

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 1999-08

**Date of Issue:** June 11, 1999

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Stetting Charge – Solicitation of Funds

A judge has inquired whether a trial court's granting a State's Attorney's motion to stet a charge on the condition that the defendant make a charitable contribution constitutes a solicitation of funds in violation of Canon 4C(2) of the Maryland Code of Judicial Conduct.<sup>1</sup> The inquiring judge further states that "Sometimes the State's Attorneys Office doesn't tell the judge about the donation component of the stet," and asks if this changes a judge's ethical responsibility.

The judge's inquiry states that in some counties the State moves to place cases on the stet docket with certain conditions. Such "attached" conditions can include the performance of community service hours; the making of restitution; the making of a "donation" of money to a charity; staying away from certain locations or persons; and many other conceivable requirements. It is with the "donation" of money condition that we are here concerned.

Maryland Rule 4-248 provides for disposition of criminal charges by stet. In pertinent part it states that, "on motion of the State's Attorney, the court may indefinitely postpone trial of a charge by marking the charge 'Stet' on the docket". It should be noted that under this Rule it is the court and not the State's Attorney who is ordering that action be taken. Canon 4 of the Maryland Code of Judicial Conduct provides that a judge should not solicit funds for charitable, fraternal, law-related or civic organizations, or use or permit the use of the judge's office for that purpose. Since the inquire asks only if such a judicial action constitutes a violation of this Rule, it would be easy enough to take the position that the judge is merely acquiescing in the imposition of the "donation" and not "soliciting" it and that, therefore, there is no violation of the Rule. However, if the stet is granted upon certain conditions, these conditions become a part of the court order. Thus, regardless of whose idea the "donation" was at its inception, it is the court's order that directs the "donation" to a particular charity. It is the opinion of a majority of the Judicial Ethics Committee that this direction is tantamount to a solicitation of funds. At the very least, it is permitting the use of the judge's office for that purpose.

Of perhaps greater significance is Canon 2A of the Maryland Code of Judicial Conduct which provides that a judge "should behave with propriety and should avoid even the appearance of impropriety." Again, it is the opinion of the majority of the Committee that granting motions to stet conditioned upon "donations" to a private charity violates this Rule.

Finally, as to whether the lack of knowledge on the part of the judge makes a difference, the answer is "yes and no." Obviously, the State's Attorney and the defendant are free to enter into any agreements they desire. However, if they wished the agreement to be a condition of the stet, they would have to apprise the judge granting the motion of said condition. A failure on their part to do

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<sup>1</sup> The inquiring judge states that this practice is occurring daily in five of the District Court districts in the State of Maryland involving at least twenty judges.

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so means that the stet was not granted on that condition.