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CJEO Formal Opinion 2023-024

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ACCEPTING INVITATIONS TO LAW FIRM CELEBRATIONS

I. Question

The Committee on Judicial Ethics Opinions has been asked whether a judicial officer may accept an invitation from a for-profit law firm to attend its 50th anniversary celebration, which will take place at the law firm's offices and include complimentary food and beverages.

II. Summary of Conclusions

The committee advises that a judicial officer may not accept an invitation to a law firm's 50th anniversary celebration under these circumstances as it could likely violate

several canons in the Code of Judicial Ethics,¹ namely: (1) the prohibitions against suggesting bias or that anyone has a special position of influence over the judicial officer (canons 2, 2A, and 2B(1)); (2) the prohibition against lending judicial prestige to advance a person’s pecuniary or personal interests (canon 2B(2)); and (3) the prohibition against accepting gifts absent certain exceptions (canon 4D(6)). There are exceptions to this general advice. For example, it may be permissible for a judicial officer to attend the celebration of a law firm with which the judicial officer has a preexisting relationship warranting disqualification, provided the judicial officer’s attendance is otherwise consistent with the canons.

III. Authorities

A. Applicable Canons

Terminology: “ ‘Gift’ means anything of value to the extent that consideration of equal or greater value is not received, and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

Canon 1: “A judge shall uphold the integrity and independence of the judiciary.”

Canon 2: “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.”

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. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.”

Advisory Committee commentary following canon 2 and 2A: “*The test for the appearance of impropriety is whether a person aware of the facts might reasonably*

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

entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.”

Canon 2B(1): “A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.”

Canon 2B(2): “A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others.”

Canon 3B(1): “A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.”

Canon 3E(5): “Disqualification of an appellate justice is also required in the following instances[:] [¶] . . . [¶]

(e)(ii): a lawyer or spouse or registered domestic partner of a lawyer in the proceeding is the spouse, registered domestic partner, former spouse, former registered domestic partner, child, sibling, or parent of the justice or of the justice’s spouse or registered domestic partner, or such a person is associated in the private practice of law with a lawyer in the proceeding.”

Canon 4A: “A judge shall conduct all of the judge’s extrajudicial activities so that they do not . . . (1) cast reasonable doubt on the judge’s capacity to act impartially . . . or (4) lead to frequent disqualification of the judge.”

Canon 4D(5): “Under no circumstance shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. . . .”

Canon 4D(6): “A judge shall not accept and shall discourage members of the judge’s family residing in the judge’s household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter set forth. Gifts that are permitted by Canons 4D(6)(a) through (i) may only be accepted if the gift, bequest, favor, or loan would neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) a gift, bequest, favor, or loan from a person whose preexisting relationship with the judge would prevent the judge under Canon 3E from hearing a case involving that person;

(b) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship; [¶] . . . [¶]

(d) any gift incidental to a public testimonial, or educational or resource materials supplied by publishers on a complimentary basis for official use, or a discounted or complimentary membership in a bar-related association, or an invitation to the judge and the judge's spouse or registered domestic partner or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice; [¶] . . . [¶]

(g) ordinary social hospitality; [¶] . . . [¶]

(i) a nominal gift, provided the gift is not from a lawyer, law firm, or other person likely to appear before the court on which the judge serves, unless one or more of the exceptions in this canon applies."

Advisory Committee commentary following canon 4D(6)(a): "*Upon appointment or election as a judge or within a reasonable period of time thereafter, a judge may attend an event honoring the judge's appointment or election as a judge provided that (1) the judge would otherwise be disqualified from hearing any matter involving the person or entity holding or funding the event, and (2) a reasonable person would not conclude that attendance at the event undermines the judge's integrity, impartiality, or independence.*"

B. Constitutional Provisions, Statutes, and Other Authorities

Code of Civil Procedure sections 170.1 and 170.9

Adams v. Commission on Judicial Performance (1995) 10 Cal.4th 866

Commission on Judicial Performance, *Public Censure of Former Judge Steven C. Baily* (2019)

Commission on Judicial Performance, *Public Censure of Admonishment of Judge John P. Shook* (1988)

CJEO Formal Opinion 2014-005 (2014), *Accepting Gifts of Little or Nominal Value Under the Social Hospitality Exception*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Oral Advice Summary 2019-030 (2019), *Acceptance of a Private Testimonial Dinner and Honors*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Expedited Opinion 2021-038 (2021), *Acceptance of Attorney Services from a Law Firm*, California Supreme Court Committee on Judicial Ethics Opinions

California Judges Association, Judicial Ethics Committee, Advisory Opinion No. 43 (1996)

California Judges Association, Judicial Ethics Update (Feb. 2010)

California Judges Association, Judicial Ethics Update (Nov. 2012)

California Judges Association, Judicial Ethics Update (Jan. 2018)

California Judges Association, Judicial Ethics Update (Jan. 2019)

Rothman et al., California Judicial Conduct Handbook (4th ed. 2017) sections 9:7, 9:41, 9:44, 9:52, and 9:53

IV. Discussion

Judicial officers are often invited to celebrations hosted by law firms, such as events celebrating the holidays, a law firm opening or merger, or a significant anniversary. When considering whether to accept such an invitation, the judicial officer is advised to consider whether it would implicate any of the following canons.

