

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

**OPINION 19-01**  
(Issued May 24, 2019)

**UNSOLICITED DONATIONS FOR USE IN PROBLEM-SOLVING COURTS**

**ISSUE**

May a court accept unsolicited monetary donations from a United States Code Section 501(c)(3) charitable organization in order to purchase and distribute incentives such as gift cards and bus passes for the sole use of participants in problem-solving courts?

**ANSWER**

Yes, with qualifications.

**DISCUSSION**

**I. Applicable Code Provisions**

Several provisions of the Arizona Code of Judicial Conduct (“Code”) are relevant to this inquiry, including:

**RULE 1.2. Promoting Confidence in the Judiciary**

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

**RULE 2.11. Disqualification**

(A) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.

#### **RULE 2.4. External Influences on Judicial Conduct**

....

- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

#### **RULE 3.1 Extrajudicial Activities in General**

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:

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality or demean the judicial office[.]

#### **RULE 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value**

- (A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

## **II. Analysis**

The pending inquiry implicates three significant Code-based limitations: (1) judicial involvement with fund-raising; (2) acceptance of gifts, benefits or other things of value by judges or judicial employees; and (3) involvement with extrajudicial activities that will lead to frequent disqualification. This opinion addresses each topic in turn.

First, it is significant that the donations at issue are unsolicited. If the donations were the result of solicitation by courts, judges, or judicial employees, the committee's analysis and conclusion would be different. As we have previously noted, "[j]udicial

support for fund-raising of any kind . . . is significantly circumscribed.” Opinion 96-08; *see also* Opinions 97-09 (Limited Role of Judge in Applying for Donations or Grants as an Officer of a Charitable Organization); 97-10 (Solicitation of Contributions for a Juvenile Restitution Fund). Although Opinion 96-08 interpreted an earlier version of the Code, the same substantial limitation exists in the current Code. *See, e.g.*, Rule 3.7(A) (“A judge may not directly solicit funds for an organization.”); Rule 3.1, cmt. 4 (referencing Rule 3.7(A)). As posed, however, these prohibitions are not implicated because no one within or on behalf of the judicial branch is soliciting donations.

Opinion 04-03 noted the distinction between solicited and unsolicited donations, albeit in a less than pristine manner. The first issue in that opinion was phrased as follows: “May a court accept contributions from a non-profit organization to assist the court in presenting a court-run symposium on mental health issues in the courts.” Although the committee answered that question in the negative, its answer was based on the view that the contributions were the result of solicitation. Indeed, the discussion began by stating that the first issue, as well as three others, “all necessarily involve the court in organizing the symposium and *soliciting* organizations for supplemental funding.” *Id.* (emphasis added). The analysis that followed noted the ethical prohibitions “against judicial fund-raising” by both judges and judicial staff; the inappropriateness of a court “solicit[ing] funds for the proposed symposium;” the impropriety of court employees soliciting “contributions on behalf of the court;” and the observation that “[s]oliciting organizations to sponsor a specific activity is no different in effect than soliciting funds for the entire activity.” *Id.* Given the focus on solicitation in Opinion 04-03, versus the inquiry at issue here, which does *not* involve solicitation of any kind, the committee concludes that Opinion 04-03 does not prohibit the proposed conduct.

Second, the pending inquiry does not involve donations that would be for the personal use or benefit of a judge or judicial employee or for funding a statutory mandate. *See* Rule 3.13; Opinion 97-10 (noting, in concluding judges, judicial employees, and others acting on behalf of the court could not solicit contributions to a statutorily created restitution fund, “the funding of the juvenile restitution fund remains primarily the responsibility of the legislative and executive branches of government.”).

This committee has previously drawn a clear boundary prohibiting judges and their staff members from accepting gifts from counsel or others who appear before them. Opinion 90-05. This prohibition even extends to gifts of nominal value, such as cakes, candies or gift baskets. As that opinion observed:

[T]he potential for abuse is poignantly illustrated when we consider the plight of litigants and attorneys who come to court empty-handed, only to find the judge and court personnel gratefully munching on treats furnished by opposing counsel. Also, consider a probation department plied with gifts and catering from those representing its charges, or a gift-giving

lawyer whose convenience is automatically and routinely accommodated at calendar calls. All practices which call into question anything other than fair and impartial treatment of all consumers in the justice system must be scrupulously avoided at all phases. Anything less tends to partiality and corruption.

Opinion 90-05; *see also* Rule 1.2.

The pending inquiry does not involve donations that will personally benefit judges or judicial employees. On the contrary, the inquirer states that the unsolicited contributions will be used for the direct and sole benefit of participants in problem-solving courts. As such, the donations do not implicate the concerns expressed in Opinion 90-05. Nor does the receipt and use of unsolicited donations to purchase items such as bus passes and gift cards for use by individuals appearing in problem-solving courts erode public confidence in the judiciary or create an appearance of impropriety.

Finally, based on the information provided, it does not appear that the unsolicited donations will necessitate frequent disqualification, which would yield a different conclusion. *See* Rule 3.1(B) (judges shall not engage in extrajudicial activities that will lead to frequent disqualification). Generally speaking, 501(c)(3) charitable organizations are infrequent litigants or participants in litigation, particularly in comparison to law firms whose gifts were the subject of Opinion 90-05. Although the availability of incentives for litigants in problem-solving courts is useful for both the court and the participants, the cost of such items is relatively small, suggesting that any consequent effect on a judge's impartiality in a subsequent matter involving the donor is remote. As noted, judges, court staff, and court operations are not the beneficiaries of the donations. But if a judge believes that his or her impartiality "might reasonably be questioned" under Rule 2.11(A) in a subsequent matter involving the donor, the judge must recuse or follow the remittal of disqualification procedure set forth in Rule 2.11(C).