

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

**C.J.E.A.B. ADVISORY OPINION 2008-06  
(Finalized and effective December 19, 2008)**

**ISSUE PRESENTED**

The requesting district court judge seeks guidance on the question of whether his belonging to the Colorado District Judges' Association creates an ethical problem. More specifically, he asks what problem, if any, arises if the Judges' Association's annual dues are used, in part, to pay a lobbyist? The Board understands that the purpose of the Judges' Association is to advance the interests of Colorado judges with respect to working conditions, salary, methods of judicial selection and retention and other similar matters.

**CONCLUSIONS**

Colorado judges may be members of the Colorado District Judges' Association and they may pay dues to the Association knowing that those dues will be used to hire a lobbyist to advance the member judges' interests as judges. Further, judges may solicit membership dues from other judges over whom they do not have supervisory or appellate authority.

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

Canon 4 encourages judges to participate in quasi-judicial activities to improve the law, the legal system, and the administration of justice, subject to the proper performance of judicial duties. Canon 4A allows a judge to appear before an executive or legislative body on matters concerning the law, the legal system, the administration of justice or the role of the judiciary as an independent branch. Canon 4C encourages a judge to serve as a member, officer, or director of an organization devoted to the improvement of the law, the legal system, the judicial branch or the administration of justice. Further, under Canon 4C, a judge may assist such an organization in its fund-raising efforts, but the judge may not personally solicit funds for such an organization.

Canon 7A(1)(c) instructs that, in general, a judge shall not solicit funds for or make a contribution to a political organization. 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.

**DISCUSSION**

Canon 4 encourages judges to engage in quasi-judicial activities and to be involved in organizations devoted to the improvement of the law, the legal system, the judicial branch or the administration of justice. The District Judges' Association, which exists to advance the interests of district court judges with respect to working conditions, salary, methods of selection and retention of judges and other similar issues, is such an organization. *See* CJEAB Ad. Op. No.

2006-07 (activities in support of or against an initiative concerning changing the tenure of appellate judges are activities that concern the legal system and the administration of justice); Tennessee Ad. Op. No. 99-7 (judges' communications with legislators concerning appropriation of funds necessary to operate and finance the court system, including judicial salary increases, are matters that concern the administration of justice.); Alabama Judicial Inquiry Comm'n Op. 91-436 (issues concerning the compensation of judges and court personnel are matters that concern the administration of justice.). Thus, Colorado judges are not just permitted, but, in fact, are encouraged to be members of the Colorado District Judges' Association.

The real question, as the requesting judge noted, however, is whether the fact that the Judges' Association uses the judges' dues to hire a lobbyist, and thus to engage in political activity, causes a judge's membership in, and contribution to, the Judges' Association to violate Canon 7. The Board considers our opinion 2006-07 dispositive of this question. There we determined it was ethically proper for a judge to make a monetary contribution to a non-partisan group advocating for or against passage of legislation that concerned the tenure of appellate judges. In that opinion we concluded that a judge was permitted to make such a donation under Canon 7A(1)(d)'s exception to the prohibition against political activity by judges because the political activity concerned the law, the legal system or the administration of justice. The only restriction on such contributions was that they could not be made to a partisan political organization. Similarly here, although the District Judges' Association's hiring of a "professional lobbyist"—defined in Art. XXIX of the Colorado Constitution as any individual engaged for pay or any consideration for lobbying—is political activity, it falls within Canon 7A(1)(d)'s exception to the prohibition against political activity by judges because the subject matter of the activity directly concerns the legal system and the administration of justice. Also, the District Judges' Association clearly is a non-partisan organization. Therefore, a district judge may ethically be a member of and make dues contributions to the Colorado District Judges' Association so the Association may hire a lobbyist to advocate on behalf of judges' interests.

Finally, even though Canon 4C prohibits judges from personally soliciting funds for an organization such as the District Judges' Association, this prohibition does not extend to district judges soliciting other district judges for such contributions. *See* Tennessee Ad. Op. No. 99-7; Texas Committee on Judicial Ethics Op. No. 201 (1996). Generally, judges may not personally solicit donations because of the concern that "the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control." Commentary to Canon 4C(3)(b), 1990 Annotated ABA Model Code of Judicial Conduct. This concern is obviated when the solicitor is a judge on the same level court (or a lower level court) as the judge being solicited because such a judge has no supervisory or appellate authority over the solicitee judge. The 1990 ABA Model Code made this explicit in Canon 4C(3)(b)(i): "... a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority." Even though Colorado's Code of Judicial Conduct does not explicitly allow such solicitations among judges on the same level court, the Board sees nothing in the Code that requires that such solicitations be prohibited. Therefore, Colorado district judges may solicit other Colorado district judges to pay membership dues to the Colorado District Judges' Association.

**FINALIZED AND EFFECTIVE** by the Colorado Judicial Ethics Advisory Board this 19th day of December, 2008.