



STATE OF VERMONT
JUDICIAL ETHICS COMMITTEE

Opinion No.: 40
Date: August 31, 2026
To: [name redacted in posted version pursuant to A.O. 35, ¶ 6]

The Committee has considered the matter you presented to it. The following is the opinion of the Committee and a response to your inquiry pursuant to Administrative Order No. 35.

Question Presented

May a Superior Court judge order a party to pay a civil contempt sanction to a non-profit organization- either one designated by the judge or one chosen by the party?

Short Answer

No, a judge's ordering a party to pay a civil contempt sanction to a non-profit organization would raise concerns about coercion and an appearance of impropriety, contrary to the Code.

Relevant Provisions of Code of Judicial Conduct

The relevant provisions of the Vermont Code of Judicial Conduct 2019 ("the Code" or "V.C.J.C.") include the following rules and definitions:

RULE 1.2: Promoting Confidence in the Judiciary: A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

RULE 1.3: Avoiding Abuse of the Prestige of Judicial Office: A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.

RULE 3.1. Extrajudicial Activities in General: A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

RULE 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities:

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fundraising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or

entity: (a) will be engaged in proceedings that would ordinarily come before the judge; or (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

Background

A judge requested the Committee’s opinion on whether judges, who are authorized to hold litigants and their attorneys in civil contempt pursuant to 12 V.S.A. § 122, V.R.C.P. 11(c)(2), V.R.F.P. 16, or the common law could authorize the payment of contempt sanctions to a nonprofit entity such as the Vermont Bar Foundation or Vermont Legal Aid because, the judge asserted that “the Vermont Judiciary does not have a mechanism to collect those sanctions” and thus that “payment into court is not available.” The Committee cannot comment on whether this assertion is correct, but this opinion is not dependent on whether or not the Judiciary has a mechanism to collect the sanctions.

Analysis

Authority to Issue Such an Order

The Rules cited in the inquiry do not contain any language that specifically or generally authorizes an order to pay a contempt sanction to a nonparty nonprofit of any kind. V.R.C.P. 11(c)(2) provides for an order to pay a penalty “into court” or to pay a movant “some or all of the reasonable attorney’s fees and other expenses incurred as a direct result of the violation.” V.R.F.P. 16(c)(2) provides for fines to be paid to “the State of Vermont.” V.R.F.P. 16(c)(3) provides for the court to issue judgment in favor of a party aggrieved by the contempt to compensate that party for the loss or injury and to satisfy that party’s costs, including reasonable attorney’s fees. Thus, no general authorization appears to exist for a judge to order payment of a sanction to a nonparty other than the State.

Additionally, the Supreme Court has noted that “only compensatory fines or coercive sanctions may be imposed on a civil contemnor.” *State v. Pownal Tanning Co.*, 142 Vt. 601, 603 (1983) (citations omitted). “A coercive sanction must be purgeable—that is, it must be capable of being avoided by defendants through adherence to the court’s order.” *Kneebinding, Inc. v. Howell*, 2018 VT 101, ¶ 74, 208 Vt. 578 (quotation omitted). An order to pay a nonparty cannot be fairly characterized as a compensatory fine as described above, nor is it a coercive sanction that can be purged.

Appearance of Impartiality

The Vermont Code of Judicial Conduct provides that “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Rule 1.2. “The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.” *Id.*, Comment 5.

Rule 3.7 relates to a judge’s involvement with charitable and civic organization and limits a judge’s solicitation of contributions to such organizations to members of the judge’s family and other judges over whom the judge does not exercise authority. Rule 3.7(A)(2). “Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge’s participation in or association with the organization, would conflict with the judge’s obligation to refrain from activities that reflect adversely upon a judge’s independence, integrity, and impartiality.” Rule 3.7, cmt. 2. “[A] judge’s solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.” Rule 3.1, cmt. 4.

This committee has previously noted that a judge’s own contributions to Vermont Legal Aid “may create the appearance of [partiality].”¹ See *Re: Request By Judge*, 1997 WL 34844105, at *2 (VT Jud. Eth. Comm. Oct. 28, 1997). A judge’s ordering a litigant or their attorney to pay a sanction to a nonprofit identified by the court, such as the Vermont Bar Foundation, similarly appears to raise the concern of partiality. Requiring a party to make such a payment would appear to be an abuse of the court’s coercive powers to advance a nonparty’s economic interest in violation of Rule 1.3.

