

# MINNESOTA BOARD ON JUDICIAL STANDARDS

## Advisory Opinion 2016-1

### Participation in Charitable, Educational, or Civic Organizations and Activities

**Issue.** Under what circumstances may a judge participate in charitable, educational, or civic organizations and activities, including law-related activities?

#### Summary.

1. Subject to important limitations, judges are encouraged to participate in the activities of charitable organizations, including law-related organizations. A judge may also encourage lawyers to provide pro bono services.

2. The Code's limitations on judicial participation include prohibitions on a judge's (a) solicitation of funds or services, with very narrow exceptions; (b) involvements which reasonably appear to lend the prestige of judicial office to the organization or coerce contributions; and (c) activities that will lead to frequent disqualification or that reasonably appear to undermine the judge's independence, integrity, or impartiality.

3. In general, judges may not be featured at fund-raising events. However, judges may attend such events as private individuals and may serve in such low-profile functions as usher, food-server, or preparer. In addition, subject to certain restrictions, judges may appear at fund-raising events that concern the law, the legal system, or the administration of justice.

**Issues Not Addressed.** This opinion does not address judicial service on a governmental committee, board, commission or other governmental entity. Such issues are addressed in Advisory Opinion 2014-2, available on the Board's website.

**Authorities.** The principal authorities for this opinion are Rules 3.7, 3.1, 1.3 and related Comments. Other authorities include Canon 3; prior Board opinions; Arthur Garwin et al., *Annotated Model Code of Judicial Conduct* (2d ed. 2011) ("*Annotated Model Code*"); three articles by Cynthia Gray: *Defining Charitable "Fund-Raising Event," Participating in Fund-Raising Events*, and *Discipline for Charitable Fund-Raising*, published in the Spring and Summer 2014 issues of 36 *Judicial Conduct Reporter*; and opinions and cases from other jurisdictions. The Board's website includes Board opinions<sup>1</sup> and links to the *Judicial Conduct Reporter*.<sup>2</sup>

---

<sup>1</sup> *Summary of Advisory Opinions*, Board on Judicial Standards, <http://bjs.state.mn.us/file/advisory-opinions/advisory-opinions-index-current.pdf> ("*Summary Adv. Ops.*").

<sup>2</sup> *Education Materials*, Board on Judicial Standards, <http://bjs.state.mn.us/education-materials> (follow [www.ncsc.org/cje](http://www.ncsc.org/cje) hyperlink).

The Comments serve two functions: (1) to “provide guidance regarding the purpose, meaning, and proper application of the Rules,” and (2) to “identify aspirational goals for judges.” Minn. Code of Judicial Conduct, Scope (2009). “The Canons state overarching principles of judicial ethics . . . [and] provide important guidance in interpreting the Rules.” *Id.*

Where the Rules or Comments use a permissive term such as “may” or “should,” the intent is not to create a mandate for action. Rather, the conduct being addressed or action being considered “is committed to the personal and professional discretion of the judge.” *In re Jacobs*, 802 N.W.2d 748, 754 (Minn. 2011) (quoting Minn. Code of Judicial Conduct, Scope).

Nonetheless, Board advisory opinions will often advise judges of what they *should* do, as well as what they *must* do.

**Authority to Issue Advisory Opinions.** “The board may . . . issue advisory opinions on proper judicial conduct with respect to the provisions of the Code of Judicial Conduct. . . . The advisory opinion shall not be binding on the hearing panel or the Supreme Court in the exercise of their judicial-discipline responsibilities.” Minn. R. Bd. Jud. Standards 2(a)(2), 2(a)(2)(v) (2016).

### **Terminology, Definitions, and Shorthand References.**

Rule 3.7 is titled “Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities.” For convenience, this Opinion uses “organization(s)” or “charitable organization(s)” to refer to all such groups and entities. Similarly, this Opinion uses “law-related activities” to refer to activities “concerned with the law, the legal system, or the administration of justice.” Rule 3.7(A). The term “member of a judge’s family” refers to all the individuals listed under that phrase in the Terminology section of the Code. The term “intimate relationship” means a continuing relationship involving sexual relations.

