

FILED

January 25, 2016

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

ADM08-8004

**ORDER REGARDING PROPOSED AMENDMENTS TO THE
MINNESOTA CODE OF JUDICIAL CONDUCT**

O R D E R

The Minnesota Board on Judicial Standards has filed a petition with the court that requests amendments to two provisions of the Minnesota Code of Judicial Conduct. The rules proposed for amendment are Minn. Code of Jud. Conduct 3.7(A)(4) and 4.2(B)(3)(c). The Board's petition and proposed amendments to the Code of Judicial Conduct are attached to this order. The court will consider the proposed amendments after soliciting and reviewing any comments regarding those amendments.

IT IS HEREBY ORDERED that any individual wishing to provide comments in support of or opposition to the proposed amendments shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts. Written comments shall be electronically submitted for filing in Administrative Case Number ADM08-8004 using the appellate courts' e-filing application, E-MACS, or may be filed in person at 25 Rev. Dr. Martin Luther King Jr. Blvd., Suite 305, Saint Paul, Minnesota 55155. All comments shall be filed so as to be received no later than March 25, 2016.

Dated: January 25, 2016

BY THE COURT:



Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA

OFFICE OF
APPELLATE COURTS

IN SUPREME COURT

DEC 09 2015 #

File No. ADM10-8032

FILED

In re Petition to Amend the Minnesota Code of
Judicial Conduct

**PETITION OF BOARD ON
JUDICIAL STANDARDS**

To the Honorable Justices of the Minnesota Supreme Court:

Petitioner, the Minnesota Board on Judicial Standards (“Board”), respectfully requests that the Court amend two provisions of the Minnesota Code of Judicial Conduct as set forth in Exhibit A hereto. The reasons for the proposed amendments are summarized below and described more fully in the Board’s Memorandum filed herewith.

Attendance at Fund-Raising Events

1. Rule 3.7(A)(4) of the Judicial Code prohibits a judge from “appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with” any fund-raising event. This rule prohibits judges from such public participation in fund-raising events that benefit legal aid programs and other programs that concern the legal system.

2. In contrast to the blanket prohibition in the Minnesota rule, the corresponding ABA model rule contains an exception allowing a judge to participate in a fund-raising event that “concerns the law, the legal system, or the administration of justice” provided that participation does not reflect adversely on the judge’s independence, integrity, or impartiality in violation of Rule 3.1.

3. The Board has reviewed the rules and practices in Minnesota and in other states concerning judges’ participation in fund-raising events. It appears that, over the years, that there

have been a number of instances in which respected Minnesota judges have participated in fund-raising events to benefit legal services programs or other law-related organizations. There has been no indication that such participation has caused harm, nor does it appear that there have been problems in other states caused by adoption of the ABA version of Rule 3.7(A)(4).

4. The Board proposes that the Court adopt the exception in the ABA model rule. The Board has added language to the ABA model rule in order to clarify the scope of the exception. The Board's proposed amendment would allow a judge to participate in a fund-raising event 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.

See Ex. A.

5. Although the current rule prohibits a judge from "appearing" at a fund-raising event, "mere attendance" is generally permitted. Rule 3.7(A)(4) and Rule 3.7 cmt. 4. The Board's proposed amendment would not affect the permission for a judge to merely attend a fund-raising event, even if the event does not "concern[] the law, the legal system, or the administration of justice."

6. Under the proposed amendment, a judge would remain subject to Rule 3.1 regardless of whether a fund-raising event "concerns the law, the legal system, or the administration of justice." Thus, a judge would remain prohibited from participating in fund-raising events that reflect adversely on the judge's impartiality, such as a fund-raising event for parties that appear before the judge. In contrast, a judge would be permitted to attend a fund-raising for a legal services program whose attorneys appear before the judge.

Solicitation of Campaign Contributions From Other Judges

7. There is currently an inconsistency in the Judicial Code. Rule 4.2(B)(3)(c) allows a judicial candidate to personally solicit campaign contributions from a judge but Rule 4.1(A)(4)(b) prohibits a judge from making a contribution to a candidate.

