

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)
C.J.E.A.B. ADVISORY OPINION 2006-06
(Finalized and effective July 19, 2006)**

ISSUE PRESENTED

The requesting judge serves a small, rural county that is being considered for a substance abuse grant by a foundation in Denver. The judge has attended some of the meetings held in connection with the possible grant, and has spoken at the meetings about the financial obstacles faced by many poor defendants in his community who are ordered to attend substance abuse treatment but find that they cannot pay the costs of such treatment. Some of the potential grant money would be used to establish a type of "scholarship" so that defendants ordered to attend treatment could apply for assistance to defray the costs associated therewith. The commissioners of the county in which the judge sits have requested that the judge participate, in his capacity as county judge, in the screening process to determine which individuals should be awarded the scholarship funds. The judge notes, however, that any time he would devote to the screening process would take place outside his court duties. The judge has expressed concern that while the cause is worthy, his involvement in determining which individuals receive access to treatment that was ordered from the court, even if based on recommendations from the alcohol and drug evaluator, could pose an ethical problem. May the requesting judge participate in the screening process to determine which defendants will receive financial assistance in attending court-ordered substance abuse treatment?

CONCLUSIONS

The judge may serve on the board of an organization devoted to seeking funds to assist defendants in obtaining court-ordered substance abuse treatment, and he may make recommendations to a private foundation that it should fund programs to the same end, but it would be inappropriate for the judge to assist in determining which particular defendants receive the scholarship funds.

APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 2 generally directs a judge to avoid impropriety and the appearance of impropriety in all of the judge's activities.

Canon 3A(4) provides that a judge should neither initiate nor consider information about a pending or impending proceeding that he receives in an *ex parte* manner.

Canon 4C specifies that a judge is encouraged 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. A judge may assist such an organization in its fund-raising efforts, but the judge may not personally solicit funds for the organization. The Canon also provides that a judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

DISCUSSION

As the Board noted in opinion 2005-04, judges have been called upon with increasing frequency to share their unique perspectives in helping to address societal problems. To that end, Canon 4 of the Code of Judicial Conduct encourages judges to participate in activities to improve the law, the legal system, and the administration of justice. Under Canon 4C, judges are expressly permitted to make recommendations to public and private grant-funding agencies on projects and programs concerning the law, the legal system, and the administration of justice. Here, the requesting judge's participation in the process of recommending that the foundation fund scholarships to assist indigent defendants to receive court-ordered substance abuse treatment falls squarely within the bounds of activity permitted and encouraged by Canon 4. Thus, the judge may continue to assist the county in its efforts to secure funds to defray the costs of such treatment, and he may continue to make recommendations to the foundation on how, in general, such funds should be allocated.

The county's request that the judge assist in making determinations as to which specific individuals should receive the scholarship funds, however, creates a number of conflicts with the Canons. First, in deliberating whether to award a scholarship to a specific defendant, the judge may learn information about the defendant *ex parte*, in violation of Canon 3A(4). Second, if the scholarship fund has limited funds and the screening committee must decide who is to receive a scholarship and who is not to receive one, the judge may find himself advocating for a scholarship for one defendant over another, or even simply choosing one defendant over another. Ordering defendants to obtain substance abuse treatment, and then deciding which among various defendants will receive such treatment, creates an appearance of actual bias or partiality, in violation of Canon 2. Third, if the screening committee asked the judge to comment on which one among many defendants is most deserving of a scholarship, the committee might well defer to the judge's recommendation in light of his familiarity with the defendant's case, and the judge would be in a position to use his judicial position to aid one defendant over another. Accordingly, it would be inappropriate for the judge to participate in the process of recommending that scholarship funds be awarded to specific defendants.

In concluding that it would be inappropriate for a judge to recommend how scholarship funds should be disbursed to specific individuals, the Board emphasizes that it is not attempting to discourage the judge from serving on the board of an organization that helps to obtain funding for scholarships. Nor is the Board attempting to dissuade the requesting judge from recommending that the foundation provide funding for substance

abuse treatment. Similarly, the Board does not wish to discourage judges from serving on other similar boards, such as community corrections boards. As discussed above, participation on such boards is encouraged by the Canons and benefits the legal system as a whole. Rather, the Board's concern is that judges should not be involved in allocating funds to specific individuals who have in the past or very likely might in the future come before the judge. Thus, the Board concludes that it is entirely consistent with the Canons for the judge to advise the foundation that scholarship funds for substance abuse treatment are needed in his county, and to recommend that the foundation provide such funds for the purpose of defraying the costs of substance abuse treatment for defendants in general. It would not, however, be appropriate for the judge to select the individual defendants who will be the beneficiaries of such scholarship funds.

FINALIZED AND EFFECTIVE this 19th day of July, 2006, by the Colorado Judicial Ethics Advisory Board.