



Formal Advisory Opinions

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Rule 8. Advisory Opinions



FAO 2013 - 02

Q: "May a judge participate in fund-raising activities on behalf of civic, charitable and other organizations as described in Canons 4 and 5 of the Code of Judicial Conduct, if the activities do not involve the direct solicitation of funds, goods, volunteer service, membership, etc.?"

FAO 2013-02

A: "...a judge may participate in activities related to fund-raising which do not utilize the esteem of the judge's office to further the interests of the entity, present an element of coercion, interfere with the performance of the judge's judicial duties, nor reflect adversely upon the judge's independence, integrity, and impartiality."



FAO 2013-02

- A judge "may not actively assist such an organization in raising funds."
 - Canon 4C, Canon 5B(2)
- A judge should not lend the prestige of the judge's office to advance the private interest of others orally or in writing.
 - Canon 2B
- A judge's participation in civic and charitable activity may not call into question the independence, integrity and impartiality of the judge or the judiciary as a whole.
 - Canon1, Canon 2A



FAO 2013-02

- A judge may participate in charitable and civic fund-raising activity, which does not involve any solicitation of funds, goods, volunteer service, membership, etc., provided:
 - The judge's participation is not publicized and his or her identity is not noted;
 - The judge's participation is not likely to encourage others to participate nor reasonably be perceived as coercive by others (i.e. participation for fear of offending the judge);
 - The judge's participation does not cast reasonable doubt on his or her ability to perform judicial duties impartially;
 - Participation in charitable and fund-raising activities should be tasteful and observe appropriate community standards.



FAO 2013-02

+ Generally, situations where a judge's participation in a fundraising activity is unseen or unnoticed would not violate the Code.

- Situations where a the judge's name, image, or judicial office are being used to promote the private interests of another may violate the code.



FAO 2013-02

YES

- Working inside a concession stand
- Contributing items* (without using title), setting up and breaking down displays for charitable auction
- Serving on planning committee for church stewardship
- Speaking about ALS at a local civic club

NO

- Hawking concessions out in the stadium
- MC for the charitable auction
- Participating in home visits for stewardship campaign
- Challenging attorneys to participate in "Ice Bucket Challenge"



FAO 2014-01

Q: May a judge maintain membership in voluntary bar associations?



FAO 2014-01

A: "A judge may maintain membership in a voluntary bar association so long as the organization promotes the bar in general and the legal profession as a whole, and is not essentially a law-related special interest group which promotes issues pertaining to the representation of a particular group of clients."



FAO 2014-01

"The Commission further reasoned that membership in gender, ethnic, and cultural based bar associations is permitted, so long as the entity does not practice unlawful discrimination."



FAO 2014-01

- | | |
|---|--|
| No | Yes |
| <ul style="list-style-type: none">• criminal defendants• personal injury plaintiffs• criminal prosecution• insurance defense | <ul style="list-style-type: none">• women attorneys• attorneys of color• voluntary county bar association• family law section of bar* (represents both sides) |



FAO 2014-02

Q: "Is a judge required to disqualify from matters wherein a party moves for the disqualification of the judge based upon the fact that the party has filed a complaint about the judge with the Judicial Standards Commission?"



FAO 2014-02

A: "The mere filing of a complaint with the Judicial Standards Commission, nothing else appearing, does not establish a reasonable basis upon which one may reasonably question the subject judge's impartiality in proceedings involving the complainant."



FAO 2014-02

The Commission recognizes the likely abuse of the judicial process which would arise should a party be permitted to "judge shop" by way of motions to disqualify a judge based upon the mere filing with the Commission of a complaint against the judge.



FAO 2014-02

- Distinguished from *In re Braswell*, 358 N.C. 721 (2004)
 - "...a judge is disqualified from hearing a case when one of the parties has a pending lawsuit against the judge..."
- Pre-existing conflict vs. manufactured



FAO 2014-02

- When to recuse...
 - During formal investigation,
 - After receiving a private letter of caution,
 - After served with a statement of charges,
 - After receiving any disciplinary measure from the NC Supreme Court



FAO 2014-03

Non-immigrant Status Certification Form
I-918 Supplement B (I-918B)



FAO 2014-03

Q: Three part question

- “Should judges ...certify that [certain] individuals are, have been, or are likely to be helpful in the investigation or prosecution of that [certain crimes]?”
- Should judges register with Homeland Security that they are authorized to sign a I-918B on behalf of law enforcement agencies?
- If a judge has already [certified] an ...individual's helpfulness in assisting in the investigation or prosecution of a criminal matter, what are the judge's obligations in any future matter concerning adjudication of that individual?

UNC

FAO 2014-03

A: Three part answer

- Judges should not execute I-918B forms, certifying the likelihood that an alien victim of criminal activity is, has been, or will be helpful in the investigation or prosecution of that activity.
- Judges should not provide information for a federal “Certifying Official” registry.
- If a judge has executed a I-918B certifying the helpfulness or potential helpfulness of an alien victim in the prosecution of a crime, that judge should disqualify himself or herself from any criminal matters involving that victim.

UNC

FAO 2014-03

- Reasoning
 - Voluntary character testimony? (Honesty, credibility, reliability, “helpfulness”)
 - Not a part of “prosecutorial team”
 - Improper to forecast “potential” helpfulness
 - Improper to speak for “law enforcement”

UNC

FAO 2014-03


Helpfulness to Prosecution

Duty to Monitor & Notify

B. Provide an explanation of the victim's helpfulness to the investigation or prosecution of the criminal activity. A victim must provide evidence to USCIS that he or she (or, in the case of an alien child under the age of 16 or who is incapacitated or incompetent, the parent, guardian, or next friend of the alien) has been, is being, or is likely to be helpful to a certifying law enforcement official in the investigation or prosecution of the qualifying criminal activity.


Part 6 - Certification

Please read the certification block carefully. NOTE: If the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, even after this form is submitted to USCIS, you must notify USCIS by sending a written statement to: USCIS - Vermont Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001. Please include the victim's name, date of birth, and A-number (if available) on all correspondence.




FAO 2014-03

Being "helpful" means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. Alien victims who, after initiating cooperation, refuse to provide continuing assistance when needed will not meet the helpfulness requirement. There is an ongoing responsibility on the part of the victim to be helpful, assuming there is an ongoing need for the victim's assistance.



FAO 2014-03

- Additional Issues
 - Judge's certification leads to four year work visa. Why?
 - Judge's obligation to monitor "helpfulness" and notify Homeland Security
 - Many other officials are already authorized to provide this certification, including DSS, and other social welfare officials



FAO 2014-03

- Already filled one out?
 - No obligation to self-report
 - No disciplinary issue
 - Obligation to disclose past certifications
 - Judge's duty to know who he or she certified
 - Obligation to monitor and notify



Future Issues

- A judge's authority to direct attorneys to notify unrepresented litigants about the consequences of legal motions
- Additional direction regarding issues of familial disqualification