A. Bias or Special Influence

First, a judicial officer must consider whether attending the law firm celebration will compromise public confidence in the impartiality of the judiciary or suggest that the law firm is in a special position to influence the judicial officer. (Canons 1, 2, and 2A [judges must promote public confidence in the integrity and impartiality of the judiciary and avoid impropriety in all activities]; canon 4A(1) [a judge must conduct all extrajudicial activities in a manner that does not cast reasonable doubt on the judge's capacity to act impartially]; canon 2B(1) [a judge must not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgement, nor shall a

judge convey or permit others to convey the impression that any individual is in a special position to influence the judge].) Put another way, a judicial officer must consider whether attendance might reasonably suggest that the judicial officer is biased in favor of the law firm or under the influence of the law firm.

To determine whether attendance would suggest bias or special influence, a judicial officer must be guided by the perspective of an objective observer. (Advisory Comm. commentary foll. canon 2A [the test for impropriety is whether a person aware of the facts might reasonably doubt the judge's integrity or impartiality].) In the committee's view, attending a law firm's 50th anniversary celebration may suggest that a judicial officer has a special relationship or close association with the law firm. This may cause an observer to reasonably question the judge or court's impartiality in cases involving the law firm or suspect that the law firm has special sway or influence over the judicial officer in carrying out judicial decisions. For these reasons, the committee advises against attending a law firm celebration under the circumstances presented here.

B. Lending Prestige

A judicial officer must also consider whether attending the law firm celebration would impermissibly lend judicial prestige to advance the law firm's interests. (Canon 2B(2) [a judge shall not lend judicial prestige or use judicial title in any manner to advance the pecuniary or personal interests of the judge or others].) While they may have social aspects, law firm celebrations are typically attended by clients, or prospective clients, and are generally geared toward promoting the law firm as a business. The Rothman treatise explains that a law firm holiday party, for example, "may have social purposes, but such an event is undoubtedly centered on the advancement of the business of the firm," and is treated as a business expense. (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) (Rothman) § 9:44, p. 633 [disagreeing with Cal. Judges Assn., Jud. Ethics Update (Feb. 2010) p. 5, which advised that a judge may attend a law firm celebration for the political appointment of one of its lawyers].)

A judicial officer's attendance at a law firm's anniversary celebration may lend prestige to the law firm by suggesting that the law firm has a favored position with the judiciary or is endorsed by the judicial officer or the court, leading to increased business. Due to the risk of lending judicial prestige to advance the law firm's interests or suggesting the judiciary's endorsement, the committee advises against attending a law firm anniversary celebration, as it is described here. (CJEO Expedited Opinion 2021-038 (2021), *Acceptance of Attorney Services from a Law Firm*, Cal. Supreme Ct., Com. Jud. Ethics Opns., p. 4 [advising against placing a law firm's incoming associate in an appellate justice's chambers because it would give the law firm a favored position not enjoyed by its competitors and might be viewed as having the court's endorsement]; Rothman, *supra*, § 9:7, p. 591, citing Cal. Judges Assn., Jud. Ethics Update (Nov. 2012) p. 4 [a judge may not endorse an attorney's law practice].)

C. Gifts

In addition, a judicial officer must consider whether the law firm celebration will include food, beverages, or any other tokens or favors that qualify as gifts. Judicial officers are prohibited from accepting gifts from any party appearing before, or "reasonably likely" to appear before, the judicial officer. (Canon 4D(5).) With regard to accepting gifts from a law firm, judicial officers are generally governed by canon 4D(6), which prohibits judicial officers from accepting gifts, bequests, favors, and loans from anyone unless the gift: (1) falls into one of the exceptions enumerated in the code; and (2) would not "reasonably be perceived as intended to influence the judge in the performance of judicial duties."

Under the question presented here, the law firm's 50th anniversary celebration will include complimentary food and beverages, which are gifts not falling within any enumerated exception to the gift prohibition. The code defines a gift as "anything of value to the extent that consideration of equal or greater value is not received...." (Cal. Code Jud. Ethics, Terminology, "Gift"; Code of Civ. Proc., § 170.9, subd. (l) [defining "gift" in similar terms].) This includes items having small or nominal dollar value.

