

Maryland Judicial Ethics Committee

Opinion Request Number: 2005-16

Date of Issue: October 31, 2005

Revision Issued: December 13, 2005

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Sitting Judge Not to Allow Law Firm to Pay for Investiture Party

Issue: May a sitting judge allow a law firm to pay for a function following the judge's investiture in a higher office?

Answer: No.

Facts: A judge asks whether the judge's former law firm may pay for a reception to which judges and other governmental officials, lawyers, and friends would be invited, following the judge's investiture in a higher office. The judge would pay or reimburse the law firm for the judge and the judge's immediate family for at least the per head charge.

The requestor has informed staff orally that the firm sponsored a reception on the judge's initial investiture as a judge 5 years ago, as had been done for a family member. Indeed, the requestor states the practice to be common amongst the members of the judge's bench. Additionally, a member of the judge's immediate family is employed by the firm.

Discussion: Maryland Code of Judicial Conduct (2005), Canon 2B prohibits a judge from "lend[ing] or us[ing] the prestige of judicial office to advance the private interests of the judge or others" and from "convey[ing] or permit[ting] others to convey the impression that they are in a special position to influence judicial conduct." Maryland Code, Canon 4D(5) bars a judge from accepting, and adjures the judge to urge members of the judge's family not to accept, a gift, defined by reference to the Maryland Public Ethics Law in State Government Article § 15-102(g)(1) as "the transfer of anything of economic value, regardless of form, without adequate and lawful consideration."

Among exceptions not here relevant are those in Maryland Code, Canon 4D(5)(b), (d), (e), (f), and (i), which allows *inter alia* a gift "incident to a public testimonial" (*see* [Opinion Request No. 1974-02,] dated April 29, 1974), a gift of "ordinary social hospitality" (*see* [Opinion Request No.1983-09,] dated May 21, 1984), a gift "from a friend or relative, for a special occasion", a gift "from a relative or close personal friend whose appearance or interest in a case would in any event require a recusal", or a gift "if: (1) the donor ... is not a person whose interests have come or are likely to come before the judge and (2) the judge reports, on the judge's financial disclosure form, all ... gifts ... required under Rule 16-815 to be reported." The Comment explains that, "[h]owever innocently intended, favors or gifts from persons not in a judge's immediate family may create an appearance that the judge could be improperly beholden to the donor" and specifically cites Canon 4D(5)(b) and (i) with regard to "acceptance ... of an invitation paid for by an individual lawyer or group of lawyers."

However, State Government Article § 15-505(b) bars a Maryland official or employee from knowingly accepting a gift that would impair the impartiality and independent judgment of the official or employee or that has significant value "directly or indirectly, from an entity that the

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official or employee knows or has reason to know: (1) does or seeks to do any business of any kind, regardless of amount, with the official's or employee's governmental unit; ... (3) has a financial interest that may be affected substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the official's or employee's official duties".

Relying on proscription against acceptance of "anything of value" in Michigan Canon 7C(2), Op. No. JI-60 provided that "donations towards the costs of an investiture celebration may not be accepted.

On the other hand, Opinion No. 98 of the federal Committee on Codes of Conduct reads, in part, as follows:

One common benefit offered to new judges is an offer by a private entity either to sponsor or to contribute to a reception in honor of the judge's investiture. Whether a judge may properly accept such an offer depends in part on the identity of the proposed donor and its relationship to the judge. If the donor or sponsor is a former law firm, corporate employer, business client, or colleagues, the [federal] gift regulations recognize that such an offer may properly be accepted as a gift from a friend on a special occasion, if the gift is fairly commensurate with the occasion and the relationship. It may also be accepted as a gift incident to a public testimonial. In addition, to the extent the judge plans to recuse for a period of time following appointment from cases in which the former employer, client, or colleagues appear the judge will not be taking any official action affecting the donors and no appearance of impropriety should be created.

Florida Opinion No. 99-3 and Illinois Op. 01-11 seem to be in accord, with the former assuming the need for recusal but the latter urging consideration of the motivation of the law firm, the future relationship, if any, between judge and firm, the magnitude of the function, and the nature of those invited. Washington Op. 95-05 is in accord.

The weight of opinions seems to prevail against an outright proscription against such sponsorship of a reception. However, the Committee believes that the statutory proscription, as well as the factors in this particular instance, mitigate against knowingly accepting a gift from the law firm. This is a sitting judge who has not been associated with the former firm for 5 years. The occasion for recusal is minimal, although sufficient relationship between the judge and immediate family members and the law firm already exists to raise the question of a special relationship. Such may explain the motivation of the firm in offering to pay for a reception but compounds the possibility that an appearance of impropriety is being generated. Additionally, the passage of time heightens the apprehension that the prestige of office of a sitting judge is being used in the firm's inviting judges and other governmental officials and lawyers, rather than, for example, anonymously contributing to the event.

Application: The Judicial Ethics Committee cautions that this opinion/letter of advice is applicable only prospectively and only to the conduct of the requestor described in this opinion/letter of advice,

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to the extent of your compliance with this opinion/letter of advice. Omission or misstatement of a material fact in the written request for opinion negates reliance on this opinion/letter of advice.

Additionally, this opinion/letter of advice should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If you engage in a continuing course of conduct, you should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.