

**Colorado Supreme Court  
Judicial Ethics Advisory Board (C.J.E.A.B.)**

**C.J.E.A.B. ADVISORY OPINION 2010-01  
(Finalized and effective February 9, 2010)**

**ISSUE PRESENTED**

The requesting judge states that in light of various budget cuts concerning judicial education and the cancellation of programs such as the annual state judicial conference, the Judicial Education Subcommittee of the Judicial Liaison Section of the Colorado Bar Association (CBA) is considering approaching providers of continuing legal education (CLE) programs to inquire as to whether such providers would provide discounts to judges who attend their programs, or whether such providers would allow judges to attend their programs free of charge. The Subcommittee, of which the requesting judge is a member, requests guidance on four related questions: (1) May a judicial officer make such a request? (2) May the Judicial Liaison Section of the CBA make such a request on behalf of those of its members who are judges? (3) If discounted or no cost CLE programs are made available only to judges, must judges disclose the value of the benefit provided? (4) If the discounted or no cost CLE programs are made available both to judges and certain nonjudicial officers, must judges disclose the value of the benefit provided?

**CONCLUSIONS**

A judge may not request that CLE providers offer programs to judges on a discounted or no cost basis, and a committee on which judges serve may not make the request on behalf of its judge members. Judges should disclose the benefit of discounted or no cost programs if they are made available only to judges, but need not do so if the programs are available to similarly situated persons who are not judges.

**APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT**

Canon 4C encourages judges to serve organizations devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice, but prohibits a judge from personally soliciting funds for the organization.

Canon 5B(2) directs that a judge shall not personally solicit funds for any educational, religious, charitable, fraternal, social or civic organization, or use or permit the use of the prestige of the judge's office for that purpose.

Canon 5C(4)(a) provides that a judge may accept an invitation to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice.

Canon 5(C)(4)(b) allows a judge to accept a scholarship awarded on the same terms applied to other applicants.

## DISCUSSION

Comprised of both judges and non-judges, the Judicial Education Subcommittee was formed to address issues concerning continuing education for judges in Colorado. The Code of Judicial Conduct by its terms applies only to judges; thus, while the committee itself is not subject to the Code, the judge members of the committee are bound by it.

Approaching the requesting judge's questions seriatim, we conclude as to the first question that a judicial officer may not request that a provider of CLE programs allow judges to attend at a discounted rate or free of charge. To make such a request would amount to a fund-raising activity and, under Canons 4 and 5 of the existing Code of Conduct, judges are not permitted to solicit funds (or, by extension, to solicit discounts, which is in essence requesting that judges be given a special financial break). The result would be the same under the proposed code of conduct currently being considered by our supreme court.<sup>1</sup> Proposed Rule 3.7(a)(2)<sup>2</sup> only allows a judge to solicit contributions from "the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority," none of which are applicable here.

The answer to the requesting judge's second question – whether the Judicial Liaison Section may make such a request on behalf of its judge members – is no different. Although, as noted above, the committee itself is not subject to the Code of Judicial Conduct, its judge members are. Under the Code, judges may not authorize or allow someone to do something on their behalf that judges cannot do themselves. A request by the committee on behalf of its judges, even if the request is not made directly by one of the judge members, implicates all of the judges on the committee. Even if a judge member did not participate in a particular request, the action would be made on behalf of the committee as a whole, including the judge members. Thus, because judges may not themselves request that CLE providers offer discounted or free programs to them, a committee comprised in part of judges similarly cannot make such a request.

Next we consider whether judges must disclose the value of the benefit provided if discounted or no cost CLE programs are made available only to judges. We previously considered gifts and the reporting of gifts in the area of ordinary social hospitality in CJEAB 2009-01. The analysis of the instant question differs under the existing and proposed codes. Colorado's current code provides in Canon 5C(4) that a judge may accept an invitation to the judge to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice. The Canon does not require the judge to report the gift. If these discounted or no-cost CLE programs are not considered bar-related functions or activities and if the value of the reduced tuition is greater than \$100, the judge must report it pursuant to Canon 5C(4)(c).

Alternately, under Rule 3.14<sup>3</sup> of the proposed code, a judge may accept a waiver of fees or charges for registration or tuition if the expenses are associated with the judge's participation in permissible extrajudicial activities. In deciding whether it is appropriate to accept the fee waiver in the first instance, comment 3 to the proposed Rule cautions a judge to assess whether such acceptance would appear to a reasonable person to undermine the judge's independence,

integrity, or impartiality, and sets forth a host of factors for a judge to consider. Our opinion in CJEAB 2008-03, in which we discussed whether it was appropriate for a judge to teach at a CLE aimed at a group of attorneys that only represented one side in dependency and neglect cases addressed some analogous concerns. Assuming that the judge concludes that it is appropriate to accept the waiver, Rule 3.15<sup>4</sup> of the proposed Code governs the reporting of gifts and benefits and requires the reporting of fee waivers described in Rule 3.14. Comment [3][d] to the rule clarifies that the statutory reporting requirements, which the proposed rule is designed to track, mandate reporting waiver or partial waiver of CLE costs that exceed \$50. See also § 24-6-203(3)(e), C.R.S.