(CJEO Formal Opinion 2014-005 (2014), *Accepting Gifts of Little or Nominal Value Under the Social Hospitality Exception*, Cal. Supreme Ct., Com. Jud. Ethics Opns., p. 6; Rothman, *supra*, § 9:44, p. 634.) While there is an exception to the gift prohibition for “nominal” gifts, this exception does not apply to gifts from lawyers or law firms. (Canon 4D(6)(i) [permitting nominal gifts provided they are not from a lawyer, law firm, or person likely to appear before the court on which the judge serves].)

There is another exception to the gift prohibition for “ordinary social hospitality,” which is also inapplicable here. (Canon 4D(6)(g).) When determining whether the ordinary social hospitality exception applies, the crux of the analysis is whether an activity is primarily social or business-oriented in nature. (CJEO Formal Opinion 2014-005, *supra*, at p. 13 [when offered gifts of nominal value, a judge should consider whether it is something that would traditionally be offered in circumstances involving socializing rather than business].) The committee agrees with the cautious approach expressed in Rothman that law firm celebrations are typically “[e]vents which, at their essence, involve a business purpose” and therefore “do not constitute ‘social hospitality’ as that term is commonly understood.” (Rothman, *supra*, § 9:53, p. 643.) There may be exceptions to this general rule for functions hosted by lawyers that have no business purpose. (Cal. Judges Assn., Jud. Ethics Update (Jan. 2018), p. 5 [judge may attend a memorial service for a deceased lawyer, paid for by the judge’s spouse who is also lawyer, because there is no business purpose to the event and therefore it falls within the ordinary social hospitality exception].) However, a law firm’s 50th anniversary celebration, absent additional facts, would not fall within this category.

A determination of whether an event falls within the ordinary social hospitality exception “focuses on a reasonable perception of an intent to gain advantage.” (CJEO Formal Opinion 2014-005, *supra*, at p. 12, citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 880; Cal. Judges Assn., Jud. Ethics Com., Advisory Opn. No. 43 (1996), p. 4 (CJA Opinion No. 43) [ordinary social hospitality is the type of social event so common in the judge’s community that no reasonable person would

believe the donor intended to obtain an advantage].) Under the question presented here, an observer may reasonably perceive that a law firm has invited a judicial officer to its anniversary celebration to enhance its own reputation or to gain favor or an advantage with the judicial officer or the court.

Even if gifts incident to a law firm's 50th anniversary celebration did fall within the exception for ordinary social hospitality, a judicial officer may not accept them if they would "reasonably be perceived as intended to influence the judge in the performance of judicial duties." (Canon 4D(6)). The risk that gifts will be perceived as intended to influence a judicial officer is heightened when the donor is a lawyer or law firm. Gifts from lawyers are " ‘ ‘inherently wrong’ ’ " and have a " ‘ ‘subtle, corruptive effect, no matter how much a particular judge may feel he is above improper influence.’ ’ " (*Adams, supra*, at p. 879 [judge disciplined for, among other misconduct, accepting a fishing trip and various gifts from lawyers over a period of years]; Com. on Jud. Performance, *Public Censure of Former Judge Steven C. Bailey* (2019), p. 16, 19-20 [judge disciplined for accepting charity event tickets and other gifts from a lawyer whom the judge had appointed as a special master]; Com. on Jud. Performance, *Public Admonishment of Judge John P. Shook* (1988), p. 4 [judge disciplined for accepting lunches and a limousine ride from attorneys].) As a result, gifts from lawyers or law firms are "*presumptively improper*." (Rothman, *supra*, § 9:52, p. 641 [italics in original].) Even when there is no actual influence, a judicial officer must refrain from accepting any gift that creates the perception of influence. (CJEO Expedited Opinion 2021-038, *supra*, p. 3 [even when there is no actual influence, accepting attorney services from a law firm would cast a shadow of influence, which must be avoided].)²

² Attending a law firm celebration is distinguishable from attending a bar association or legal education event sponsored by law firms. Such activities do not generally undermine judicial impartiality, and a specific exception to the gift prohibition applies. (Rothman, *supra*, § 9:41, p. 627 [judges may attend bar-related functions with complimentary food and beverages, even when underwritten by law firms, because judges are expected to maintain relationships with the bar and such events do not cast