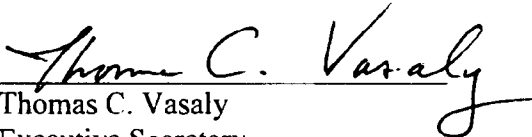
8. The Board has been informed that notwithstanding Rule 4.2(B)(3)(c), Minnesota judges do not solicit campaign contributions from other judges.

9. The Board proposes that Rule 4.2(B)(3)(c) be amended to delete the permission to solicit other judges as set forth in Exhibit A.

WHEREFORE, the Board respectfully requests that the Court issue an order establishing a notice and comment period and that the Court adopt the rule changes proposed by the Board.

Dated: December 8, 2015

MINNESOTA BOARD ON JUDICIAL
STANDARDS

By: 
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Proposed Amendment to Rule 3.7(A)(4):

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

* * *

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, ~~unless the event serves a fund-raising purpose, but if 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;~~

Proposed Amendment to Rule 4.2(B)(3)(c):

(B) A candidate for elective judicial office may, unless prohibited by law:

* * *

(3)(c) personally solicit campaign contributions from members of the judge's family; or from a person with whom the judge has an intimate relationship; ~~or from judges over whom the judge does not exercise supervisory or appellate authority.~~

STATE OF MINNESOTA

IN SUPREME COURT

File No. ADM 10-8032

In re Petition to Amend Minnesota Rules of
Judicial Conduct

**MEMORANDUM IN SUPPORT
OF PETITION OF BOARD ON
JUDICIAL STANDARDS**

To the Honorable Justices of the Minnesota Supreme Court:

Petitioner, the Minnesota Board on Judicial Standards (“Board”), respectfully submits the following memorandum in support of its petition to amend two provisions of the Minnesota Code of Judicial Conduct.¹

I. JUDGES SHOULD BE PERMITTED TO PARTICIPATE IN LAW-RELATED FUND-RAISING EVENTS.

The Board proposes that the Court adopt a provision in the current ABA Model Code of Judicial Conduct that permits judges to participate in fund-raising events that concern the law, the legal system, or the administration of justice.

The 1996 Minnesota Code of Judicial Conduct provided, “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 4(C)(3)(b). This provision was based on Canon 4(C)(3) of the 1990 ABA Model Code.

In 2007, the ABA reorganized and revised the Model Code. The 2007 Model Code, consistent with the 1990 Model Code, generally prohibits a judge from “appearing or speaking at,

¹ On occasion, the Court has appointed advisory committees to study and recommend proposed changes to Court rules. The Board believes that it is unnecessary in this instance to appoint an advisory committee. First, the Board’s proposal is narrowly directed at two rules. Second, as will be discussed below, the rules in question have already been reviewed by an advisory committee (in 2007). The Board’s proposals are consistent with the recommendations of the 2007 committee.

receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event” that serves a fund-raising purpose. 2007 ABA Model Rule 3.7(A)(4). The 2007 model rule, however, incorporated a new exception allowing a judge to participate in a fund-raising event that “concerns the law, the legal system, or the administration of justice.”

In 2007, a Court-appointed committee reviewed the revised ABA Model Code and recommended that the Court adopt most of the revised Model Code, including Model Rule 3.7(A)(4).² However, the Board opposed the exception for law-related fund-raising events. The Court agreed with the Board’s position. Effective 2009, the Court adopted the current version of the Minnesota rule, which prohibits a judge from participating in any fund-raising event.³

The Board recently reviewed the Board’s advisory opinions on this subject. The Board’s review indicated that the Board’s advisory opinions on judges’ participation in fund-raising events, such as on whether a judge may receive an award at a fund-raising event to benefit a legal services program, have not been entirely consistent. In addition, the Board has become aware that, over the years, that there have been a number of instances in which respected Minnesota judges have participated in fund-raising events intended to benefit legal services programs or other law-related organizations. There has been no indication that such participation has caused harm.

