

SUMMARY

Illinois Judicial Ethics Committee

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Rule 4.04

The Illinois Judicial Ethics Committee supports the Joint Commission's rewrite of Rule 4.04 and, in particular, the provision in subparagraph (a)(2)(iii) concerning fundraising events conducted by law-related organizations.

The committee finds that Comment [1] to proposed Model Rule 4.01 appropriately acknowledges that [c]omplete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives." A delicate balance is required to enable judges to make valuable extra-judicial contributions while maintaining their judicial impartiality. However, based on the frequency with which it has occupied the IJEC, this balance is especially elusive when it concerns judges' permissible fundraising-relating activities. The IJEC has addressed judges' ability to participate in fundraising on behalf of a host of charitable, educational, political, religious, and law-related organizations in its opinions.

The committee notes that a judge's involvement in fundraising on behalf of law-related, charitable, or other kinds of organizations raises two potential concerns. First, as alluded to by Comment [2] to proposed Model Rule 4.04, no matter how pure a judge's motives nor how worthy the cause, a judge's involvement in fundraising activities potentially subjects prospective donors to pressure to contribute. Second, there is the flip-side to the fear of retribution—the hope that contributing would curry favor with the judge.

The IJEC believes that the rules proposed by the Joint Commission strike the right balance between facilitating judges' ability to participate in law-related, civic, and charitable organizations and preventing judges' involvement in inappropriate kinds of fundraising activities. It agrees with the distinction between judges' participation in fundraising events sponsored by civic, charitable, and other nonprofit organizations, on the one hand, and law-related organizations, on the other hand.

In sum, the IJEC urges the Joint Commission to retain, substantially as written, proposed Model Rule 4.04(a)(2)(iii). The IJEC suggests that the Joint Commission also consider (1) mentioning in a Comment to Rule 4.04 the potential concern that contributions in honor of a judge could be intended or perceived to attempt to curry favor with the judge, (2) adding a provision in a Rule or Comment stating expressly whether judges can be a speaker or guest of honor at fundraising events sponsored by civic or charitable organizations other than law-related organizations, and (3) using language from proposed Illinois Supreme Court Rule 64 in Model Rule 4.04 or its Comments.