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CJEO Oral Advice Summary 2019-030

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ACCEPTANCE OF A PRIVATE TESTIMONIAL DINNER AND HONORS

I. Questions

A judicial officer who is retiring after serving nearly 20 years on an Inn of Court executive committee, but who is not retiring from judicial office, requests ethical advice concerning a retirement dinner planned by the other executive committee members to honor the judge, and about an annual student achievement award the executive committee plans to establish in the judge's name.

The requesting judge's Inn of Court is a local chapter of the national America Inns of Court. The national organization and the judge's local chapter provide a forum for attorneys and judges to improve the law, the legal system, and the administration of

justice through education, mentoring, and socializing. Inns of Court promote strong professional relationships while providing educational services that fulfill minimum continuing legal education (MCLE) requirements for attorneys. Through monthly dinner meetings, members advance training and education in a collegial environment. Law students are also invited to be active members of Inns of Court, which offers them an opportunity to learn and to develop professional relationships with members of the bar and bench. The monthly MCLE programs provided at the judge's Inn of Court are presented by teams from the general membership, which include law students who learn and teach side-by-side with experienced judges and attorneys in the community. The judge has served on the Inn of Court executive committee for many years as the at-large MCLE program coordinator, and the executive committee wishes to honor the judge for this service with a retirement dinner and award.

The dinner will be attended by the other executive committee members and their guests. The long-standing executive committee consists of judges and prominent local attorneys, with whom the judge has established close personal relationships during decades of Inn of Court service together. It has been the judge's practice to recuse in matters involving the individual executive committee attorney members, who the judge considers to be close personal friends. The dinner will be held at an executive committee member's private home. Three executive committee attorney members, who are the judge's close personal friends, will share the cost of the dinner, which will not exceed \$125 per person, although the estimated total cost of the dinner will not exceed \$3,500.

The award to be established in the judge's name will recognize the educational achievements of a law student member of the Inn of Court each year, which the executive committee plans to commemorate on a plaque installed at the law school where the Inn of Court meetings are traditionally held. The executive committee also plans to give the judge a framed replica of the plaque at the retirement dinner to commemorate the judge's educational contributions through the Inn of Court.

The judge specifically asks if the dinner is a private testimonial or an otherwise acceptable gift, and if so, whether the dinner should be valued at the cost of the judge and his or her guest's dinners, a quarter of the total cost of the dinner, or the total cost of the dinner. The judge also asks if reimbursing the three hosting executive committee attorney members for the value of the dinner resolves the statutory prohibition against accepting more than \$450 a year from a single source. Finally, the judge asks if the award and acceptance of the framed commemoration are permissible.

II. Oral Advice Provided

The Code of Judicial Ethics¹ recognizes the importance of judicial officers engaging in their communities in the ways for which this judge is being honored. (Advisory Com. com. foll. canon 4A [“complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which he or she lives”]; canon 4B [a judge may teach and participate in activities concerning legal matters]; Advisory Com. com. foll. canon 4B [a judicial officer is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, and may do so through a group dedicated to the improvement of the law]; canon 4C(3)(a) & (b) [a judge may serve as a director of a civic or nonprofit educational organization devoted to the improvement of the law, the legal system, or the administration of justice].) It does so by explicitly permitting this judge’s educational service and by providing exceptions to the general prohibition on accepting gifts associated with such extrajudicial community activities. The code and these exceptions allow the judge to ethically accept the retirement dinner and award planned by the Inn of Court executive members.

¹ All further references to canons, the code, and to advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

A. Retirement Dinner

The code defines a gift as anything of value to the extent that consideration of equal or greater value is not received. (Code, Terminology, “Gift.”) This definition is fundamentally the same as that in Code of Civil Procedure section 170.9, which also governs the acceptance and valuation of gifts by judicial officers. (Code Civ. Proc., § 170.9, subd. (l) [“gift” means a payment to the extent that consideration of equal or greater value is not received]; Rothman et al., *Cal. Jud. Conduct Handbook* (4th ed. 2017) § 9:31, p. 616 (Rothman) [the code and the statute use essentially the same definition].) Both the code and the statute exclude certain items as gifts and contain exceptions to the general prohibition on judicial officers accepting items that are gifts.

