

JEAC 1998-3
February 18, 1998

The Judicial Ethics Advisory Committee has considered your letter dated January 21, 1998, in which you request an advisory opinion on proper judicial conduct under the Delaware Judges' Code of Judicial Conduct.

You are a Family Court Commissioner and are involved in avocational musical pursuits. One of the bands with which you are involved has been approached with a request that it allow the reproduction of one of its original recordings as part of a collection of musical offerings from different bands. This compilation will be sold for the purpose of raising money for arts-related corporations organized as non-profit charitable entities under § 501(c)(3) of the Internal Revenue Code.

You request guidance as to whether your participation in this project would violate any of the rules of judicial conduct. The applicable Delaware Judges' Code of Judicial Conduct is Canon 5(B)(2) which provides that:

A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization.

The Canons do not define the activities that constitute the act of soliciting. However, solicitation is defined in Black's Law Dictionary as "asking; enticing; [an] urgent request." Black's Law Dictionary 1392 (6th ed. 1990). Furthermore, the definition of "solicit" includes such acts to "agitate, move, entreat, to make petition to, to move to action, serve as an urge or incentive to; incite, to endeavor to obtain by asking or pleading." Webster's Third New International Dictionary, 2169 (14th ed. 1961).

In this case you will not personally solicit funds so the Canon is not violated in that respect. Nor is the Canon violated by including a recording made by a musical group, to which you belong, in a larger collection which will be sold to raise funds for charitable purposes, provided the offering does not specifically identify you or your office. Presumably the recording will be identified as having been performed by the name of the group to which you belong and the name of the group does not refer to you or your office.

If that is the case and you and your office are not mentioned by name in the marketing of the collection, there will be no violation of the Code of Judicial Conduct.

N. Maxson Terry, Jr.
For the Judicial Ethics Advisory Committee