

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 14-927

GIFTS: ACCEPTANCE OF CONFERENCE FEES FROM PROVIDER OF SERVICES TO JUDGE'S COURT

ISSUES

May a judge allow a private contractor that provides or seeks to provide services to the judge's court, such as a private probation company, pay the judge's registration fees and/or expenses for the judge to attend a judicial conference? **Answer:** No.

DISCUSSION

A judge's acceptance of payment of fees and/or expenses for the judge to attend law-related activities is governed by the following provisions of Alabama Canons of Judicial Ethics:

- Canon 1 A judge should uphold the integrity and independence of the judiciary.
- Canon 2 A judge should avoid impropriety and the appearance of impropriety in all his activities.
- Canon 2A A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- Canon 2C A judge . . . should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him.
- Canon 4 A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:
- A. He may . . . participate in . . . activities concerning the law, the legal system, and the administration of justice.
- Canon 6 A judge may receive compensation and reimbursement of expenses for the quasi-judicial . . . activities permitted by these Canons, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety

In complying with these canons, a judge must assure himself or herself that acceptance of payment for expenses, fees, and/or tuition, in connection with legal or judicial seminars, conferences, etc. would not appear to a reasonable person to undermine the judge's

independence, integrity, or impartiality. Comment to Rule 3.14, American Bar Association Model Code of Judicial Conduct (2009). Several factors for a judge to consider in making this determination include the following:

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

Id. It would be significant that the generation of fees, marking the success of a private contractor or service provider serving or seeking to serve the judge's court, rests on the judge's orders. For example, in the case of a private probation company, the judge would, in effect, be awarding income-producing business for the private company with every defendant the judge places on probation. In addition, a service provider's personnel would frequently work closely with the judge and frequently submit records and evidence to the judge.

Other judicial advisory bodies have advised that a judge should not accept any gratuity from any private contractor that may provide, or is seeking to provide, services to the judge's court. See, e.g., Massachusetts Committee on Judicial Ethics Advisory Opinion 99-12 (a judge may not accept payment for travel expenses to a conference from an agency that provides, for fees, services to the judge's court; a disinterested objective person could reasonably question the reimbursed judges' impartiality); Nebraska Judicial Ethics Commission Advisory Opinion 04-1 (a judge's tuition and expenses for attending a conference concerning domestic violence cannot be paid by either the local domestic violence project or through a grant from the Department of Justice because each is a partisan group whose interests will likely come before the judge in future cases, and such funding would call into question the judge's impartiality). See also Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Advisory Opinion 2009-2 (it is improper for a juvenile court judge to accept, from a private placement facility that receives or seeks to receive placement of juveniles by the court, (1) reimbursement of travel expenses for travel to the facility, or (2) a gratuitous non-conference meal while the judge is attending a conference; such gives the appearance of influencing the judge in his or her judicial duties and would otherwise appear to a reasonable person to undermine the judge's independence, integrity, or impartiality). Cf. Alabama Advisory Opinions 94-532 (a judge is prohibited from ordering a criminal defendant to attend a private, for-profit drivers' education program if the judge receives any personal benefit of any type, financial or otherwise, from the center as a result of the judge's referral); 94-518 (a judge should not accept donation of computer equipment from a litigant or attorney presently appearing in his or her court because such

acceptance would cause the judge's disqualification); 02-802 (a judge should not accept a ticket to a college football game from an attorney who presently has a case pending before the judge because such gift creates an appearance of impropriety).

REFERENCES

Alabama Canons of Judicial Ethics, Canons 1, 2, 2A, 2C, 4, 6

Alabama Advisory Opinions 02-802; 94-532; 94-518

Massachusetts Committee on Judicial Ethics Advisory Opinion 99-12

Nebraska Judicial Ethics Commission Advisory Opinion 04-1

Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Advisory Opinion 2009-2

Comment to Rule 3.14, American Bar Association Model Code of Judicial Conduct (2009)

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 18 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043.