

(Originally issued: February 5, 1994)

(Revised: August 1996)

**ACCEPTING INVITATIONS FROM ATTORNEYS TO
ATTEND SOCIAL EVENTS WHERE FOOD, BEVERAGE
OR ENTERTAINMENT IS PROVIDED WITHOUT CHARGE**

AUTHORITY: Canons 2A, 2B, 3A, 4A, 4D(5), 4D(6), Rothman, at 220.420 and 490

I. Background

Before accepting invitations to social events hosted by attorneys where food, beverages and/or entertainment is provided without charge, judges should carefully consider whether attendance constitutes the receipt of a gift and, if so, whether the gift constitutes “ordinary social hospitality” as defined in this opinion or falls within any other exception to the Code’s prohibition against the receipt of gifts. A judge should not attend such an event if attendance would undermine public confidence in the impartiality of the judiciary or promote the private interests of another.

II. Question

The Committee has received a number of inquiries concerning the propriety of accepting an invitation to a social event hosted by attorneys where the judge is to be provided food, beverage and/or entertainment without charge.

III. Answer

The subject of judges accepting invitations to social events hosted by lawyers where food, beverage, or entertainment is provided without charge involves the interaction of a number of different canons. To the greatest extent possible, each judge must determine in advance of the event whether it is ethically proper to attend. A judge may not accept such an invitation without regard to the ethical constraints and then simply decide to disqualify himself or herself if the occasion subsequently arises, for a judge has an affirmative duty to minimize the number of cases in which he or she is disqualified. (Canons 3A, Rothman 220.490.)¹

IV. Discussion

There are primarily four canons which a judge should consider in deciding whether to accept an invitation to such events. First, Canon 4D(5) and (6) sets forth the limitations on a judge’s ability to accept gifts. Second, Canons 2A and 4A(1) require judges to act at all times, and specifically when engaging in extra-judicial activities, in a manner that promotes public confidence in the impartiality of the judiciary. Finally, Canon 2B prohibits judges from lending the prestige of judicial office to promote the private interests of others or from permitting others to convey the impression that they are in a special position to influence judges.

A. Invitations to Social Events and Gifts

¹ It is not within the Committee’s purview to provide legal advice concerning the restriction on the receipt of gifts, but judges should be aware of the body of law regulating the circumstances under which public officials may receive gifts. (See, e.g., Gov’t Code Sections 86201 et seq., 89504 et seq., 89506 et seq.; Calif. Const. Art. XII. Section 7.)

Of the various canons cited above, the gift canon presents the most difficulty in application. This is so because the Code of Judicial Conduct does not define certain terms which are used in Canon 4D(5) and (6).

Canon 4D(5) provides in part:

Under no circumstances shall a judge accept a gift, bequest or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge²

On its face the Canon does not apply to non-party attorneys acting only in a representative capacity.³

Canon 4D(6) states that judges “shall not accept ... a gift, bequest, favor or loan from anyone except as hereinafter provided.” The Canon proceeds to list specific exceptions to what is otherwise an absolute prohibition against the receipt of gifts. Therefore, unless the judge concludes that the gift falls within one of the exceptions, the gift may not be accepted.

However, nowhere in the Code of Judicial Ethics is the word “gift” defined. Code of Civil Procedure 170.9(l) defines gift in part as “any payment to the extent that consideration of equal value is not received....”⁴ And Civil Code Section 1146 defines a gift as “a transfer of personal property, made voluntarily and without consideration.” The Fair Political Practices Commission defines a gift as “anything of value, whether tangible or intangible, for which equal or greater value is not provided.” (1996-97 Statement of Economic Interests. Schedule E.) It is the Committee’s opinion that in applying the canons the word “gift” should be interpreted broadly and consistent both with the definitions set forth above and with the policies which support the prohibition against gifts. (See Canons 2A, 2B, and 4A(1).) Only when property exchange without consideration is truly “de minimis” can it be said that it does not constitute a gift. Furthermore, it should be noted that the prohibition in Canon 4D(6) is not limited to gifts, but applies also to bequests, favors and loans.

Based on the foregoing discussion, the Committee is also of the opinion that, except for truly de minimis amounts, when a judge receives food, beverage, entertainment or similar benefits in connection with a social event for which the judge is not charged, the judge is receiving a gift.

