

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

**C.J.E.A.B. ADVISORY OPINION 2009-01
(Finalized and effective July 21, 2009)**

ISSUE PRESENTED

The requesting judge has been invited to the birthday celebration of a friend with whom he has been close for many years predating the judge's appointment to the bench. The birthday celebration will involve a trip out of state. The expenses for the trip (transportation, lodging, and meals) will be considerable, and will be covered by the friend and his spouse for all invitees. The judge notes that no activities within the meaning of section 24-6-203(3)(e) or (3)(g), C.R.S. (2008), the statute governing reporting by public officials of gifts and benefits, will occur. The judge's friend is not an attorney, lobbyist, or otherwise within the meaning of section 24-6-203(3.7), C.R.S. (2008), the provision prohibiting public officials from accepting gifts from lobbyists or corporate representatives. The judge asks if he should report the trip on his next quarterly report to the Secretary of State's office pursuant to the reporting statute. Alternately, he asks whether he is required, or whether it would be more appropriate, to personally pay for the approximate cost of his attendance at the celebration.

CONCLUSION

Under the Canons, the judge may accept his friend's offer to pay for the cost of the trip, and he need not report it.

APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 5C(4) specifies that neither a judge nor a member of the judge's family residing in the judge's household should accept a gift or favor from anyone except, as pertinent here:

...

(b) a judge or member of the judge's family residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or member of the judge's family residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and if its value exceeds \$100, the judge reports it in the same manner as the judge reports compensation in Canon 6C.

DISCUSSION

As a preliminary matter, the Board notes that to the extent the judge's request presents a question of statutory interpretation, i.e. whether he may accept and must report the trip under section 24-6-203, C.R.S., the Board lacks authority to so opine. Chief Justice Directive 94-01, which established the Board and sets forth the scope of its authority, provides that ethics advisory opinions shall address only whether a course of proposed conduct does or does not violate the Code of Judicial Conduct, and such opinions may not address issues of law. Therefore, to the extent the requesting judge's question is statutory and not canonical, the Board declines to answer it.

Analyzing the question under the current Code of Judicial Conduct, we look to Canon 5C(4), which pertains to gifts that a judge may accept. Subsection (b) allows a judge to accept, among other things, ordinary social hospitality. Subsection (c) allows a judge to accept any other gift if the donor is not a party likely to come before the judge and, if the value of the gift exceeds \$100, the judge must report the gift pursuant to Canon 6C.

The Board concludes that, under the circumstances of this request, the friend's offer to pay for the expenses of the trip for the judge, the judge's spouse, and all other attendees, constitutes ordinary social hospitality within the meaning of Canon 5C(4). Important to this determination is the long-standing friendship between the judge and the host, which pre-dates and exists outside of the judge's role as judge. In addition, neither the host-friend nor any of the other attendees are lobbyists, and although one attendee is a lawyer, there is no indication that the lawyer regularly appears before the judge. Moreover, the purpose of the trip is to celebrate the friend's birthday, not to engage in any conduct pertaining to the judge's function as a judge. The judge and his spouse are not being treated differently than any of the other invited guests. Thus, the Board concludes that the host-friend's offer to pay for the trip for the judge and all other invitees amounts to ordinary social hospitality within this group. *Cf.* CT Ad. Op. 2009-04 (concluding that a judge and the judge's family vacationing at the home of lawyer friends with whom they regularly socialize is part of ordinary social hospitality). Accordingly, the judge and his wife may accept the trip, and they are not required under Canon 5C4(b) to report it.

Our conclusion would be the same under the proposed Colorado Code of Judicial Conduct, which our supreme court is currently considering adopting. In the proposed code, the relevant rule is 3.13, which pertains to judges' acceptance and reporting of gifts, benefits, and things of value. Specifically, it provides:

- (A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*
- (B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:
 - (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
 - (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

...

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and

(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

Under the proposed Code, as under the current one, the judge would be permitted to accept the friend's offer to pay for the trip because, in their group, this amounts to ordinary social hospitality. The proposed Code, however, offers a second and even more apparent basis for allowing the judge to accept and not report the trip: under subsection (B)(2), a judge may accept a gift of unlimited value from a person whose appearance before the judge would in any event require the judge's disqualification. Here, given the length and depth of the judge's friendship with the host, the judge would recuse himself if the host ever were to appear before him. Thus, under the proposed Code, the judge could accept his friend's offer to pay for the trip, and the judge would not be required to report it.

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 21st day of July, 2009.