Unless otherwise noted, all references to Rules and comments are to those in the Minnesota Code of Judicial Conduct (2016) (hereinafter the “Code”). “Board” refers to the Board on Judicial Standards.

### **ADVISORY OPINION**

**Three Basic Provisions.** Rules 3.7, 3.1, and 1.3 state three basic permissions, limitations, and prohibitions regarding when and how a judge may participate in organizations and activities.

First, the general rule, subject to important limitations, is that a judge may participate in the activities of charitable organizations, just as a judge may (with limitations) participate in “extrajudicial activities” generally. Rules 3.1, 3.7(A).

Second, the main limitations on judicial participation involve: (a) the solicitation of funds or services; (b) activity which appears to lend the prestige of judicial office to the organization; (c) activities that will lead to frequent disqualification or that reasonably appear to undermine the judge’s independence, integrity, or impartiality. *See* Rules 3.7(A)(1)-(6), 3.1, 1.3, and 3.11.

Additionally, activities permitted under Rule 3.7 are permitted only if the organization is “not conducted for profit.”

Third, in addition to Rule 3.7, other rules may apply. For example, activities permitted under Rule 3.7 may still be prohibited by Rule 3.1 or 1.3. Judicial participation in law-related activities is governed by Rule 3.4 as well as Rule 3.7(A). *See* Advisory Op. 2014-2 (discussing when a judge may serve on a law-related governmental entity).

**Balancing Values: Social Good and Perceptions.** Applying the rules on judges participating in the activities of charitable and civic organizations involves three considerations in attempting to balance sometimes-competing values.

First, some charitable activities that are encouraged for members of society in general are prohibited for judges. The prohibitions rest on the judgment that the benefits produced by the charities are outweighed, for judges and society, by values central to judicial ethics, such as avoiding abuse of the prestige of judicial office for others’ gain and preserving judicial independence: “Ethical standards for judges limit participation in fund-raising for charitable organizations to ensure that the prestige of office is conserved for its essential purpose – maintaining public confidence in the independence, impartiality, and integrity of judicial decisions.” Cynthia Gray, *Defining Charitable “Fund-Raising Event,”* 36 *Jud. Conduct Rep.*, Spring 2014, at 1, 1.

Second, drawing clear lines is sometimes difficult, both because some governing principles are difficult to define and apply and because application involves very specific facts. Governing principles include appearances of impropriety, possible coercion, and favoritism. For example, it can sometimes be difficult to determine when a lawyer or litigant would reasonably believe that favor with a judge might be gained by contributing to a charity with which the judge has a certain type of involvement. As explained below, Rule 3.7 attempts to address such issues by various permissions and prohibitions, such as forbidding judges to be featured figures in most charitable fund-raisers, but permitting certain low-profile activities at fund-raisers. In close cases, the Board will focus on the risk of harm to the values central to judicial ethics.

Third, authorities from various other jurisdictions are sometimes of limited use. Opinions are often divided on whether a judge’s involvement in a fund-raising activity abuses the prestige of office. In addition, most opinions and commentary regarding charitable and organizational service are based on a partially-superseded authority, namely the ABA Model Code in its pre-2006 form.<sup>3</sup>

---

<sup>3</sup> Minnesota’s Rule 3.7(A) was preceded by Canon 4(C)(3). Because the 2009 amendments reorganized Canon 4(C)(3), detailed comparison is difficult. In general, the Rule and Canon have similar precepts. The Canon’s restriction on activities that “reflect adversely upon the judge’s impartiality or interfere with the performance of judicial duties” was moved to Rule 3.1. Further comparisons between the current Rule and prior Canon are made in the next section of this opinion.

