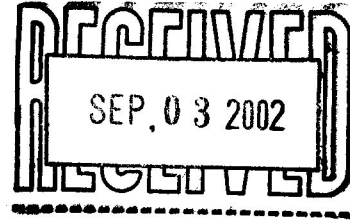


JUDICIAL ETHICS COMMITTEE
Advisory Opinion 02-4
Issued: 08/27/2002



Issue

Whether a judge may speak at a luncheon held as a fundraising event.

Statement of Facts

A judge accepted an invitation to speak at a luncheon in October. The judge received a letter of confirmation which read: "Please accept our heartfelt thanks for agreeing to speak at the luncheon, the proceeds of which will benefit [a charitable organization]." The judge's letter of inquiry expressed the understanding that the luncheon was to foster collegiality and support for women in leadership, as well as to raise funds. A phone call to the organizer of the luncheon revealed that the luncheon is, in fact, a fundraising event.

Discussion

The Maine Code of Judicial Conduct Canon 4C reads in pertinent part:

(3) A judge may serve as an officer, director, trustee or non-legal advisor, or be a member of an organization . . . subject to the following limitations and the other requirements of this Code.

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership selection. A judge should not be a speaker or guest of honor at an event of the organization held primarily for fund-raising. . .

An initial point of inquiry is whether this provision of Canon 4C applies to situations in which the judge is not an officer, director, trustee or non-legal advisor, or a member of an organization. The addition of the words "or otherwise" to supplement the existing characterizations of a judge's relationship with the organization suggests that the existing characterizations were felt to be insufficient. The addition of "or otherwise" suggests that the

drafters intended the prohibition to apply even when the judge's relationship with the organization does not fall into any of the categories laid out in Canon 4C(3).

There is no reason to conclude that the phrase "or otherwise" is not meant to have independent meaning from the preceding terms. However, even were "or otherwise" to mean having only relationships of a similar nature to those specifically stated, the prohibition would apply. When a judge speaks at an event intended to fundraise for an organization, the relationship of the judge to the organization is significantly more similar to that of a member than that of a mere attendee of the event.

An additional consideration is the Maine Judicial Ethics Committee's history of conservatively interpreting the Code. Because this provision arguably applies to this situation, the conservative approach is to apply it.

It is also necessary to determine whether the applicable language is binding upon the judge. The Preamble to the Code states that "[t]he use of . . . "should not" is intended as an hortatory statement of what is appropriate or inappropriate conduct but not as a binding rule under which discipline may be imposed." However, there are three reasons the language stating that a judge "should not" be a speaker or guest of honor at an event held primarily for fundraising should be considered binding upon the judge.

First, the words "should" and "should not" are indicative of the propriety or impropriety of particular conduct, and a judge is required by Canon 2 to avoid impropriety. Therefore, if the Code states that a judge should not conduct herself in a particular manner, she is on notice that such behavior will generally be considered improper, and is required by Canon 2 to avoid it.

Second, implicit in the phrasing of Canon 4C(3)(b)(iii) is that speaking at an event held primarily for fund-raising may be using the prestige of judicial office for fundraising, which is

prohibited, and for which discipline can be imposed. Third, a judge is prohibited from participating personally in the solicitation of funds or other fund-raising activities. Canon 4C(3)(b)(i).

Although there is no Maine authority on this subject, a few other states have dealt with this issue in their judicial ethics organizations. The Florida Judicial Ethics Committee prohibited a former National Football League player who had become a judge from attending a dinner to accept his recognition for his induction into the International Jewish Sports Hall of Fame. The proceeds from the dinner were to fund children's visits to Israel, and the judge's title would not be used. Florida Judicial Ethics Advisory Committee (Op. 96-3). The Washington Ethics Advisory Committee prohibited a judge from speaking at a breakfast which had a fundraising component. The fundraising was to happen after the judge had departed, and the judge would not personally take part in the fundraising. Washington Ethics Advisory Committee (Op. JI-87).

Here, a judge was invited to speak at a fund-raising event. The judge is expressly prohibited from doing so if it involves using the prestige of judicial office for fundraising or participating personally in fund-raising activities. The facts indicate that the judge would be using the prestige of the office and personally participating in fund-raising by speaking at the fundraising luncheon. The judge is also impliedly prohibited from speaking due to the connection between Canons 4 and 2 which suggests the potential for impropriety or appearance of impropriety in speaking at a fundraising event.

Conclusion

A judge may not speak at the luncheon. The luncheon is a fundraising event, and the Maine Code of Judicial Conduct prohibits a judge from being a speaker or guest of honor at an event held primarily for fund-raising.