Although the Code currently in force does not prescribe reporting of a CLE waiver in the event a discounted or free program is made available only to judges, the Board concludes that, given that the proposed code so clearly requires reporting in this circumstance, and given that such a requirement is consistent with the statute governing reporting by all public officials including judges, judges should report such discounts or waivers.

Finally, turning to the judge's fourth request, we consider whether judges must disclose the value of the benefit provided if discounted or no cost CLE programs are made available both to judges and to "certain nonjudicial officers." Although it is unclear who such persons would be, if the tuition reduction is offered to all members of the public on the same terms as the judge, the judge need not report the tuition waiver or scholarship under the existing code. Current Canon 5C(4)(b) provides that a judge may accept such a scholarship if it is awarded to the judge "on the same terms applied to other applicants"—*i.e.* if the judge didn't receive the scholarship because the judge is a judge. Under the current Canon, the judge need not report the gift. Similarly, under proposed Rule 3.13(B)(6), a judge may accept a scholarship or similar benefit if it is available to similarly situated persons who are not judges, based upon the same terms and criteria, without the judge having to report receiving the benefit. Thus, if any member of the bar could apply for the tuition reduction and receive it on the same terms that a judge would receive it, then a judge who did receive the tuition reduction would not have to report it.

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 9th day of February, 2010.

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<sup>1</sup> A committee of the supreme court recommended that it adopt a revised version of the code based on the ABA's Model Code, which was approved in 2007. As of the date of this opinion's publication, the proposed code, which can be found at <http://www.courts.state.co.us/userfiles/File/JudicialCodeReport.pdf> remains under consideration.

<sup>2</sup> As currently drafted, proposed Rule 3.7 reads:

Rule 3.7: Participation in Educational, Religious, Charitable,  
Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting\* contributions\* for such an organization or entity, but only from members of the judge's family,\* or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity concerning in connection with its fund granting programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

#### Comment

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

<sup>3</sup> As currently drafted, proposed Rule 3.14 reads:

#### Rule 3.14: Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law,\* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner,\* or guest.

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(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

Comment

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

<sup>4</sup> As currently drafted, proposed Rule 3.15 reads:

Rule 3.15: Reporting Requirements

(A) A judge shall publicly report the source and amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items does not exceed the statutory amount specified in Title 24, Article VI of the Colorado Revised Statutes; and

(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A).

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; and the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.

(C) The public report required by paragraph (A)(1) shall be made at least annually. Public reports required by paragraph (A)(2) and (3) shall be made quarterly.

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(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the clerk of the court on which the judge serves or other office designated by law\*.

(E) Full time magistrates shall file reports required by paragraph A in the office of the clerk of the court on which the magistrate serves annually on or before January 15.

#### Comment

[1] In Colorado, judges' public reporting requirements are governed both by this Code and by statute. See § 24-6-202 and -203, C.R.S.

[2] Pursuant to section 24-6-202, all judges are required to file an annual disclosure with the secretary of state.

[3] Pursuant to section 24-6-203, judges are required to file quarterly disclosures reporting gifts, loans, tickets to events, and reimbursement for travel and lodging expenses.

[a] Money, including a loan, pledge, or advance of money or a guarantee of a loan of money with a value of \$25 or more must be reported. § 24-6-203(3)(a), C.R.S.

[b] Any gift of any item of real or personal property, other than money, with a value of \$50 or more must be reported. § 24-6-203(3)(b).

[c] Any loan of any item of real or personal property, other than money, if the value of the loan is \$50 or more. § 24-6-203(3)(c).

[d] Waiver or partial waiver of the cost of attending CLEs or other educational conferences or seminars is included within the statutory requirement that judges report tickets to sporting, recreational, educational or cultural events with a value of \$50 or more, or a series of tickets with a value of \$100 or more, must be reported. § 24-6-203(3)(e), C.R.S.

[e] Payment of or reimbursement for actual and necessary expenditures for travel and lodging at a convention or meeting at which the judge is scheduled to participate must be reported unless the payment or reimbursement is made from public funds, a joint governmental agency, an association of judges, or the judicial branch. § 24-6-203(3)(f), C.R.S.

[4] The disclosure reports filed with the secretary of state's office may be posted electronically on its website when technically feasible.