

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 1999-10

**Date of Issue:** March 6, 2000

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Guilty Plea/Verdict – Solicitation of Funds

A judge has asked the Committee to reconsider [Opinion Request No. 1999-08] under slightly different facts.\* The scenario is similar in that the question is whether a court is permitted to order a contribution by the defendant to an organization which in this case oversees a substance abuse fund. However, unlike the previous case where the State’s Attorney sought a contribution to a fund in return for a nol prosee or stet, here, the judge would order the contribution as part of probation or probation before judgment.

While the goals of the fund are laudable, there is no escaping the dictate of Canon 4C(2) which prohibits a judge from soliciting funds for charitable, fraternal, law-related or civic organizations. The judge has presented no additional or extenuating facts or circumstances which persuades the Committee to change or overturn [Opinion Request No. 1999-08]. In fact, the scenario stated may weigh even more heavily against the contribution than that expressed in [Opinion Request No. 1999-08].

First, the solicitation could be viewed more coercive. Unlike the facts presented under [Opinion Request No. 1999-08], here, the defendant is not provided the opportunity to reject the plea as presented by the State’s Attorney. Instead, the defendant is subjected to the condition under the guise of probation or probation before judgment. Second, the State’s Attorney is not serving as an intermediary between the defendant and the court; rather, the court, without participation or election by the defendant, directly orders the contribution as part of probation or probation before judgment.

The Committee has additional reservations. First, the Committee is concerned that the forced contributions may violate Canon 1 and Canon 2A of the Maryland Code of Judicial Conduct. Under these two Canons, a judge is to ensure the preservation of the “integrity and independence of the judiciary” and to “avoid even the appearance of impropriety,” respectively. The Committee acknowledges the violation of these two Canons is not always easily discernable, however, it must be remembered that merely the appearance of “impropriety” or a lack of “integrity and independence” must concern us.

While a substance abuse fund is clearly a worthy cause, the Committee is concerned that if this practice is allowed to continue, other counties may determine that they have their own special interests which could be advanced by a program funded by contributions of defendants. If the program was established or funded with the participation of the judiciary, the public may perceive that the judges were advocating a special interest. While most programs would undoubtedly be uncontroversial, there can be little doubt that there would come a day where some programs would

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\* In [Opinion Request No. 1999-08], the Committee determined that it was a violation of Canon 4C(2) of the Maryland Code of Judicial Conduct when a judge granted the State’s Attorney’s motion to stet a charge on the condition that the defendant make a charitable contribution.

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generate discord and dissension. The judiciary might then be seen as a[n] advocate or fund-raiser for the special interest. This, in turn, may adversely affect the “integrity and independence of the judiciary” and present the “appearance of impropriety.”