

Colorado Supreme Court
Colorado Judicial Ethics Advisory Board (CJEAB)

C.J.E.A.B. Advisory Opinion 2012-01
(Finalized and effective as modified¹ January 25, 2012)

ISSUE PRESENTED:

The requesting judge is the chairman of the board of directors of a local non-profit organization whose mission is to provide programs and projects that enhance the lives of senior citizens and promote independent living. The organization relies on federal, state, local, and private grants to fund many of its programs. The judge indicated that the chairman typically “signs off” on grant applications and any terms of the grant, and that some funding entities require that the chairman sign the grant application. The judge’s question is whether a judge may sign grant applications as the chairman of the board of a non-profit organization or whether doing so would violate Rule 3.7 of the Colorado Code of Judicial Conduct (Code). The judge noted that the grant applications and accompanying letter on the organization’s letterhead will not refer to the judge’s position as a judge.

CONCLUSIONS:

Although it is appropriate for the requesting judge to serve as the chairman of the organization’s board of directors, he may not sign grant applications on behalf of the organization, regardless of whether the judge is identified as a judge in the application materials.

APPLICABLE PROVISIONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 3 of the Code provides that “A judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.” Two Rules under this Canon are relevant to the requesting judge’s inquiry: Rules 3.1 and 3.7.

Rule 3.1 serves as a general list of restrictions on a judge’s extrajudicial activities and provides in pertinent part that:

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

* * *

¹ The last paragraph of the opinion issued on January 19, 2012 read: “We agree with those opinions and conclude, based on the specific fundraising restriction in Rule 3.7(A)(2) and the general provisions in 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, that a judge may not sign grant applications on behalf of a non-profit organization to support programs that are not law-related, regardless of whether the judge is identified as a judge in the application materials.” The opinion has been modified to delete the phrase “to support programs that are not law-related.”

- (C) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality; [or]
- (D) engage in conduct that would appear to a reasonable person to be coercive

Rule 3.7 lists extrajudicial activities a judge is permitted to engage in on behalf of non-profit educational, religious, charitable, fraternal, or civic organizations. As pertinent here, Rule 3.7 provides:

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities . . . sponsored by or on behalf of . . . charitable . . . or civic organizations not conducted for profit, including but not limited to the following activities:

* * *

(2) soliciting contributions for such an organization or entity, but only from members of the judge’s family, or from judges over whom the judge does not exercise supervisory or appellate authority; [and]

* * *

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

DISCUSSION:

There have been significant changes to the Colorado Code of Judicial Conduct since the Board last considered a judge’s service on the board of directors of a non-profit organization. On the issue of such service, however, the provisions of the new Code are very similar to the provisions of the old Code. Rule 3.1, cmt. 1, of the new Code and Canon 5B of the old Code both encourage a judge to participate in extrajudicial activities including educational, religious, charitable, fraternal and civic activities not conducted for profit. Furthermore, the new Code, like the old Code, specifically allows a judge to serve as an officer or director of such an organization. (Compare Canon 5(B)(1) of the pre-2010 Code and Rule 3.7(A)(6) of the new Code.) Thus, under the new Code it is appropriate for a judge to serve as the chairman of the board of directors of a non-profit organization.

That the judge may serve as chairman of the board of directors of the non-profit organization, however, does not answer the question whether he may sign grant applications on behalf of the organization. Although the Board has not previously considered this specific question, the Board has previously advised judges against any personal involvement in fundraising. *See, e.g.*, CJEAB Adv. Op. 2008-07 (a judge may approve a deferred sentence agreement that requires a defendant to make a donation to a specific charity, as long as the charity specified in the agreement is neither chosen nor suggested by the court); CJEAB Adv.

Op. 2007-03 (a judge may serve on a grant-making committee of a community foundation and participate “in the planning or organizing of fundraising events, so long as the prestige of his judicial office is not used for fundraising purposes,” but “should not personally solicit funds on behalf of the organization”); CJEAB Adv. Op. 2007-02 (a judge may serve on the board of directors of a public charter school and the school may apply for grants from private foundations and seek private donations, but the judge’s service as a member of the board may not include any fundraising; the judge should “be listed on board materials by name only, with no reference to her title”). This advice was based on the old Code of conduct, particularly Canon 5B(2) which provided that “[a] judge shall not personally solicit funds for any educational, religious, charitable, fraternal, social or civic organization, or use or permit the use of the prestige of the judge’s office for that purpose.” The new Code does not substantially change this prohibition. It provides that a judge may solicit contributions for a non-profit organization “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)(2). Accordingly, the new Code still prohibits judges from soliciting contributions or directly engaging in fund-raising for a non-profit organization.