**Background, Prior Code and Comments.** The principles that underlie Rules 3.7, 3.1, and 1.3 have been important to judicial ethics for many decades. For example, Canon 25 of the ABA Canons of Judicial Ethics (1924) provided in part:

[A judge] should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. . . . [H]e should not solicit for charities . . . .

Rule 3.7(A) is based on Canon 4C(3) of the pre-2009 Code. “Virtually all the concepts in Canon 4C(3) have been retained, although some have been made more expansive or restrictive and some aspects of Canon 4C(3) were moved to Rule 3.1 because of their general applicability.” *Annotated Model Code* at 374. For example, the pre-2009 Minnesota Code included a prohibition against fund-raising very similar to the prohibition now found in Rule 3.7(A)(2). Canon 4C(3)(b) (1996). The pre-2009 Code also forbade a judge to “use or permit the use of the prestige of judicial office” for solicitation purposes. *Id.* In the current Code, the concern with “abuse [of] the prestige of judicial office” has been moved to Rule 3.7 comment 3.

Rules 3.7(A)(1) and (6) had close counterparts in the pre-2009 Code. *See* Canon 4(C)(3)(a), (b) (1996). Although Rule 3.7(A)(5) has no express predecessor, provisions in the former Code that allowed a judge to act as an “advisor” and to “participate in the management and investment” of funds were very similar to the current Code’s provision allowing judges to make recommendations regarding “fund-granting programs and activities.” *Id.*; Rule 3.7(A)(5). Rule 3.7(B), which allows judges to encourage lawyers to provide pro bono legal services, is new.

### **Variations of Minnesota Rule 3.7 from Model Code Rule 3.7.**

Although Minnesota Rule 3.7 generally tracks Model Rule 3.7, there are several variations. First, the Model Code prohibits soliciting “contributions,” broadly defined to include “financial and in-kind contributions,” including services. Model Rule, Terminology. Minnesota Rule 3.7(A)(2) more narrowly prohibits soliciting “funds and services.” Minnesota’s rule, unlike the Model Rule, does not incorporate the general definition of “contributions.” Thus, Minnesota’s Rule 3.7(A)(2) allows soliciting in-kind contributions, such as food for a food shelf program. Second, although the Model Code and Minnesota Code allow solicitations from family and from certain judges, Minnesota also allows solicitation from “a person with whom the judge has an intimate relationship.” Rule 3.7(A)(2). Third, the Model Code allows an organization’s letterhead, when used for fund-raising or membership solicitation purposes, to include “the judge’s title or judicial office if comparable designations are used for other persons.” Model Rule 3.7 cmt. 4. Minnesota declined to adopt this comment. *See* discussion on page 9 below.

### **Analysis, Discussion.**

**Overview.** Rule 3.7(A) provides guidance in two broad areas: when a judge may serve as an officer, director, trustee or non-legal advisor of an organization; and when, regardless of such service, a judge may participate in an organization’s specific activities. Rule 3.7(B) allows judges to encourage lawyers to provide pro bono legal services.

Rule 3.7(A) describes six types of activities in which judges ostensibly may participate. However, significant limitations apply to five of these activities. For example, “soliciting funds and services” is permitted, but the restrictions largely negate the permission. Rule 3.7(A)(2).

Because Rule 3.7 is closely linked to Rules 1.3 and 3.1, a brief review of these rules helps to introduce Rule 3.7.

### **Rule 1.3 “Avoiding Abuse of the Prestige of Judicial Office” and Rule 3.7.**

Rule 1.3 provides: “A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”

Former Canon 25 (quoted above) linked its prohibition on charitable solicitation to its prohibition on abuse of the power or prestige of judicial office. *See* ABA Canons of Judicial Ethics Canon 25 (1924). Similarly, the current Code links the permission for some charitable activities by judges, such as ushering or serving food at a fund-raiser, to the absence of coercion or abuse: “Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.” Rule 3.7 cmt. 3.

The policy reasons for Rule 3.7’s restrictions on judicial solicitations are found in Rules 1.3 and 3.1.

