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**GIFT – ACCEPTING EXPENSES OF FOREIGN STUDY TOUR**

**AUTHORITY:** Canons 2A, 2B, 4B, 4D(6)(a), 4D(6)(b), 5D and Code of Civil Procedure Section 170.9

I. Background

A judge was invited by a community organization to participate in a judicial/legal study tour of a foreign country. Both judges and lawyers are to participate in this program, but only the judges will attend without charge. It is not anticipated either the sponsoring organization or the anonymous donors who are funding the program have interests that are likely to come before the judicial attendees. Judges may bring their spouses, but at their own expense. No reciprocal obligations exist on the part of the judge to do anything for the sponsoring organization as a result of the trip.

II. Question

May a judge accept travel expenses from an organization, allowing the judge to participate in a study tour of the legal system of a foreign country, when the interests of the sponsoring organization are unlikely to appear before the judge?

III. Answer

Yes.

IV. Discussion

The proposed study tour was described as follows:

The purpose of the trip is to exchange information and to encourage understanding among the respective lawyers and judges participating in the program as to how each state/nation deals with the legal/social issues that arise in their respective communities. Matters of mutual land, conflicting legal rules, procedures and laws will be discussed. Meetings will be held with lawyers, judges and government officials of the foreign country. The program's objectives are to aid California judicial officers in the administration of justice in their own communities by acquiring a better understanding of the diverse legal rules and procedures that exist in other societies in the world.

As described in the inquiry letter, it appears the proposed study tour qualifies as a typical cultural exchange program. Canon 4B and the Commentary thereto encourage judges to participate in activities which promote the administration of justice. A cultural exchange program which allows California judges to learn more about the court systems, procedures and other aspects of the administration of justice in a foreign country, and to exchange knowledge and viewpoints with judges and lawyers in that country, easily qualifies as an activity which furthers the administration of justice. Indeed, the United States government and American foundations regularly provide financial support to make possible similar visits to this country by foreign jurists and by American jurists to other countries as a means of enhancing the administration of justice both here and in those countries. Accordingly, the Committee finds it entirely appropriate in principle for a judge to accept a gift from a government or other organization for travel and related expenses attendant to participating in an educational program built around an onsite examination of the justice system of another country.

Canon 4D(6)(a) places some limits on the source of the financial support for this study tour, but in no sense prohibits outright a judge's receipt of financial support for this type of study tour. Canon 4D(6)(b) permits a judge to receive:

...advances or reimbursement for the reasonable costs of travel, transportation, lodging, and subsistence which is directly related to participation in any judicial, educational, civic, or governmental program or bar-related function or activity devoted to the improvement of the law,<sup>1</sup> ....

Canon 4D(5) prohibits gifts from those who are parties or who have interests that have come or may come before a judge. Other subsections of Canon 4D(6) allow gifts that satisfy certain conditions. Of course, the permission to receive gifts allowed by these subsections is qualified by other Canons which proscribe a gift given to create the impression of special influence over the judge (see Canon 2B), or which somehow would cause the public to lose confidence in the integrity and impartiality of the judiciary (see Canon 2A). However, none of these Canons sets up a presumption a gift from someone whose interests have not and are unlikely to appear before the recipient judge is improper. Just as there are many legitimate reasons a relative, friend, foundation or other organization might want to give a gift to a non-judge, those reasons do not become illegitimate merely because the recipient is a judge. It is only where the giver is someone who might profit from decisions the judge is empowered to make that the Code presumes the acceptance of the gift by the judge will impair the reality or appearance of impartial justice.<sup>2</sup>

The inquiry describes a proposal in which a community organization whose interests have not and are unlikely to come before a judge would sponsor that judge's participation in a study tour of a foreign justice system. On its face, such an arrangement does not violate any of the Canons discussed above.

The Committee cautions, however, that before accepting an invitation to participate in such a study tour a judge should assure himself or herself that the details of the arrangements of a specific program do not compromise the Canons. For example, the judge should ensure the sponsors of the program are not enticing others, especially lawyers, to pay their own way for this program in order to obtain a special relationship with members of the judiciary since this could constitute a violation of Canon 2B. The judge also should be satisfied the sources of funding for the program are not persons or organizations which have or are likely to have an interest in matters which come before the judge since this could constitute a violation of Canon 4D(5). Moreover, the judge should be satisfied the program will be conducted in such a way that the judge's participation will not adversely affect public confidence in the integrity or impartiality of the judiciary since this could violate Canon 2A. Thus, for instance, a judge should not participate in a program which expects the judge upon returning to this country to speak out publicly on political issues unrelated to the law, the legal system or the administration of justice. Participation in such a study tour does not create an exception to the usual proscriptions against public comment on political issues (See Canons 2A and 5A(3) and the Commentaries thereto).

This opinion is advisory only. This Committee acts on specific questions submitted, and its opinion is based on facts as set forth in the question submitted.

#### COMMITTEE ON JUDICIAL ETHICS

June 27, 1988

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<sup>1</sup> Law denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (Commentary), 2A, 2C (Commentary), 3A, 3B(2), 3B(7), 3E, 4B (Commentary), 4C, 4D(6)(a)-(b), 4F, 4H, and 5D.

<sup>2</sup> Code of Civil Procedure Section 170.9 (e) permits reimbursements for travel and related expenses, provided certain criteria are met. Subsection (e)(2) requires that the expenses be paid by certain designated agencies, including a "nonprofit charitable...organization which is exempt from taxation." It is assumed that the "community organization" which invited the judge qualifies as such.