

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1559

Amending Canon 4 of the Alaska Code
of Judicial Conduct concerning pro bono
activities for judges

IT IS ORDERED:

Canon 4 of the Code of Judicial Conduct is amended to read as follows:

Canon 4. A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.

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B. ~~Avocation~~ Educational Activities. As part of the judicial role, a judge is encouraged to render public service to the community. Judges have a professional responsibility to educate the public about the judicial system and the judicial office, subject to the requirements of this Code. A judge may speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law,* the legal system, the administration of justice, and non-legal topics, subject to the requirements of this Code.

***Commentary.** — As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of*

justice, the independence of the judiciary, and the integrity of the legal profession. A judge may also encourage community involvement in court-affiliated programs and may invite public suggestions for the improvement of the law, the legal system, or the legal profession. In conducting these activities, judges should be mindful to comply with Canon 2 when recommending specific programs or activities.

C. Governmental, Civic, ~~or~~ Charitable, and Law-related Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,* the legal system, or the administration of justice, or except when acting pro se in a matter involving the judge or the judge's interests.

Commentary. — See Section 2B regarding the obligation to avoid improper influence.

“Administration of justice” matters include seeking funding for public service organizations that provide or seek increased access to justice such as Alaska Legal Services, so long as the organization is not identified with a particular cause that may come before the courts. When testifying as an individual judge on administration of justice matters, the judge should be clear that the observations are based on his or her experience as a judge and that other judges may have different observations.

Section 4C(1) permits a judge to appear before a governmental body or government official on a matter concerning the judge's interests. The word “interests” should

be interpreted broadly. A judge may speak on matters concerning the judge's social interests as well as matters affecting the judge's economic interests.

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(3) A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice, or of an educational, religious, charitable, fraternal, cultural, athletic, or civic organization not conducted for profit, subject to the following limitations:

* * * *

(b) Regardless of the judge's role within the organization, a judge:

(i) may assist the organization in planning fundraising activities and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or be the speaker or guest of honor at the organization's fundraising event, except that the a judge may be the speaker or guest of honor for public service organizations that seek improvement in the administration of justice, benefit indigent representation, or assist access to justice, or for any permitted organization under Section 4C(3) where the proceeds from the event seek to improve the administration of justice, benefit indigent representation, or assist access to justice. A judge may also solicit funds for any permitted organization under Section 4C(3) from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public or private fund-granting organizations on projects and programs concerning the law,* the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive;

(iv) shall not personally participate in membership solicitation, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fundraising mechanism;

(v) shall not use or permit anyone else to use the prestige of judicial office for fundraising or membership solicitation.

Commentary. — *A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may solicit other judges over whom the judge does not exercise supervisory or appellate authority, (2) a judge may solicit other persons for membership in the organizations described*

above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves, and (3) a judge who is an officer of a Section 4C(3) organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fundraising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

Section 4C(3)(b)(i) is intended to prohibit the direct solicitation of funds. Being the speaker or guest of honor at an organization's fundraising event is the functional equivalent of solicitation. However, judges may participate as workers at fundraising events such as car washes and carnivals, purchase admission to fundraising social events, and purchase goods and services (e.g., candy bars, commemorative buttons, or a car wash) that are being sold as a fundraising effort.

The limited exception allowing judges to be speakers or guests of honor for public service organizations that assist access to justice is meant to include not-for-profit organizations that exist to enhance access to justice or to seek improvement in the administration of justice, but judges

should be mindful of the need to avoid creating the appearance that they are identifying with a particular cause or issue that is likely to come before them or before other judges on their court. See Canon 2 and accompanying Commentary. "Access to justice" includes increasing minority representation on the bench, preserving judicial independence, and assisting the advancement of the legal profession.

DATED: April 28, 2005

EFFECTIVE DATE: July 15, 2005

/s/
Chief Justice Bryner

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Carpeneti