This committee has also determined that “membership in an organization that broadly supports lawyers on one side of the criminal justice system is far more likely to trigger concerns about impropriety, lack of independence, or impartiality.” *Op. No. 30*, 2024 WL 4920732, at *3 (VT Jud. Eth. Comm. Oct. 4, 2024). Because Vermont Legal Aid provides legal assistance for tenants in landlord-tenant disputes, ordering payment to that organization may create the appearance that the judge is partial to tenants in those disputes. The Committee has also noted that fundraising by judges is limited because a person may feel obligated to contribute. See *Op. No. 2728-15*, 2013 WL 9658980, at *3 (VT Jud. Eth. Comm. Dec. 16, 2013). A party ordered to make a donation to a charity of their choosing may feel obligated to contribute to an organization with which the judge has in some manner been associated. Thus, allowing the party to choose the organization to which they would pay a sanction does not seem to alleviate the concern about coercion or partiality.

¹ The original text reads “appearance of impartiality,” but reading the sentence in the context of the decision, the Committee surely meant “appearance of partiality” or “appearance of a lack of impartiality.”

Other Jurisdictions Concur

The New York Advisory Committee on Judicial Ethics has addressed the question of whether a judge may order a donation in lieu of community service. Op. 25-144, 2025 WL 4634419 (NY Adv. Comm. Jud. Eth. Nov. 6, 2025). The committee determined that “absent any legislation authorizing the proposed arrangement, a judicial order directing a delinquent defendant to make a monetary donation to a not-for-profit agency would, at the very least, create an appearance that the judge was personally soliciting funds and/or lending judicial prestige for fund-raising purposes.” *Id.*

A Louisiana judge who sat on the advisory council of an organization that provided substance abuse prevention education for children ordered defendants in 1,052 drug cases to pay their fines to the organization. *In re Morvant*, 15 So.3d 74, 76 (La. 2009). The Louisiana Supreme Court held that the fines violated the canon of judicial conduct that prohibits lending the prestige of judicial office to advance the private interest of the judge or others. *Id.* at 79.

The Ohio Board of Commissioners on Grievances and Discipline addressed the question of whether it is proper for a judge who has sentenced an offender to grant the offender’s request to replace a sanction of community service with a financial contribution to a charitable organization? Op. No. 2010-4, 2010 WL 2522464, at *1 (Ohio Bd. Com. Griev. Disp. June 11, 2010). The Board concluded that doing so “conveys the impression that the financial interests of a charitable organization are inappropriately influential to the judge’s conduct in making sentencing decisions that protect the public and punish an offender,” and “it may appear to the public that the judge is using the judicial office to advance the interests of charitable organizations or to solicit funds for charitable organizations.” *Id.* at *3.

The Nevada Standing Committee on Judicial Ethics and Election Practices recognized that judges may have good intentions in ordering a party to pay a contempt sanction to a charity, but that “[s]trongly weighing against these well-intentioned goals ... is the concern for an impartial judicial system and the basic instruction provided by [the judicial conduct rules] that judges may not personally participate in the solicitation of funds, or other fund-raising activities.” Op. No. JE00-003, 2000 WL 35917456, at *4 (NV Std. Comm. Jud. Eth. June 21, 2000).

Orders to a specific charity may create the appearance of partiality or give the impression that the judge is using the prestige and power of their office to promote a particular cause that they are advocating. Further, allowing a litigant to make a donation to the charity of their choosing problematically diverts funds from the treasury of whichever government entity would receive them or deprives the aggrieved party of compensation for their costs in responding to the contempt. *See Cynthia Gray, Charitable Contributions as Part of a Sentence*, 21 Jud. Cond. Rep. 4, 4–6 (Winter 2000).

Conclusion

An order to pay a civil contempt sanction to a nonparty nonprofit entity would likely be improper under the Code of Judicial Conduct. To avoid any appearance of impropriety, judges are limited in their ability to engage in fundraising activities or to use the court's coercive power to benefit another party's interests. Thus, the committee concludes that a judge may not impose the requirement to make a payment to a nonprofit as a sanction for civil contempt.

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