Supreme Court of Wisconsin
Judicial Conduct Advisory Committee
Date Issued: January 30, 2009 **Opinion 09-1**

ISSUE I

Does a judge's participation in a "polar plunge" event with many participants and spectators "demean" his or her judicial office, within the meaning of the judicial code?

ANSWER

No.

ISSUE II

If the "polar plunge" is a charitable event, does the judge violate the judicial code if the judge delegates to a third party the task of raising funds in the judge's name and the third party does not inform the judge of the results and informs potential contributors that the judge will not learn whether or how much they contributed?

ANSWER

Yes.

FACTS

The judge wishes to participate in a "polar plunge" charitable event, with proceeds going to the Special Olympics of Wisconsin. He explains that persons are solicited to make donations if a particular participant "plunges" into water through a hole cut through the ice on a lake. The judge tells us that, before becoming a judge, he was a regular participant and a top fund raiser in this event.

The judge proposes to continue assisting in fund raising under the following conditions:

a) The judge would delegate to a "disinterested third-party" the task of soliciting funds from persons who would donate if the judge makes the plunge.

b) The third party would not disclose to the judge who was contacted for donations.

c) The third party would not tell the judge who contributed, who declined to contribute, or what amounts were contributed by individuals.

d) The third party would explicitly inform potential contributors regarding b and c above.

DISCUSSION

Issue I: Does a judge's participation in a "polar plunge" event with many participants and spectators "demean" his or her judicial office, within the meaning of the judicial code?

The controlling provision is SCR 60.05(1)(b), which states:

> (1) Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:
>
> ….
>
> (b) Demean the judicial office.

We interpret the judge's question on this topic as asking whether the public participation in a polar plunge demeans the judge's office, regardless whether it is done as part of a charitable event. We conclude that, even if some members of the public may question why a person would voluntarily subject himself or herself to such extreme conditions, the public participation in a polar plunge does not demean the judicial office within the meaning of the code.

Issue II: If the "polar plunge" is a charitable event, does the judge violate the judicial code if the judge delegates to a third party the task of raising funds in the judge's name and the third party does not inform the judge of the results and informs potential contributors that the judge will not learn whether or how much they contributed?

The controlling provisions are contained in SCR 60.05(3)(c)2.a. and d. They provide, in pertinent part:

> 2. A judge, in any capacity:
>
> a. May assist the organization in planning fund-raising activities and may participate in the management and investment of the organization's funds but may not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;
>
> ….
>
> d. May not use or permit the use of the prestige of judicial office for fund raising or membership solicitation.

The requesting judge recognizes that the above code provisions prohibit the judge from directly soliciting charitable contributions. The question posed is whether, under the conditions described, the judge is nonetheless "personally participat[ing]" in the solicitation of funds under subsection a. or permitting the "use of the prestige" of the

judge's office for the solicitation under subsection b. We conclude that both would be true.

As to personal participation, we conclude that, if a judge arranges with a third party to solicit charitable funds in the judge's name, the judge is personally participating in the solicitation, even though the judge does not directly solicit the funds. The judge personally participates by engaging in communications that assist in putting the solicitation effort in motion.

As to the use of the prestige of judicial office, the solicitation arrangement suggested by the judge makes it appear that potential contributors will generally be approached because they might choose to donate if the judge takes the plunge, at least in part, because they know or know of the judge, including the fact that he or she is a judge. We conclude there is a likelihood that at least some persons will contribute, at least in part, because it is a judge that is taking the plunge and, therefore, the judge's prestige as a judicial officer would be used for fund raising.

Finally, we note that closely related questions were addressed in our prior opinions designated 98-12, 98-7, 98-5, and 98-1.

CONCLUSION

The committee concludes that a judge may participate in a "polar plunge" event with many participants and spectators, whether or not it is a charitable event, without "demeaning" the judicial office, within the meaning of the judicial code. We further conclude that, if the polar plunge is a charitable event, a judge violates the judicial code by participating in fund raising and by permitting the use of the prestige of judicial office if the judge delegates to a third party the task of raising funds in the judge's name even if the third party does not inform the judge of the results and informs potential contributors that the judge will not learn whether or how much they contributed.

APPLICABILITY

This opinion is advisory only. It is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee and is limited to questions arising under the Supreme Court Rules, Chapter 60, Code of Judicial Conduct. This opinion is not binding on the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial disciplinary responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, Subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 09-1 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 30th day of January, 2009.

/s/ George S. Curry

Honorable George S. Curry
Chair