D. Special Circumstances

There may be special circumstances, which the question presented does not implicate here, where a judicial officer may attend a law firm function or celebration consistent with the canons. For example, it is generally permissible to attend a celebration of a law firm with which the judicial officer has a preexisting relationship warranting disqualification, such as the opening of an adult child's law practice or a holiday party at a law firm where the judicial officer's spouse works. In these cases, the judicial officer would be disqualified from cases involving the law firm in any event and exceptions to the gift prohibitions apply. (Canon 3E(5)(e)(ii) [appellate justices are disqualified when a spouse or other close relation is a lawyer in the proceeding or in private practice with a lawyer in the proceeding]; Civ. Proc., § 170.1(a)(5) [applying the same rule to trial court judges]; 4D(6)(a) [providing an exception to the gift prohibition for gifts from a person who has a preexisting relationship with the judge that would trigger disqualification]; canon 4D(6)(b) [providing an exception to the gift rule for gifts from relatives and friends if the gift is fairly commensurate with the occasion and relationship]; Cal. Judges Assn., Jud. Ethics Update (Jan. 2019) p. 2 [judge may attend a law firm open house where the judge's spouse works and complimentary food and beverages will be served].)³ However, even in such cases, judicial officers are advised to

doubt on impartiality]; canon 4D(6)(d) [providing an exception for gifts incident to bar-related functions and activities devoted to the improvement of the law, the legal system, or the administration of justice].) In recent years, law firms have increasingly hosted law student mixers and events to promote diversity in the legal profession. When deciding whether to attend such events, judicial officers are advised to consider whether the event appears to promote a particular law firm or whether it is geared to improvement of the law and legal system in general.

³ Judicial officers may also be permitted to attend celebrations of law firms from which they are temporarily disqualified within the period of disqualification, provided the judicial officer's attendance is otherwise consistent with the canons. (Advisory Com. commentary foll. canon 4D(6)(a) [within a reasonable timeframe after appointment or

ensure that the law firm does not use the judicial officer's position to improperly lend prestige to the law firm, for example, by introducing the judicial officer by title as a special guest in the presence of clients.

This is consistent with the committee's previous advice that a judicial officer may attend certain private functions hosted by attorneys having a preexisting relationship with the judicial officer warranting disqualification. (CJEO Oral Advice Summary 2019-030 (2019), *Acceptance of a Private Testimonial Dinner and Honors*, Supreme Ct. Com. Jud. Ethics Opns., p. 3 [judicial officer may accept a retirement dinner from attorney members of the Inn of Court with whom the judicial officer has a close relationship warranting disqualification]; Rothman, *supra*, §9:53, pp. 642-643 [judge may attend a dinner at an attorney's home when there is a preexisting friendship warranting disqualification or at least disclosure].) While a *preexisting* relationship requiring disqualification may give rise to certain exceptions to the gift prohibition, a judicial officer may not avoid the prohibition by attending a law firm celebration and then subsequently deciding to disqualify. (Canon 3B(1) [a judge has a duty to hear all cases from which the judge is not disqualified]; canon 4(A)(4) [a judge must conduct extrajudicial activities so that they do not lead to frequent disqualification]; CJA Opinion No. 43, *supra*, at p. 1 [a judge may not accept invitations to socialize with lawyers without regard to ethical constraints and then subsequently decide to disqualify].)

The committee understands that there will be other circumstances under which it may be appropriate for a judge to accept an invitation to a celebratory event hosted by a law firm — for example, a retirement party or memorial service for a well-known member of the legal community, given that such an event is not business oriented, and the judge's attendance would not necessarily be indicative of impartiality or lending

election, a judge may attend an event honoring the judge's appointment or election provided that the judge would otherwise be disqualified from hearing a matter involving the entity hosting the event and a reasonable person would not conclude that attendance undermines the judge's integrity, impartiality, or independence].)

prestige to the law firm that hosts. This may be particularly true where many members of the legal community — judges and non-judges alike — are invited. The committee simply advises that judges evaluate their ethical obligations in connection with attending such an event — and consider canons 2, 2A, 2B, 4A, 4D(5) and 4D(6).

V. Conclusion

A judicial officer is advised not to attend a law firm's 50th anniversary celebration where complimentary food and beverages will be served. A judicial officer's presence at such an event may suggest that the judicial officer has a special relationship with the law firm, which may undermine the impartiality of the judiciary or convey the impression that the law firm is in a position to influence the judicial officer's judicial decisions. In addition, the judicial officer's attendance at such an event may improperly lend judicial prestige to advance the law firm's interests by suggesting that the law firm is favored or endorsed by the judiciary. Finally, because law firm celebrations are primarily for the purpose of business development, the complimentary food and beverages served at such events are gifts for which no exception to the general prohibition against accepting gifts applies.



This opinion is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) 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 rule 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 opinion 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)).