This, however, does not mean that judges must necessarily decline all invitations to such events from attorneys; Canon 4D(6) states that a gift may be accepted if it falls within any of the following exceptions:

(a) any gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge’s spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,⁵ the legal system, or the administration of justice;

² (See also Commentary to Canon 4D(5).) Canon 4D(5) reinforces the concept that receipt of a gift, like all other activities of a judge, must not cast reasonable doubt on the judge’s capacity to act impartially as provided for in Canons 2A and 4A(1). (See Rothman, California Judicial Conduct Handbook, at 220.420 (“Rothman”).)

³ The 1992 version of Canon 4D(5) prohibited gifts or loans not only from “parties” but from any other person who has come or is likely to come, or a person whose interest have come or are likely to come before the judge. This former standard was broader than the language in the current Code in that the prohibition against gifts was not limited to parties but originally included attorneys who came before the judge.

⁴ Sections (1) and (l) spell out what a gift is and is not.

(b) advances or reimbursement for the reasonable cost 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, the legal system, or the administration of justice;⁶

(c) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other member of the judge's family residing in the judge's household,⁷ including gifts, awards, and benefits for the use of both the spouse or other family member and the judge, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(d) ordinary social hospitality;⁸

(e) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;⁹

(f) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(g) a loan in the regular course of business on the same terms generally available to persons who are not judges;

(h) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.¹⁰

Except in one respect, these canons generally provide clear guidance to judges who have been invited by attorneys to attend social events. If the event is a public testimonial, is bar-related or otherwise devoted to the improvement of the law, is primarily directed to the separate activity of the judge's spouse, or if the invitation is from a friend or relative in honor of a special occasion, or from someone whose

⁵ 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, 5D and California Code of Judicial Ethics, Terminology.

⁶ The Commentary to Canon 4D(6)(b) states as follows: "Acceptance of an invitation to a law-related function is governed by Canon 4D(6)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 4D(6)(d)."

⁷ Member of the judge's family residing in the judge's household denotes a spouse and those persons who reside in the judge's household who are relatives of the judge including relatives by marriage, or persons with whom the judge maintains a close familial relationship. (See Canon 4D(5) and 4D(6).)

⁸ The Commentary to Canon 4D(6)(d) states as follows: "Although Canon 4D(6)(d) does not preclude ordinary social hospitality between members of the bench and bar, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of bias. See Canon 2B."

⁹ The Commentary to Canon 4D(6)(e) states as follows: "A gift to a judge, or to a member of the judge's family residing in the judge's household that is excessive in value, raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required." See, however, Canon 4D(6)(f).

¹⁰ See Rothman, at 220.420

appearance in a case would require the judge to be disqualified, the judge may attend the event and receive the benefits without charge.

The uncertainty in Canon 4D(6) is, unfortunately, found in that portion which has the widest application, Canon 4D(6)(d), which permits judges to receive gifts made in “ordinary social hospitality.” That term is not defined in the Code of Judicial Ethics and is capable of varying interpretations by judicial officers. (See Rothman, at 220.430.) The Committee believes a definition of “ordinary social hospitality” would be helpful to judges, as would listing of factors which judges should consider in determining whether a social invitation from an attorney constitutes ordinary social hospitality.

In developing the definition, the Committee considered two policies which are at the foundation of many of the canons in the Code of Judicial Ethics. First, judges cannot be isolated from their friends and the community in which they work. (See Commentary to Canon 4A.) It is not healthy, and it tends to remove judges from both the interests and the concerns of their community, including the legal community. Judges, like other members of society, must also be able to extend common courtesies and social amenities to others, and be willing guests and willing hosts. At the same time, all of a judge’s activities should be conducted in a manner which promotes public confidence in the integrity and impartiality of the judiciary and which does not lend the prestige of the judicial office to advance the personal interests of others. (Canons 2A, 2B, 4A(1))

With these policies in mind, “ordinary social hospitality” should be interpreted as follows: It is that type of social event or other gift which is so common among people in the judge’s community that no reasonable person would believe that (1) the donor was intending to or would obtain any advantage or (2) the donee would believe that the donor intended to obtain any advantage.

In determining whether a social event hosted by an attorney constitutes ordinary social hospitality, a judge should consider the following factors. The list is not intended to be exhaustive.

1. The cost of the event in the context of community standards for similar events. What may seem excessive in one part of the State or county may be within ordinary hospitality in other places depending on what is customary and reasonable in the community in question.