With regard to the current request, the Board determines that a judge’s signing a grant application on behalf of a non-profit organization, even if the judge’s title or position is not mentioned on the application, is the equivalent of soliciting a contribution or fund-raising for the organization, and is therefore prohibited by the Code. The fact that the judge’s title and position would not be mentioned in the grant application makes this activity somewhat less objectionable since one of the reasons for the prohibition against judges soliciting contributions is the potentially coercive effect of a judge’s involvement in fundraising. C.J.C. Rule 3.1, cmt. 4, and Rule 3.7(a)(2). Nevertheless, the Board finds that the Code’s prohibition against a judge engaging in fund-raising and soliciting contributions is so clear that the Board must hew to a bright-line rule. Moreover, even if the judge’s title were not used on the grant application there would be no guarantee that the organization or person being solicited for funds would not be aware of the judge’s position.

Other state judicial advisory boards that have considered this question have reached the same conclusion.² See Ariz. Jud’l Ethics Adv. Comm. Op. 97-09 (rule stating that judge may not solicit funds for any charitable or civic organization prohibited judge from signing grant application or being “contact person” regarding grant application on behalf of non-profit corporation of which judge was president); N.Y. Adv. Comm. on Jud’l. Ethics Op. 91-69 (1991)

² Based upon provisions of judicial ethics codes similar to C.J.C. Rule 3.7(A)(5) that permit a judge to make recommendations to private and public funding agencies on projects and programs concerning the law, the legal system or the administration of justice, some ethics advisory committees have approved judges writing letters in support of grant applications for law-related projects. See Fla. Jud’l Ethics Adv. Comm. Op. 93-1 (1993) (letter supporting high school’s grant application to fund a pre-law magnet program); Neb. Jud’l Ethics Comm. Op. 98-4 (1998) (judge permitted to provide a letter in support of grant proposals by county attorney’s victim assistance unit and court appointed special advocate program); N.Y. Adv. Comm. on Jud’l Ethics Op. 97-71 (1997) (judge may provide statement for use by organization seeking a state grant to create a legal advocacy program for victims of domestic violence).

(rule prohibiting judges from using prestige of judicial office for fund-raising purposes prohibited judge who served as a trustee of a charitable organization from having “his or her name listed in any funding application by the organization unless a grant application requests the names of all trustees”); N.Y. Adv. Comm. on Jud’l Ethics Op. 88-121 (1988) (rules prohibiting judges from using prestige of judicial office for fund-raising purposes prohibited judge serving on board of directors of civic group from allowing his or her name to be used in connection with fundraising or grant applications; “all stationery and written material used in connection with any fundraising, and grant applications [must] exclude any reference to the judge’s membership on the board of directors”); Okla. Jud’l Ethics Adv. Comm. Op. 2009-2 (rule prohibiting judges from personally participating in solicitation of funds or other fund-raising activities on behalf of charitable or civic organizations prohibited judge who was president of non-profit charitable corporation from signing application for funding grant, and noting that “the Code makes no distinction as to whether the signatory is or is not identified on the application as a judge”). In addition, although it did not specifically address whether the inquiring judge may submit a grant application on behalf of the non-profit organization he served, another state advisory committee concluded that the judge “may *write* grants and plan fundraisers,” but “may not participate in fundraising.” (Emphasis added.) S.C. Adv. Comm. on Stds. of Jud’l Conduct Op. 10-2009. *See also* Jud’l Educ. Ctr. Adv. Comm. on Code of Jud’l Conduct Op. 99-03 (1999) (judge may serve as a member of the board, and judge’s name and judicial designation could properly appear with other board members to solicit funds, provided judge’s name and judicial office are not selectively emphasized, and judge’s signature is not the sole signature on fundraising correspondence).

We agree with those opinions and conclude, based on the specific fundraising restriction in Rule 3.7(A)(2) and the general provisions in 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, that a judge may not sign grant applications on behalf of a non-profit organization, regardless of whether the judge is identified as a judge in the application materials.

FINALIZED AND EFFECTIVE AS MODIFIED this 25th day of January, 2012.