The restrictions on fund-raising in [Model] Rule 3.7(A)(2) address two concerns: that the person solicited will feel obligation to respond favorably because of the judge’s position of influence or control or will expect future favors for their donations. . . . These restrictions also reduce the possible appearance of impropriety or lack of impartiality that is implicit in fund-raising.

*Annotated Model Code* at 376-77 (citations omitted). Avoiding speech or conduct that would reasonably be perceived as coercive or as offering an opportunity to curry favor is a dominant theme of Rule 3.7(A).

### **Rule 3.1 “Extrajudicial Activities in General,” the “Reasonable Person” Test, and Rule 3.7(A).**

Rule 3.7 is expressly linked to Rule 3.1. Rule 3.7(A) begins: “Subject to the requirements of Rule 3.1 . . . .” Rule 3.7, which addresses charitable, civic, and law-related activities, is in part a subset of Rule 3.1, which addresses extrajudicial activities generally. If an activity falls under any of the five prohibitions of Rule 3.1, it will not be permitted under Rule 3.7.

Rule 3.1 permits extrajudicial activities, but subject to important limits. In general, permission is not given where the activity is “prohibited by law or this Code.” Rule 3.1. For Rule 3.7 purposes, extrajudicial activities are not permitted where they cast doubt on judicial independence or impartiality, or involve coercive use of judicial prestige and authority. Rule 3.1(C), (D). The test is whether “an objective, unbiased layperson with full knowledge of

the facts and circumstances” would believe that the judge’s independence, integrity or impartiality was compromised. *State v. Pratt*, 813 N.W.2d 868, 876 n.8 (Minn. 2012) (quoting *In re Jacobs*, 802 N.W.2d 748, 753 (Minn. 2011)).

Rule 3.1(D) prohibits “conduct that would appear to a reasonable person to be coercive.” Again, the “reasonable person” standard is used. Comment 4 to Rule 3.1 notes, as to Rule 3.1(D):

While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge’s solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

Rule 3.7(A)(6), comment 2 to Rule 3.7, and comment 4 to Rule 3.7 closely follow Rule 3.1(B), (C), and (D). As to these parallel provisions, a leading commentary cautions: “While judges are generally permitted to attend fund-raising events, more caution should be exercised when the hosting organization actively advocates positions or files amicus briefs on disputed legal issues.” *Annotated Model Code* at 385.

While Rule 3.1 generally permits “extrajudicial activities,” with exceptions, Rule 3.7(A) permits specific types of activities involving organizations. “The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.” Rule 3.7 cmt. 1.

### **Participating in Activities and Organizations; Serving in Various Capacities.**

Almost all of Rule 3.7 addresses participation in charitable and other “activities,” usually undertaken at a specific time, e.g., planning, managing, investing, soliciting, appearing, speaking, attending, recommending, and encouraging. Rule 3.7 also addresses, in much less detail, a judge’s participation, over a period of time, in an organization by “serving” in various capacities, viz., “as an officer, director, trustee, or nonlegal advisor.” Rule 3.7(A)(6).

### **Participating in Activities – Financial and Fund-raising, Planning, Managing, Investing, Recommending; Serving as an Officer, Director, Trustee, or Nonlegal Advisor – Rule 3.7(A)(1), (5), (6).**

Rules 3.7(A)(1) and (5) permit a judge to be involved, formally or informally, in an organization’s internal financial activities – fund-raising planning, management and investment of funds, and making recommendations on fund-granting activities. While these subsections do not themselves prohibit any activity, they are of course subject to other general prohibitions such as those found in Rules 1.3 and 3.1.

Rule 3.7(A)(6) permits a judge to serve an organization in the formal capacities of “officer, director, trustee,” and also as a “nonlegal advisor.” Rules 3.7(A)(6)(a) and (b) provides express

limitations on these services. The judge may not provide the services when the organization is likely to be involved in proceedings before the judge or in frequent adversary proceedings before the judge's court. Rule 3.7(A)(6)(a), (b).