2. Whether the benefits conferred are greater in value than that traditionally furnished at similar events sponsored by bar associations or similar groups.

3. Whether the benefits are greater in value than that which the judge customarily provides his/her own guests. The events which a judge hosts tend to reveal the judge’s view of ordinary social hospitality.

4. Whether the benefits conferred are usually exchanged only between friends or relatives such as transportation, housing or free admission to events which require a paid admission.

5. Whether there is a history or expectation of reciprocal social hospitality. If a judge is invited to a social event by an attorney who the judge has invited in the past or is likely to invite in the future to similar events; this is suggestive of ordinary hospitality.

6. Whether the event is a traditional occasion for social hospitality such as a holiday party or the opening of an office.

7. Whether the benefits received are reportable to any governmental entity.¹¹

¹¹ See, e.g., Government Code Section 87207 which requires the reporting of gifts in excess of \$50. See also Form 721, Instructions for Schedule E, Income – Gifts, Fair Political Practices Commission.

B. Attendance at Such Gatherings as Giving an Appearance of Impropriety

Once a judge determines that the invitation to the event constitutes ordinary social hospitality or falls within another exception to the prohibition against receiving gifts, the judge must also consider whether attendance would undermine public confidence in the impartiality of the judiciary. (Canons 2A and 4A(1); Commentary, Canon 4D(5).) “The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality and competence.” (Commentary, Canon 2A.)

In determining whether attendance at a social event hosted by an attorney creates an appearance of impropriety, judges should consider the following. Again, the list is not intended to be exhaustive.

1. Whether the attorney or a member of the attorney’s law firm is currently appearing before the judge, has in the recent past appeared, or will in the near future. Being the guest of an attorney with whom the judge has a professional relationship (e.g., with whom the judge serves on the local bar association governing board) may generally be proper, for example, but may be inappropriate during the pendency of a trial in which the attorney is appearing in the judge’s court.

2. The frequency with which the attorney or a member of the attorney’s law firm appears before the judge.

3. Whether the invitation is limited to the judge or a small number of judges as compared to judges and/or members of the legal community at large.

4. Whether there is a personal friendship or professional relationship between the judge and the attorney which exists independent of the event in question.

5. Any other circumstances relating to the event which, if the judge attended, might result in future disqualification under Canon 3E. (Commentary, Canon 3E.)

C. Attendance at Social Events as Advancing the Private Interest of Others

Even if attendance at a social gathering hosted by an attorney does not involve the receipt of a prohibited gift and does not cast a doubt on the judge’s ability to be impartial, attendance may not be appropriate for the reasons stated in Canons 2B(1) and (2).

Canon 2B(1) provides:

A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

Canon 2B(2) states in part:

A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others:

A judge’s attendance at a social gathering hosted by an attorney may, under certain circumstances, tend to advance private interests. On the one hand, a large gathering to which many segments of the bar are invited is not likely to have such an effect. On the other hand, a social event to which a number of the law firm’s clients or potential clients are invited, and where the attorney makes a point of introducing the judge to those persons, or where the judge otherwise plays a prominent role, would appear to involve the judge in advancing the personal interests of the firm.

D. Conclusion

The subject of judges accepting invitations to social events hosted by lawyers where food, beverage, or entertainment is provided without charge involves the interaction of a number of different canons. To the greatest extent possible, each judge must determine in advance of the event whether it is ethically proper to attend. A judge may not accept such an invitation without regard for ethical constraints and then simply decide to disqualify himself or herself if the occasion subsequently arises, for a judge has the affirmative duty to minimize the number of cases in which he or she is disqualified. (Canons 3A, 4D(3); Rothman, at 220.490.)¹²

This opinion is advisory only. The Committee acts on specific inquiries submitted, and its opinion is based on facts set forth in the submitted inquiry.

COMMITTEE ON JUDICIAL ETHICS
February 5, 1994, revised August 1996.

¹² It is not within the Committee's purview to provide legal advice concerning then restrictions on the receipt of gifts, but judges should be aware of the body of law regulating the circumstances under which public officials may receive gifts. (See, e.g., CCP sect. 170.9, Gov't Code sects. 86201 et seq., 89501 et seq., 89504 et seq., 89506 et seq.; Calif. Const. art. XII, sect. 7.)