

Advisory Opinion #2004-01

(adopted February 2, 2004)

Question: *What types of activities may judges perform to help further pro bono participation by attorneys?*

Opinion: Resolution of this question requires the Commission to address what judges may do to help further this participation, in response to the Alaska Supreme Court's application of a 50-hour pro bono aspirational rule to judges, while adhering to Canon 2's requirement that a judge "avoid impropriety and appearance of impropriety in all of the judge's activities," and Canon 4's requirement to "conduct the judge's extra-judicial activities [so] as to minimize the risk of a conflict with judicial obligations."

Alaska Supreme Court Order No. 1496, effective April 15, 2003, amended Rule 6.1 of the Alaska Rules of Professional Conduct. It adopted an annual aspirational goal of 50 hours of pro bono publico legal service for all lawyers, including judges. See, Paragraph 5 of the Commentary. Judge may satisfy their pro bono obligation through participation in "activities for improving the law, the legal system or the legal profession." This Order, with its commentary, is consistent with the provisions of Canon 4C of the Code of Judicial Conduct.

A judge may make monetary contributions to further pro bono activities. See, Alaska Commission on Judicial Conduct Advisory Opinion #98-4. The commentary to Rule 6.1 allows for the satisfaction of some or all of the judge's pro bono obligation by contributions. These contributions should be "reasonably equivalent to the value of the hours of service that would have otherwise been provided." However, a judge may not personally participate in any solicitation of funds or be a guest or speaker at a fundraising event, even on behalf of an organization devoted to the improvement of the law, the legal system, or the administration of justice. The sole exception to this limitation is that a judge may solicit funds from other judges, if the judge holds no supervisory or appellate authority over the judge solicited. See, Canon 4C(3)(b)(i).

Judicial ethics opinions from a number of jurisdictions suggest strongly that it is inappropriate for judges to solicit attorneys to participate in particular pro bono programs. Solicitations on behalf of specific organizations may lead to "the impression that they are in a special position to influence the judge." This is a violation of Canon 2B. Additionally, since such solicitations ask the attorney to contribute time, which is equivalent to money, it could be considered fundraising. Consequently, it is impermissible for a judge to individually solicit attorneys to participate in pro bono organizations or to accept particular cases. However, general appeals to participate in pro bono efforts are permissible. And a judge's reference to a list of available pro bono programs is also allowed.

The commentary to Canon 4B makes clear that a judge should undertake efforts to improve the law, the legal system, and the administration of justice. Encouraging attorneys to fulfill their obligation to perform pro bono work, through speaking in support of pro bono activities, serving on the board of a particular pro bono program (see below), or teaching at seminars for pro bono attorneys, would further this ethical responsibility. However, these activities should not refer attorneys to any particular pro bono program or specific cases.

Judges may be active in civic and/or charitable activities. Canon 4C(3) allows a judge to serve as an officer or director for an organization that is devoted to the improvement of the law, the legal system, or the administration of justice, subject to some specific limitations. Those limitations are of two types. The first is a general limitation that prohibits judges from serving as an officer or director for any organization that is involved in frequent adversary proceedings that would come before the judge, the court of which the judge is a member or a court over which the judge has appellate jurisdiction. The commentary to Canon 4C(3) directs judges to regularly reexamine the goals and activities of any organization to which he or she belongs to avoid this problem. The second severely limits the judge's involvement in the financial affairs of the civic or charitable organization.

Additionally, judges may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system and the administration of justice. See, Canon 4B. Examples of this activity could include participating in a workshop or CLE seminar that is made available at no (or reduced) cost for attorneys who agree to undertake pro bono cases. It would also be permissible for a judge to write articles for publication in bar or general-circulation media, encouraging members of the bar to participate in pro bono work.

Acknowledging the pro bono activity of particular attorneys would be permissible if it were done in a manner that is public, such as in a newspaper advertisement or displaying a plaque in a court. However, letters of congratulation that were sent directly to the attorney could be interpreted as evidence that the attorneys are in a special position of influence or that the judge's ability to act impartially has been compromised. This same problem would be presented if a judge hosted a social event for the such lawyers. In any activity, the judge must avoid impropriety and the appearance of impropriety. See, Canon 2A.

The Chief Justice of the Alaska Supreme Court serves a unique role in the Alaska Court System and should be provided more latitude when soliciting funds for organizations integrally concerned with the justice system in the state. Article IV, § 16 of the Alaska Constitution designates the Chief Justice the administrative head of all courts. As part of this responsibility, the Chief Justice appoints an administrative director of the court system. The State Personnel Act, (in AS § 39.25.020) grants the Chief Justice the authority to appoint all administrative and clerical personnel in the judicial system. These administrative duties of the office are clearly separate from judicial functions. This administrative role, for example, the Chief Justice gives a "State of the Judiciary" address to the legislature and testifies with the Administrative Director on proposed legislation and

budgetary needs of the court system.

Each of the other branches of state government has an identifiable spokesperson. The Chief Justice fills this position in the judiciary. There would be a unique void if the person filling that position, were not allowed to publicly solicit for the needs of the unrepresented. The concerns that led to the prohibitions in Canon 4C(3)(b) while applying with equal validity to the Chief Justice in charitable interests that are unrelated to the court system, fade when balanced against the need for an institutional voice from the court system who can speak to fundamental financial needs of justice administration. For these reasons, the Commission believes that a limited exception exists for the Chief Justice in pleas for funding assistance to particular charitable organizations that provide access to justice for those who are otherwise unable to pay.