7(A)(2) and (4) prohibits both active and passive participation in fundraising on behalf of such organizations.

Rule 3.7(A)(2) prohibits judges from soliciting contributions for a non-profit organization from individuals other than family members and judges over whom the judge has no supervisory or appellate authority. Based on this clear and specific fundraising restriction, the Board has consistently advised judges against direct personal involvement in fundraising for charitable and civic organizations. *See* CJEAB Adv. Op. 2012-01 (collecting opinions interpreting the solicitation prohibition in the pre-2010 Code and concluding under the current Code that a judge may not sign grant applications on behalf of a non-profit organization, even if the judge’s title is not used on the application). Indeed, in CJEAB Adv. Op. 2012-01, we concluded that “the Code’s prohibition against a judge engaging in fundraising and soliciting contributions is so clear that the Board must hew to a bright-line rule” prohibiting any solicitation activities other than those specifically permitted by the Rule.

The solicitation prohibition is rooted in concerns about the misuse of the prestige of judicial office and the potentially coercive effect of a judge’s involvement in fundraising. *See id.*; C.J.C. Rule 3.1, cmt. 4, and Rule 3.7, cmt. 3; *see also* C.J.C. Rules 3.1(C) and (D) (prohibiting extrajudicial activities that may be perceived as coercive or as compromising a judge’s independence, integrity, and impartiality). Because those concerns are mitigated when the organization involved is law-related, the Code permits judges to participate in fundraising events of law-related organizations if the participation is limited to “speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with [the] event.” C.J.C. Rule 3.7(A)(4).

Thus, with respect to law-related organizations, the Code distinguishes between active and passive fundraising efforts, strictly prohibiting the former, but permitting some forms of the latter. *Compare* C.J.C. Rule 3.7(A)(2) (prohibiting solicitation other than from family members and judges over whom the judge has no supervisory or appellate authority), *with* C.J.C. Rule 3.7(A)(4) (permitting judge to allow organization to use judge’s title in fundraising event but only if the organization “concerns the law, the legal system, or the administration of justice”); *see* CJEAB Adv. Op. 2-012-03 (a judge involved with a teen offender diversion program run by a law-related non-profit organization may be interviewed for a video concerning the program to be used in both informational and fund-raising situations, provided the judge does not directly solicit funds on behalf of the organization). But Rule 3.7(A)(4) forbids even indirect involvement in fundraising efforts on behalf of non-law-related organizations. Thus, we conclude that the prohibition against soliciting contributions on behalf of non-profit organizations prohibits both active and passive solicitation on behalf of organizations that are not law related.¹

¹ The Code does not define “soliciting” for purposes of Rule 3.7. The term “personally solicit” as used in Rule 4.1, which governs political and campaign activities of a judge, is defined in the Code’s Terminology section as “a direct request made by a judge or judicial candidate for financial support or in kind services, whether made by letter, telephone, or any other means of communication.” That definition, however, does not refer to Rule 3.7.

In so concluding, we recognize that the line between activities that constitute solicitation and activities that do not may not always be clear. *See e.g.*, C.J.C. Rule 3.7, cmt. 3 (“Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.”); C.J.C. Rule 3.7, cmt. 4 (“Identification of a judge’s position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge’s title or judicial office if comparable designations are used for other persons.”). With regard to the current request, however, there is no such uncertainty.

The Mask Project website emphasizes that the masks displayed in the gallery and sold at the auction are created by local celebrities and community leaders, and the apparent success of the fundraiser is due, at least in part, to the influence and prestige of the individuals who contribute the masks. By submitting a mask that identifies her by name and title, the judge would permit The Denver Hospice to use the prestige of her judicial office to encourage members of the public to bid on her mask and thereby contribute to that organization. Accordingly, although the judge would not actively solicit bids on her mask or otherwise directly solicit donations to The Denver Hospice, her contribution of a mask to be sold in the auction would constitute passive solicitation on behalf of the organization, and is therefore prohibited under the Code. *See* Ariz. Jud. Ethics Adv. Comm. Op. 94-4 (1994) (agreeing to have lunch with successful bidder at charity auction improperly used judicial prestige to advance private interest); Conn. Comm. Jud. Ethics Informal Op. 2012-30 (judge may contribute item for sale at charity auction provided his identity as a donor will not be publicized and that his judicial title will not otherwise be used by the organization for promotional purposes); Fla. Jud. Ethics Adv. Comm. Op. 03-16 (2003) (judge’s artwork or crafts may not be sold or auctioned at bar association fund-raising event); N.Y. Jud. Ethics Op. 10-132 (2010) (a judge may donate a photograph he created to a non-profit organization for use as a prize in the organization’s fundraising auction, but should not permit the organization to identify the judge as the donor or photographer); Wash. Ethics Adv. Comm. Op. 93-10 (1993) (a judge may not participate in solicitation for fundraising, either directly or indirectly, and her name “should not be associated in any way with a charity auction and an item donated by a judicial officer should not be attributed to the judicial officer”).

FINALIZED AND EFFECTIVE AS MODIFIED this 19th day of August, 2013.