



**NEW YORK STATE BAR ASSOCIATION**

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**Committee on Professional Ethics**

**Opinion 585 — 12/15/87 — (24-87)** Topic: Judges; judicial candidates; campaign contributions.

Digest: Judge or candidate for judicial office may not contribute to any political organization but judicial candidate's own committee. Therefore, judge may not belong to bar association whose funds are used to support a political action committee.

Code: CPR DR 8-103(A);  
CJC Canon 4C, 5B(2),  
7A(1)(c), 7A(2)

**QUESTION**

May a judge belong to a bar association which sponsors a political action committee ("PAC") and provides it, free of charge, with certain services, including (1) free office space and administrative and clerical services at the bar association headquarters, (2) coverage under the bar association's directors' and officers' liability insurance policy, and (3) use of the bar association's annual dues statement as a vehicle to solicit contributions to the PAC?

**OPINION**

A local bar association proposes to establish a PAC, which will be funded by the voluntary contributions of those members of the bar association who wish to support the goals of the PAC. The purpose of the PAC is to support, through political, educational and legislative activities, the officially adopted policies of the bar association, including (1) encouraging lawyers to understand the records of office holders and candidates for elective office, and (2) providing financial support to individual candidates for election to public offices of the United States, the State of New York or any political subdivision thereof, and to any legally constituted political fundraising committees organized and operated to provide financial support to such candidates, but not to candidates or fundrais-

ing committees for candidates for judicial office. Members of the judiciary would not be not solicited for and would not contribute to the PAC.

The PAC will operate as a "separate segregated fund" within the meaning of the Federal Election Campaign Laws, 2 U.S.C. Sec. 441b(b)(2)(C), and the regulations thereunder, 11 CFR Sec. 114.5, the Internal Revenue Code, IRC Sec. 527(F)(3) and the New York State Election Law, Section 14-116. To the extent permitted by applicable law, the bar association will provide support to the PAC in the form of free office space and administrative and clerical services at the bar association headquarters. The PAC's Directors and Officers, to the extent possible, will be covered by the bar association's directors' and officers' liability insurance policy. In addition, the PAC will use the bar association's annual dues statement as a vehicle to solicit contributions to the PAC. Any contributions received will be promptly transferred by the bar association to the PAC's separate segregated fund.

We wish to emphasize that our Committee may give advisory opinions to lawyers and judges with respect to the appropriateness of their own conduct under the Code of Professional Responsibility ("CPR") and the Code of Judicial Conduct ("CJC"). Interpretations of law, such as the Election Law, and rules of court, including the Judicial Conduct Rules of the Chief Administrator of the Courts, 22 NYCRR Part 100, are beyond the jurisdiction of this Committee. Accordingly, we render no opinion on the legality of political expenditures by the bar association or the effect of political expenditures by a bar association on the tax-exempt status of the association. In addition we note that the Office of Court Administration ("OCA") has recently formed a panel of judges to render advisory opinions to judges relating to judicial conduct and ethics. Judges who are association members may wish to obtain the opinion of that body.

#### Participation in Law Reform Activities

The Code of Judicial Conduct is applicable both to persons who hold judicial office and to lawyers who are candidates for judicial office. See DR 8-103(A) of the CPR.

Under the CJC, a judge may clearly engage in activities to improve the law, the legal system and the administration of justice. CJC Canon 4C provides:

"He may serve as a member, officer, or director of an organization . . . devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but

should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.”

As the Commentary to this section elaborates, to the extent that the judge’s time permits, the judge is encouraged to participate in activities to improve the law, “either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.” Thus, the normal activities of bar associations in seeking to improve the law and the administration of justice are not foreclosed to judges.

#### Political Contributions

On the other hand, Canon 7A(1)(c) provides that a judge or a candidate for election to judicial office should not:

“(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate . . . except as authorized in subsection A(2).”

Canon 7A(2) of the CJC provides:

“A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, . . . contribute to a political party or organization.”

Section 17-162 of the Election Law provides:

“No candidate for a judicial office shall, directly or indirectly, make any contribution of money or other thing of value, nor shall any contribution be solicited of him . . .”

Similarly, several ethics opinions have held that a judge may not make a contribution to any candidate except the judge himself. See ABA Inf. 1350 (1975), ABA Inf. 1400 (1977).

In any event, political contributions by judges (other than purchase of tickets to politically sponsored events during a specified period before and after the election) are prohibited by the Judicial Conduct Rules, as adopted by the Chief Administrator of the Courts in New York. See 22 NYCRR Section 100.7.

### Contributions to a PAC

In our view, a political action committee constitutes a political organization within the meaning of Canon 7A(1)(c). See ABA Inf. 1400, *supra* (holding that organizations such as the National Women's Political Caucus are such "political organizations"). Accordingly, a judge or judicial candidate should not contribute to a PAC. The question we must answer is whether membership in a bar association that provides free services to a PAC constitutes (1) a contribution to the PAC (2) by judges who are members of the association.

We believe that provision of valuable services such as office space, administrative and clerical services, use of the bar association dues statement to solicit contributions, and coverage under the bar association's directors' and officers' liability insurance policy constitutes a contribution by the bar association within the meaning of the CJC, since each such service has a definite monetary value to the PAC. *Cf.*, Election Law Section 14-100 (definition of "contribution" includes deposits of money or any thing of value and payments such as compensation for the personal services of any individual), Election Law Section 17-162 (a candidate for judicial office may not contribute any thing of value).

We also believe that contributions by the bar association constitute indirect contributions by the judges who are members of the association, and that such indirect contributions are prohibited by Canon 7 of the CJC. Canon 7A(2) incorporates the provisions of the Election Law, Section 17-162 of which prohibits a judicial candidate directly or indirectly from making any contribution. Canon 7B(1)(b) admonishes that a judge "should not allow any other person to do for him what he is prohibited from doing under this Canon." Accordingly, we find that a judge should not belong to a bar association that provides free services to a PAC which in turn provides financial support to candidates and their fundraising committees.

Our answer would necessarily be different if the bar association made no contributions to the PAC, but rather charged the PAC fair value for the office space, administrative and clerical staff assistance, mailing services and insurance coverage provided. In such a case, the funds of judicial members would in no way be deemed to be contributed to a political organization.

Although a bar association may thus make separate mailings on behalf of a PAC, charging for the fair value of its services and materials, where it uses its own dues statement for solicitations on behalf of the PAC, it is improper in our opinion, for members of the judiciary to belong to such bar association. Such

lending of its power and prestige to the PAC's appeals for contributions would itself be a valuable contribution to the PAC. *Cf.*, GJC Canon 5B(2) ("A judge should not solicit funds . . . or use the prestige of his office for that purpose.")

**CONCLUSION**

For the reasons stated above, the question is answered in the negative.

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