The current situation should be addressed. Either the Code’s blanket prohibition on participating in fund-raising events should be enforced or an exception should be created

² Report of the Ad Hoc Comm. to Review the Minn. Code Jud. Cond., No. C4-85-697 (Minn. Oct. 31, 2007) (“2007 Advisory Committee”) at 6.

³ “Mere attendance” at a fund-raising event, regardless of the purpose of the event, does not violate Rule 3.7(A)(4). Rule 3.7 cmt. 3. The comment is taken from the 2007 Model Code. The Board does not propose any change to the comment.

permitting participation in certain types of fund-raising events. The Board favors the second option. Specifically, the Board proposes that the Court adopt the exception in the ABA Model Code, and in the Judicial Codes of many other states, allowing a judge to participate in a law-related fund-raising event. The Board's proposed amendment is as follows:

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

* * *

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, unless the event serves a fund-raising purpose, but if 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;

In an aid to clarity, the Board's proposed amendment contains two limitations that are not set forth in Model Rule 3.7(A)(4) but which are found elsewhere in the Model Code.⁴ Proposed

⁴ Model Rule 3.7(a)(4) provides that "if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice." The model rule has a complicated structure because permission to attend a law-related fund-raising event is expressed as an exception to an exception. In addition, Rule 3.7 is subject to the overarching restrictions of Rule 3.1. The Board did not attempt to restructure the rule.

clause 4(b) confirms that a judge generally may not engage in direct solicitation of contributions. Proposed clause 4(c) confirms that participation is not permitted where participation would reflect adversely on the judge's independence, integrity, or impartiality. *See* Rule 3.1(C).

After the Court acts on the Board's proposal, the Board will issue a formal opinion to Minnesota judges providing examples of conduct that is permitted and conduct that is prohibited.⁵

II. JUDGES SHOULD BE PROHIBITED FROM PERSONALLY SOLICITING CAMPAIGN CONTRIBUTIONS FROM OTHER JUDGES.

There is currently an inconsistency in the Judicial Code. Rule 4.2(B)(3)(c) allows a judicial candidate to personally solicit campaign contributions from other judges but Rule 4.1(A)(4)(b) prohibits a judge from making a contribution to a candidate. The Board believes that this inconsistency should be corrected by removing the permission for a judge to personally solicit campaign contributions from other judges.

The 1996 Code prohibited judges from contributing to candidates and prohibited judicial candidates from personally soliciting campaign contributions. Canons 5(A)(1)(e) and 5(B)(2), Minn. Code Jud. Cond. (1996). Solicitation was permitted only by the judge's campaign committee. *Id.* The 2007 Model Code prohibits soliciting contribution except by the judge's campaign committee, but includes a provision allowing a judicial candidate to contribute to candidates. Model Rule 4.2(B)(6). The 2007 Advisory Committee rejected Model Rule 4.2(B)(6) and recommended retaining Minnesota's general prohibitions on contributions and personal solicitations. 2007 Advisory Committee Report at 7-9.

⁵ In June 2015, the Board asked Minnesota judges for comments on the Board's draft formal opinion on charitable activities. Several judges criticized the blanket prohibition on attending fund-raising events, and no judges supported a blanket prohibition. The Board has placed its draft opinion on hold until the Court rules on the Board's petition to amend the Code.

In its revision of the Judicial Code effective 2009, the Court did not adopt either the ABA recommendation or the Advisory Committee recommendation concerning personal solicitation of campaign contributions. The 2009 Code generally forbids personal solicitations but contains an exception allowing a judicial candidate to solicit contributions from judges over whom the candidate (if a judge) does not exercise supervisory or appellate authority. Rule 4.2 of the 2009 Code, which remains in effect, provides:

(B) A candidate for elective judicial office may, unless prohibited by law:

* * *

(3)(c) personally solicit campaign contributions from members of the judge's family, or from a person with whom the judge has an intimate relationship, or from judges over whom the judge does not exercise supervisory or appellate authority.