One of the items that both the code and the statute exclude as gifts subject to the general prohibition and exceptions are public testimonials. (Rothman, *supra*, § 9:39, p. 623 [recognition of a judge at a public testimonial event is not a tangible item that falls within the gift definitions in either the code or the statute, and the event itself, such as a dinner publicly honoring a judge, is not subject to the no-gift rules].) Although the code does not define a public testimonial, it has been interpreted as an event that publicly, not privately, pays tribute to, celebrates, or honors a judge and is open to the community. (*Ibid.* [a public testimonial event by a bar association that is open to the legal community and civic leaders, or a tribute dinner by a community institution that is open to its members and supporters, are not items subject to the gift rules].)

Given this interpretation, the retirement dinner planned by the Inn of Court executive committee cannot be described as a *public* testimonial that is excluded or excepted from the rules prohibiting and permitting gifts. The dinner is limited to the executive committee, which includes judges and attorneys, but is not open to other members of the greater Inn of Court membership or legal community. As a *private* testimonial, however, the retirement dinner is a gift that falls within at least one exception that allows acceptance.

Canon 4D(6)(a) provides that a judge may accept a gift from a person whose preexisting relationship with the judge would prevent the judge from hearing that person's matter under the disqualification rules. Judicial officers are required to disqualify themselves when they believe they cannot be impartial or that someone aware of their relationship with a person would reasonably doubt their ability to be impartial if that person appeared before them. (Canon 3E(4)(b) [applicable to appellate justices]; Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii) [applicable to trial court judges].) These rules have long been applied to preclude judges from hearing matters involving a close friend. (Rothman, *supra*, § 9:45, p. 636 [relationships requiring recusal normally include close personal friends of the judge].) Thus, a judge may accept a gift under the preexisting relationship exception in canon 4D(6)(a) when the gift is from a close friend whose matters the judge is disqualified from hearing. (*Ibid.* [judges may accept gifts from friends where a reasonable person would doubt impartiality and the judge is disqualified from hearing the friend's matter].)

Code of Civil Procedure section 170.9, subdivision (b)(3) similarly provides that gifts are not prohibited from a person whose preexisting relationship with the judge would prevent the judge from hearing a case involving that person under the code.

Here, the retirement dinner is planned by, will be attended by, and will be hosted by persons for whom the judge disqualifies when they appear. Specifically, the judge considers the three attorney board members who are hosting the dinner to be close personal friends, so the costs of the dinner are acceptable gifts that fall within the preexisting relationship exception.

Significantly, the statute also provides that acceptable gifts from friends for whom the judge disqualifies are not limited by value and may be accepted without regard to the \$450 single source limit. (Code Civ. Proc., § 170.9, subd. (a), (b); Rothman, *supra*, § 9:45, p. 636 [excepted gifts from close friends are eliminated from the statutory dollar

limitation and a judge is free to take a gift in any amount from a person whose preexisting relationship with the judge requires disqualification].)

The value of the acceptable gift is nonetheless subject to reporting requirements under the Political Reform Act of 1974 (Gov. Code, §§ 8100 et seq.), which does not add further limitations on the receipt or value of gifts to judicial officers, but which requires public reporting of any gift or compensation. (See Rothman, *supra*, § 9:31, pp. 615-616.) It is generally accepted that the value of gifts falling within various code exceptions is the reasonable amount of the judge's participation and the participation of the judge's spouse, domestic partner, or guest. (See Rothman, *supra*, § 9:48, p. 639; *id.*, § 9:55, p. 649 [acceptable invitations to ticketed educational events are calculated at the reasonable value of refreshments dinner, and entertainment, rather than the face value of the ticket].)

