

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 95-13

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[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

SYLLABUS: A judge may not participate in a fund-raising telethon to the general public; this includes answering telephones during the telethon to accept donations from callers, being a celebrity guest or member of the telethon's "VIP telephone panel," or soliciting donations for the organization hosting the telethon.

OPINION: We have before us your request regarding a telethon which raises funds from the general public for a charitable organization. What are the guidelines for a judge's participation in such telethons? Your specific questions are as follows:

1. May a judge answer a "VIP telephone line" during a telethon to the general public;
2. May a judge anonymously answer telephones at the telethon's telephone bank;
3. May a judge solicit funds from his or her friends and coworkers for the organization hosting the telethon?

Canon 5B of the Ohio Code of Judicial Conduct allows a judge to "participate in civic and charitable activities that do not reflect adversely upon his [her] impartiality or interfere with the performance of his [her] judicial duties." Canon 5B (3) limits the scope of a judge's participation in fund-raising.

Canon 5B (3) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his [her] office for that purpose, except he [she] may participate as a member in solicitations limited to members of an educational, religious, charitable, fraternal or civic organization of which he [she] is a member, and he [she] may be listed as an officer, director, or trustee of such an organization. He [she] should not be a speaker or the guest of honor at an organization's fund raising events, but he [she] may attend such events.

With regard to the first question, if a judge were to answer a "VIP telephone line" during a fund-raising telethon, he or she would be permitting the use of the prestige of the office for the purpose of raising funds. This is true even though the judge technically is not soliciting funds, but only processing donations from callers. The very purpose of a "VIP telephone panel" is to encourage viewers to donate to a cause which a well-known member of their community appears to support.

With regard to the second question, because of the potential for a judge's prestige to influence contributors, a judge may not anonymously answer telephones for a fund-raising telethon's telephone bank. This is prohibited for two reasons: first, the mere appearance of the judge may lend the prestige of the office to the telethon, and second, the judge is too closely involved with the fund-raising aspect of the organization hosting the telethon.

It is common in most telethons for the telephones to be set up onstage, and for the volunteers covering the telephones to be televised throughout some or all of the telethon. Many viewers would recognize a judge if he or she were on this panel, even if the judge were not identified by name or given any special attention. This is especially true in smaller communities, where it is likely a judge would be widely recognized. A judge in a metropolitan area might be less widely recognized, but would also be lending the prestige of the office to the telethon, even if only some of the viewers recognized him or her.

A judge might request that he or she not be televised at all, but this would still be unacceptable under Canon 5B (3). Participating in a telethon, regardless of the judge's media exposure, still falls under the Canon 5B (3) prohibition of solicitation of funds by judges. That canon was discussed in this Board's Opinion 90-16 stating that "[j]udges should be insulated from the fund-raising as far as practicable." See Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Op.90-16 (1990). See also Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Op. 87-009 (1987). Telethons are the epitome of fund-raising, existing solely for the purpose of soliciting funds from viewers. If a judge participated in a telethon in any way, other than by making a donation, it would be impossible for him or her to be insulated from the fund-raising aspect of the telethon.

With regard to the third question, a judge may not solicit donations for the organization from friends and coworkers. This is prohibited by Canon 5B (3). The narrow exception to the

prohibition is that if a judge is a member of an organization he or she may solicit funds from other members of that organization. A judge's blanket request for donations from friends and coworkers would not fall within this exception.

This Board is not alone in its view regarding a judge's participation in telethons. Most states that have addressed this issue advise that a judge should not be involved in this type of activity. See e.g., State Bar of Texas, Comm. on Judicial Ethics, Op. 76-16 (1976) (a judge may not be a celebrity auctioneer during a telethon); Louisiana SupCt, Comm. on Judicial Ethics, Op. 32 (1976) (a judge may not serve on a VIP panel during a telethon); Georgia, Judicial Qualifications Comm'n, Op. 37 (1980) (a judge may not appear on television or radio programs on which donations are solicited); and Florida SupCt, Comm. on Standards of Conduct Governing Judges, Op. 86-14 (1986) (a judge should not participate in a public radio station's pledge drive). Cf. Alabama, Judicial Inquiry Comm'n, Op. 88-325 (1988) (a judge may serve as chairman of a telethon and appear on the program at the beginning and the end to introduce and do a wrap-up; the judge primarily will be behind the scenes, will not be identified as a judge, and will not personally make any direct requests).

Because of the high status of judges in the community, they are often asked to participate in various fundraisers and charitable causes. It is not the intent of this opinion to discourage a judge's involvement in civic and charitable activities. The Commentary to Canon 5A expressly states: "Complete separation of a judge from extra-judicial activities is neither possible nor wise; he [she] should not become isolated from the society in which he [she] lives." However, a judge must be careful not to be involved in any conduct that may be construed as solicitation of funds. Serving on a telephone bank during a fund-raising telethon must be avoided.

In conclusion, this Board advises that a judge may not participate in a fund-raising telethon to the general public; this includes answering telephones during the telethon to accept donations from callers, being a celebrity guest or member of the telethon's "VIP telephone panel," or soliciting donations for the organization hosting the telethon.

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