Rule 3.7(A)(6) overlaps with Rules 3.7(A)(1) and (5), because a judge who serves as officer, director, trustee, or advisor will often engage in the activities of planning, managing, investing, or recommending that are related to an organization's fund-raising or fund management.

Perhaps because Rule 3.7(A)(1), (5), and (6) are largely permissions, with only fairly narrow express prohibitions, these subsections have not been the subject of very many informal opinions or disciplines. The Board advised a judge against serving as a legal advisor to an organization that provided legal advice to indigent individuals. *Summary Adv. Ops.* at 6. Previous Board opinions advised it would be inappropriate for judges to serve on the boards of a legal aid group and of a women's shelter that was involved in advocacy. *Id.* at 6, 7. Such services were viewed as inappropriate because the organizations or their employees were apt to be involved in proceedings before the judge or adversarial proceedings before the judge's court. Rule 3.7(A)(6)(a), (b).

Previous Board opinions have approved judges serving as board members, and similar roles, in several types of organizations, e.g., a multi-county mental health center, a charitable foundation, a foundation dedicated to the promotion and recognition of academic excellence. *Summary Adv. Ops.* at 5, 8, 9. These organizations have engaged in a variety of activities, e.g., making educational grants, addressing problems of drug abuse and violence in schools, supporting cultural activities, promoting "progressive spiritual principles to the needs in our community and nation . . . our families, work places, communities, and political lives." *Id.* at 4-10. Some of these opinions, although they approved judicial service or participation, also contained limitations based on particular facts. *Id.*

Minnesota Rule 3.7(A)(5) allows a judge who is a member or director of an organization to make recommendations to any charitable organization, whether law-related or not.<sup>4</sup> On the other hand, the permission in the Minnesota rule is, at least expressly, only "concerning its fund-granting programs and activities." Rule 3.7(A)(5). However, if a judge may make recommendations regarding these activities, there appears to be no reason to forbid recommendations regarding other activities, particularly because Rule 3.7(A) addresses permitted activities that are "including but not limited to the following activities." Rule 3.7(A).

---

<sup>4</sup> ABA Model Rule 3.7(A)(5) takes a more restrictive position, allowing a judge to make recommendations to a charitable organization "only if the organization or entity is concerned with the law, the legal system, or the administration of justice."

**Soliciting and Encouraging Funds, Services, Memberships. Rule 3.7(A)(2), (3), and (6).**

A judge generally may not solicit “funds and services” for charitable organizations. Rule 3.7(A)(2). This prohibition is based on concerns about possible coercion and with “abuse [of] the prestige of judicial office.” Rule 3.7 cmt. 3.

Previous Board opinions have repeatedly advised judges that contemplated charitable solicitation activities are “inappropriate.” Examples of such inappropriate activities include co-chairing a committee to solicit funds for a county bar foundation, signing a letter soliciting funds for a rape and abuse crisis center, and writing a letter in support of the Kids Network for use in the network’s fundraising activities. *Summary Adv. Ops.* at 21, 22.

Narrow exceptions to this rule are made for certain persons close to the judge – those who have a family, family-like, or other intimate relationship with the judge, and also colleagues on the bench, unless the judge “exercise[s] supervisory or appellate authority” over the colleague. Rule 3.7(A)(2). These exceptions had no counterparts in the prior Code.

Another narrow exception relates to what is solicited. Minnesota does not prohibit soliciting in-kind items, unless the solicitation would violate another rule. *See* Rule 3.7(A)(2) (prohibiting solicitation only of “funds and services”). For example, soliciting food-shelf items would normally not violate the Code, but soliciting items of considerable value could involve coercion or abuse of the prestige of the judicial office. In contrast, ABA Model Code Rule 3.7(A)(2) prohibits soliciting “contributions,” defined to include “in-kind” items. Model Code, Terminology.

