

MEMORANDUM

TO: All CJA Members

FROM: Stanley S. Bissey
Executive Director & CEO

DATE: October 2015

SUBJECT: **Formal Ethics Opinion No. 70**

The Judicial Ethics Committee of the California Judges Association has issued the following formal opinions:

Opinion No. 70

“Judges Giving Gifts To Court Staff”

Judges may direct questions on the Code of Judicial Ethics to the current 2014/15 Ethics Committee by writing or calling the CJA office or any Ethics Committee member. The Ethics Committee, as a matter of policy, does not answer inquiries which are moot or raise issues of law. Nor does the Committee respond to questions that involve matters pending before the Commission on Judicial Performance.

All opinions of the committee are advisory only.

SSB:jmg

CALIFORNIA JUDGES ASSOCIATION

Judicial Ethics Committee

Opinion No. 70

JUDGES GIVING GIFTS TO COURT STAFF

I. Introduction

Many judges spend years working with the same staff. Naturally they become friendly, with the result that from time to time, judges want to give them gifts, treat them to meals, and sometimes invite them to their homes. Despite the almost universal desire among judges to do these things, there is a dearth of ethics information on the topic.

II. Authority

Canon 1- An independent, impartial, and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. ...

Canon 2A- A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. ...

Canon 2B(1) – A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, ...

Canon 3B(5) - A judge shall perform judicial duties without bias or prejudice. ...

Canon 3C(1)- A judge shall diligently discharge the judge’s administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary. ...

III. Discussion

A. Within reason, gift giving is allowable.

Within reasonable limitations, it is proper and acceptable for judges to be friendly with their staff, give them gifts, and treat them to meals. In his *California Judicial Conduct Handbook* (Handbook), Judge David Rothman briefly addresses this topic.¹ Relying in part on the U.S. Office of Government

1 Section 6.27, California Judicial Conduct Handbook, 3rd Ed., by Hon. David M. Rothman, Ret.

Ethics on gifts pamphlet,² (“Pamphlet”) Judge Rothman opines that gifts for special occasions, holidays, illnesses, and hospital stays are permissible. So are lunches and dinners. He cautions that such meals and gifts should be “in a modest sum if possible.” Rothman cautions that socializing should remain at a professional and business-like level, but he recognizes that celebrating holidays and other occasions with staff are allowed.

A review of the U.S. Office of Government Ethics pamphlet discusses indirectly the issue of a government-employed supervisor inviting employees to the superior’s home for annual holiday parties. This practice did not raise any notable concern.

In addition, the Pamphlet recognizes the existence of personal relationships that can develop between and among government employees. It notes that if a close friendship exists, the gift-giver does not make less money than the gift-recipient, and the gift-giver is not under the supervision of the gift-recipient, then the individuals may exchange gifts of any value at any time. Given the salary differential between judges and members of a judge’s staff, this factor does not prevent judges from giving gifts to their staff.

B. The Canons Do Not Forbid Gifts to Staff.

Nowhere in the Canons is there any prohibition against a judge giving gifts to court staff. (Canon 4D does not apply; it covers gifts given to judges, not from them.) Nevertheless, a judge must remain aware of any bias or favoritism, as well as the appearance of bias or favoritism, that gift-giving may create and be sensitive to the possibility that the judge’s gift giving practices (e.g., only giving gifts to women) may be perceived as sexual harassment or creating a hostile workplace. For example, if a judge always gives gifts to his/her judicial assistant or clerk but never to the court attendant, or if the judge often takes his/her court attendant to lunch but never anyone else, ethical problems may arise. It follows that judges should maintain professionalism and strive for equal treatment with respect to these activities.

C. Judges Must Remain Sensitive to Creating Pressure on Their Staff to Reciprocate.

While gift-giving is permissible, judges must be sensitive to the possibility that doing so may create among their staff a sense of obligation to respond in kind, even though that may constitute a financial burden. This can be alleviated by, among other methods, avoiding expensive gifts and by telling staff that they have no obligation to reciprocate.

IV. Conclusion

2 U.S. Office of Government Ethics pamphlet, “Gifts Between Employees”, at www.usoge.gov

Judges may treat the court staff to meals and give them gifts. However, judges need to be careful to maintain a professional relationship with them at all times. Judges must keep their generosity to a reasonable level, and they must not let the practice foster the impression that one or more staff members are being favored over others.

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