Thus, in the circumstances described here, the reportable value of the retirement dinner would be the cost of the dinner for the judge and his or her guest, or approximately \$125 each, for a total value of \$250. Although the purpose of the dinner is to celebrate the judge's retirement from the executive committee as the at-large coordinator of educational programs, nothing in the code or the statutes requires the judge to pay for the costs of those attending to celebrate and honor the judge.

Under the circumstances, the committee concludes that the retirement dinner is an acceptable gift and it would not be necessary for the judge to pay or otherwise reimburse the hosting attorneys for the cost of the judge and his or her guest's meals, a quarter of the total cost of the dinner, or the total cost of the dinner.

B. Award

The annual student achievement award the executive committee plans to establish in the judge's name is similarly a permissible honor, although it is not a gift to the judge.

The award will recognize the educational achievements of a law student Inn of Court member each year without bestowing anything of monetary value on the judge.

Nor will it advance the pecuniary interests of the judge, the student, or the Inn of Court. (Canon 2B(2).) Unlike a scholarship, which would require prohibited fundraising, the use of the judge's title in the award will contribute to legal education in a manner that advances the law, the legal system, and the administration of justice. (Cf. CJEO Oral Advice Summary 2015-011 (2015), *Use of Judicial Title on a Scholarship Fund*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 1 [judicial officer's name and title may not be used by an alumni association of the judge's law school alma mater on a scholarship named in honor of the judge if the scholarship will be funded by donations solicited using the judge's name].) As such, it is a permissible use of title and the prestige of office in honor of both the judge and the students who will receive the award each year. (Rothman, *supra*, § 10.18, p. 689 [there is no prohibition on use of judicial title to promote a permissible legal educational program because the importance of judges contributing to the law, legal system, and the administration of justice far outweighs any arguable use of the prestige of office to advance the pecuniary interests of others].)

Finally, the plaque and the framed commemoration of the award that the executive committee intends to present to the judge are also honors the judge may accept. The statute specifically excludes plaques from the definition of a gift, so long as they are limited in value to under \$250. (Cal. Code Civ. Proc., § 170.9, subd. (l)(6) [the term 'gift' does not include personalized plaques and trophies with an individual value of less than \$250.00].) While the code does not contain a similar exclusion, the committee believes that the similarity in the two gift definitions supports the conclusion that the plaque and framed commemoration are not gifts because the personalization eliminates any value that could potentially be used as consideration. (CJEO Oral Formal Opinion 2014-005, *Accepting Gifts of Little or Nominal Value Under the Ordinary Social Hospitality Exception*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 6 & fn. 6 [advising

that items of any value are gifts within the meaning of the code when they could be exchanged for consideration on the open market, but distinguishing homemade personalized items that would have no market value].)

Nonetheless, to the extent that the cost of procuring the personalized plaque and framing it were to be viewed as a gift incidental to the private retirement dinner, it would fall within the same code exception for permissible gifts based on the judge's preexisting relationships and disqualification practices, as discussed above. (See Rothman, *supra*, § 10:16, p. 685 [a judge may accept a free dinner and a plaque from a local bar association even though the event is underwritten by attorneys who will appear in front of the judge and who will be recognized for their donations at the event].)

III. Conclusions

The retirement dinner is a private testimonial the judge may accept as a gift, without limit and without reimbursement of costs for any part of the dinner, including the costs of the judge and his or her guest's meals. For reporting purposes, the value of the gift is the total cost of the judge and his or her guest's meals. The student achievement award in the judge's name is also a permissible honor and use of judicial title. Finally, the framed commemoration of the award is an acceptable honor incidental to the retirement dinner.



This oral advice summary is advisory only. (Cal. Rules of Court, rule 9.80(a), (e); Cal. Supreme Ct. Com. Jud. Ethics Opns. (CJEO), Internal Operating Rules & Proc. rule 1(a), (b).) It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rules 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)). The conclusions

expressed in this summary are those of the committee and do not necessarily reflect the views of the California Supreme Court or any other entity. (Cal. Rules of Court, rule 9.80(b); CJEO rule 1(a).)