A judge may solicit “membership” for charitable organizations, but only “if there are no dues or fees required for membership.” Rule 3.7(A)(3). This rule has no counterpart in the pre-2009 Code. Rule 3.7(B), discussed below, permits a judge to encourage lawyers to provide pro bono services.

A judge, in the course of the judge’s official duties, may ask a government agency to fund a judicial branch activity. *See* U.S. Courts, Jud. Conference Comm. on Codes of Conduct, Adv. Op. 50 at 63 (2009) (noting that matters relating to court budget are “vital to the judiciary’s housekeeping functions”).<sup>5</sup> However, a judge may not seek private funding for a governmental entity, nor may a judge seek either private or governmental funding for a non-governmental entity. *Summary Adv. Ops.* at 23.

**Including or Excluding Judicial Title on Organizational Letterhead When Soliciting Funds or Members.**

As noted above, Minnesota declined to adopt Model Code Comment 4 to Rule 3.7. The Model Code comment allows an organization’s letterhead, when used for fund-raising or membership solicitation purposes, to include “the judge’s title or judicial office if comparable

---

<sup>5</sup> Available at <http://www.uscourts.gov/file/vol02b-ch02pdf>.



designations are used for other persons.” In Minnesota, however, a judicial title or office should not appear on an organization’s letterhead for fund-raising or membership-solicitation purposes.

Several previous Board opinions reflect the Board’s position. A 2002 opinion advised a judge in whose name a scholarship fund was being established that “no reference to [your] judicial office should be made” in connection with establishing the fund or disbursing its funds. *Summary Adv. Ops.* at 40. A 1988 opinion advised that, although a judge could serve on the board of the State Arts School, the judicial title could not be used in fundraising efforts. *Summary Adv. Ops.* at 7.

### **Attending and Appearing at Fund-Raising Events. Rule 3.7(A)(4).**

Judges frequently seek advisory opinions regarding involvement in charitable fund-raising events. The basic answers are clear. Except where the event concerns the law, the legal system, or the administration of justice, judges may *not* appear at fund-raisers in such prominent roles as speaking, receiving an award, and being featured on the program, nor may they permit the judicial title to be used for the event. Rule 3.7(A)(4), Rule 3.7(A)(4) cmt. 3. On the other hand, judges *may* attend such events, and may play minor roles, such as usher, food server, and food preparer. Rule 3.7(A)(4) cmt. 3.

Fund-raising events include events for which the ticket price of a dinner hosted by an organization substantially exceeds the organization’s costs. Cynthia Gray, *Defining Charitable “Fund-Raising Event,”* 36 *Jud. Conduct Rep.*, Spring 2014, at 1, 4. Fund-raising events also include events for which donors purchase advertisements. *Id.* at 6.

The pre-2009 Code included briefly-described prohibitions and a permission: “A judge shall not be a speaker or the guest of honor at an organization’s fund raising events, but may attend such events.” Canon 4C(3)(b). Current Rule 3.7(A)(4) provides more specific prohibitions, e.g., “speaking at” the fund-raiser, “receiving an award,” “being featured on the program,” and permitting the judicial title to be used are all specifically prohibited. Additional prohibitions apply to “appearing” and “receiving . . . recognition,” but these prohibitions are difficult to apply in some circumstances. Rule 3.7(A)(4).

In addition to mere attendance, the current Code permits “a judge to serve as an usher or a food server or preparer, or to perform similar functions . . . .” Rule 3.7 cmt. 3.<sup>6</sup> What functions are “similar” to those permitted in comment 3 to Rule 3.7? The rationale for permitted activities helps answer this question. “Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.” *Id.* Leading commentaries echo this rationale: “As long as there is no coercion – even subtle and unstated coercion – and as long as the judge’s position as a judge is not being exploited, the activity is permissible.” *Annotated Model Code* at 378.

---

<sup>6</sup> Citations to numerous public judicial disciplines in other states for improper charitable activities are found in Cynthia Gray, *Discipline for Charitable Fund-Raising*, 36 *Jud. Conduct Rep.*, Summer 2014, at 1.