In the revised Judicial Code, the Court retained the general prohibition on contributing to candidates. Rule 4.1(A)(4)(b). Thus, Rule 4.2(B)(3)(c) allows a judicial candidate to solicit a campaign contribution from a judge who is apparently barred from contributing. It could be argued that a judge is impliedly allowed to contribute to another judge because the prohibitions in Rule 4.1(A) apply "[e]xcept as permitted by Rule[] 4.2." Nevertheless, it is the Board's understanding that Minnesota judges do not solicit campaign contributions from other judges.

The inconsistency in the Code should be corrected. Either judges should be expressly permitted to contribute to other judges, or the permission for judges to personally solicit campaign contributions from other judges should be rescinded. The Board believes that the second option is preferable. The Board proposes that Rule 4.2(B)(3)(c) be amended as follows:

(B) A candidate for elective judicial office may, unless prohibited by law:

* * *

(3)(c) personally solicit campaign contributions from members of the judge's family; or from a person with whom the judge has an intimate relationship; ~~or from judges over whom the judge does not exercise supervisory or appellate authority.~~

The Board is aware that its proposal will result in a difference in treatment between campaign solicitations and charitable solicitations. The Board believes, however, that a stricter approach in the case of campaign contributions is justified.

The language in current Rule 4.2(B)(3)(c) is taken from Rule 3.7(A)(2), which permits a judge to solicit charitable contributions under similar circumstances. If the Board's proposal is adopted, a judge will be permitted to solicit other judges for charitable contributions, but will not be able to solicit other judges for campaign contributions.

The exception in the case of charitable solicitations is based on the notion that in soliciting charitable contributions from other judges, "the element of coercion is largely missing, and there is little likelihood that the judge making the contribution would be perceived as attempting to influence the judge making the solicitation." Reporter's Explanation of Changes, Rule 3.7(A)(2), *reprinted in* ABA Model Code of Jud. Cond., App. B (ABA 2007).

Although personal solicitation of campaign contributions from fellow judges does not present the same potential harm as personal solicitation of other persons, a solicitation for a contribution to the judge's own election campaign involves a degree of self-interest, and hence risk of pressure on the judge who is solicited, that is not present in a solicitation for a judge's favorite charity. Prohibiting such solicitations is consistent with Rule 4.1(A)(3), which prohibits a judge from endorsing any candidate for public office, including a colleague on the bench. As mentioned above, the Model Code allows a judge to solicit funds "from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority," ABA Model Rule 3.7(A)(2) (asterisk omitted), but prohibits all personal solicitations of campaign

contributions. ABA Model Rule 4.1(A)(8).

The U.S. Supreme Court has upheld Florida's blanket ban on personal solicitations by judicial candidates. *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656 (2015). In rejecting an argument that the Florida rule was overbroad because it forbade solicitations where the risk of coercion was relatively low, Justice Roberts stated:

Florida has reasonably determined that personal appeals for money by a judicial candidate inherently create an appearance of impropriety that may cause the public to lose confidence in the integrity of the judiciary. That interest may be implicated to varying degrees in particular contexts, but the interest remains whenever the public perceives the judge personally asking for money.

* * *

The First Amendment requires that Canon 7C(1) be narrowly tailored, not that it be "perfectly tailored."

Id. at 1671 (quoting *Burson v. Freeman*, 504 U. S. 191, 209 (1992)).

CONCLUSION

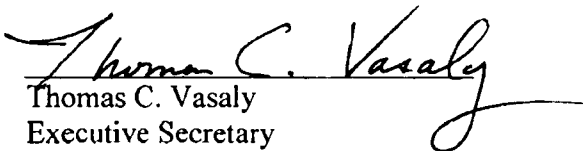
For the foregoing reasons, the Board requests that the Court issue an order establishing a notice and comment period and that the Court adopt the Board's proposed amendments to the Judicial Code.

Respectfully submitted,

Dated: December 8, 2015

MINNESOTA BOARD ON JUDICIAL
STANDARDS

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