

**SUPREME JUDICIAL COURT
ADVISORY COMMITTEE ON ETHICAL OPINIONS
FOR CLERKS OF THE COURTS
JOHN ADAMS COURTHOUSE
ONE PEMBERTON SQUARE
BOSTON, MASSACHUSETTS 02108-1750**

617-557-1161

2008-3

July 14, 2008

Dear Clerk :

This is in response to your request for advice from the committee. On May 15, 2008 you emailed the secretary of the committee requesting an opinion on the following situation. You are the Clerk of the Court. The District Attorney in the county where you work has initiated a criminal investigation of an occurrence in the courthouse. You believe that you are the target of the investigation. You have retained a lawyer and incurred legal expenses. Judges, court personnel, friends and lawyers have offered you support. It has been suggested that a legal defense fund be established in your name. In your email, you sought an opinion on whether such a fund would conflict with the provisions of the Code of Professional Responsibility for Clerks of the Courts. The Committee offers the following advice, which was also conveyed to you by telephone on June 10, 2008, after the Committee met to consider your request.

The Committee notes that the Code of Professional Responsibility for Clerks of Court does not explicitly prohibit the creation of a fund. See Opinion 99-1. The Committee did not reach a conclusion with respect to your query about the creation of a legal defense fund established in your name. More information on the specifics of the fund would be needed for the Committee to determine whether it would be permissible under the Code.

The members concluded that any fund that would be permissible under the Code could not include donations from judges and court personnel connected directly or indirectly with the Court, or any lawyer or other person likely to come before the Court. In the view of the members, questions regarding the appearance of impartiality could be raised if the fund were to include donations from these individuals. The members noted that lawyers and court personnel could feel pressure to contribute to the fund. To avoid the appearance of impartiality and promote public confidence in the judicial branch as required generally by the Code, and specifically by canons 4 and 5, any fund that would be permissible under the Code should not include donations from those connected directly or indirectly with the Court.

As stated above, without additional information the Committee is unable to offer further advice on your query.