Distinguishing between prohibited “appearing” and permitted “mere attendance” or serving is sometimes difficult. A gray zone remains between prohibited star-of-the-show activities and permitted activities for which the judge does not receive special recognition. The Board will not attempt to draw fine lines on these issues. Instead, the Board will refer judges to several principles and to opinions from other jurisdictions.

As to whether a judge may play a certain role at a fund-raiser, questions include: (1) Is the judge publicly identified as a judge at the event or in advertisements for the event? (2) Would an attendee reasonably perceive the judge to be coercing or soliciting a contribution, even indirectly?<sup>7</sup> (3) Would an attendee reasonably perceive that a contribution would gain the judge’s favor? (4) Is the prestige of judicial office used to give the event greater importance?

A survey of various states’ judicial ethics opinions includes many very specific permitted or prohibited participations in charitable fund-raising activities.<sup>8</sup> For example, a judge may wash cars, but may not stand on the street encouraging drivers to have their cars washed. Cynthia Gray, *Participating in Fund-Raising Events*, 36 *Jud. Conduct Rep.*, Summer 2014, at 1, 4, citing *Ariz. Comm. on Judicial Conduct, Advisory Op. 6 (2000)*. Several states’ opinions prohibit a judge from having “celebrity status,” by bartending, running a race in judicial robes, participating in a “dunk a judge” event, etc. *Id.* Most states allow judges to sell refreshments and act as cashier at a fund-raiser. *Id.* Most states allow judges to be members of an ensemble, such as an orchestra or softball team. *Id.* at 5.

For charitable events that do *not* involving fund-raising, Rule 3.7(A)(4) allows a judge to speak at, receive an award or other recognition, or be featured on the program of such an event. Several previous Board opinions have found it appropriate for judges to be publicly honored, when honor was due. For example, a judge may be honored for service in athletic programs by a special fund in the judge’s name for the athletic program. *Summary Adv. Ops.* at 8. A judge may permit a community theater to name a facility for the judge. *Id.* at 9. A judge’s picture and success story may be used in promotional materials to attract students to a private college, but not in a fund-raising brochure. *Id.* at 15. A judge may participate in a promotional video profiling the judge in a public service announcement for the Minnesota Higher Education Service Office. *Id.* However, where the activity or literature that would feature the judge has a fund-raising purpose, the prohibitions and permissions of Rule 3.7(A)(4), discussed above, apply. Even when a charitable event does not involve fund-raising, if a judge is invited to speak at, accept an award at, or otherwise participate in an event sponsored by an advocacy organization concerned with issues that come before the court, the judge should determine whether the participation could reasonably appear to undermine the judge’s impartiality contrary to Rule 3.1(C). *See Annotated Model Code* at 335, 385.

---

<sup>7</sup> Lawyer discipline for in-person solicitation was affirmed even where the lawyer never “popped the question” in so many words. *See In re 97-29*, 581 N.W.2d 347, 351 (Minn. 1998).

<sup>8</sup> No attempt has been made in this opinion to determine whether these opinions rely on versions of the Code that, in Minnesota, were superseded by 2009 amendments. The amendments would not change the results in most cases.

### **Events That Concern the Law, the Legal System, or the Administration of Justice.**

Effective July 1, 2016, the Minnesota Supreme Court created an exception to the general prohibition on appearances by judges at fund-raising events. Rule 3.7(A)(4) now provides:

[I]f the event serves a fund-raising purpose, the judge may participate only if (a) the event concerns the law, the legal system, or the administration of justice, (b) the judge does not encourage persons to buy tickets for or attend the event or to make a contribution except as provided in paragraph (A)(2) of this rule, and (c) participation does not reflect adversely on the judge's independence, integrity, or impartiality.

The amendment is based in part on ABA Model Rule 3.7(A)(4). The primary purpose of the amendment is to allow judges to accept awards, speak, or otherwise appear at fund-raising events that benefit law-related organizations such as legal services programs and pro bono programs.

### **Encouraging Pro Bono Activities.**

Rule 3.7(B) provides: “A judge may encourage lawyers to provide pro bono publico legal services.” To “encourage” is, of course, permitted, while to coerce is not. Comment 4 to Rule 3.7 provides guidance for making this distinction.

In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in so doing the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

Such encouragement may often lend the prestige of the judicial office to pro bono activity, but adoption of Rule 3.7(B) impliedly determines that “abuse” of prestige is not involved, absent a special and abusive feature of the encouragement.

The Board has previously opined that judges, individually or as a group, may actively support creation of a panel of volunteer criminal defense attorneys, to provide brochures about their services, and to announce their availability periodically. *Summary Adv. Ops.* at 10. The Board’s opinion included advice regarding disclaimers and cautionary instructions to be included in the promotional brochures. *Id.* The Board has also approved a judge becoming a member or director of a minority bar association or a similar group that promoted the hiring of minority lawyers by Twin City law firms. *Id.*

ABA Formal Opinion 15-470 interprets Rule 3.7(B). ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 470 (2015). The synopsis of the opinion states:

A state supreme court judge may sign a letter printed on the judge's stationery that is duplicated and mailed by the unified state bar association directed to all lawyers licensed in the state encouraging those lawyers to meet their professional responsibility under Rule 6.1 of the Model Rules of Professional Conduct and provide pro bono legal services to persons in need and to contact the bar association for information about volunteer opportunities.

*Id.* at 1.

The ABA opinion lists a number of factors that can be considered when judges have to decide whether a specific act involves permitted encouragement or might be impermissibly coercive. *Id.* at 8. For example, according to the opinion, the more the encouragement involves one-on-one contact, or out-reach to a small group, the more likely it might be viewed a coercive. *Id.* Other factors include the tone of the communication, and whether the judge will learn whether individual lawyers responded positively. *Id.*

The Board believes, however, that some departure from the ABA opinion is appropriate because of Minnesota experience. Minnesota lawyers have provided pro bono services through "access to justice" organizations for many years. The Board has no record of complaints of coercion based on judicial encouragement for such volunteer work, even when the judge is fully aware of the lawyer's connection to the organization. With this background, the Board does not expect that judicial encouragement of lawyer volunteer work through organizations that provide legal representation for low income individuals is likely to be viewed as coercive in most situations.

As Rule 3.7(B) recognizes, judicial encouragement of pro bono representation is a special category of charitable/civic activity. Unlike most other charitable and civic activities, pro bono representation provides a direct benefit to the court system since pro se cases take up a disproportionate share of court resources. Judicial encouragement of pro bono activity also furthers the courts' institutional objective of equal administration of justice. Thus, so long as the form and manner of encouragement "does not employ coercion, or abuse the prestige of judicial office," it is permitted. Rule 3.7(B) cmt. 4.

**Judicial Acts Related to Charities and Non-Profit Entities.** The Board has issued numerous opinions that judges may not order criminal defendants to make contributions to charities and that judges may not accept plea agreements including such provisions. *Summary Adv. Ops.* at 21. The Board cited former canons that are similar to current Rule 1.3. *Id.*

Two opinions exemplify the Board's views. A 1993 opinion found it inappropriate for a judge performing a marriage ceremony to request, in lieu of a fee, that the couple make a donation to a charity designated by the judge. *Id.* A 1997 opinion found it appropriate, in a traffic violation case, for a judge to offer a defendant the option to participate in Decision Driving Court, a course offered by a local vocational college. *Id.* at 13.

**Conclusion.** Within the limits of what is permitted under Rules 3.7, 3.1 and 1.3, the Board generally wishes to encourage judicial contributions to the work of non-profit civic and charitable organizations. The Board hopes that this opinion provides helpful general guidance to judges when they consider becoming involved in such activities.

Adopted November 4, 2016