

*Key Issues in  
Judicial Ethics*

**A JUDGE'S ATTENDANCE AT SOCIAL  
EVENTS, BAR ASSOCIATION FUNCTIONS,  
CIVIC AND CHARITABLE FUNCTIONS,  
AND POLITICAL GATHERINGS**

BY CYNTHIA GRAY



This paper was developed under grant #SJI-93-02B-C-270 from the State Justice Institute, "To Promote the Establishment and Support the Operations of State Judicial Ethics Advisory Committees." Points of view expressed herein do not necessarily represent the official positions or policies of the American Judicature Society or the State Justice Institute.

**American Judicature Society**

Allan D. Sobel  
Executive Vice President and Director

Cynthia Gray  
Director, Center for Judicial Ethics  
Box 190, 3304 N. Broadway  
Chicago, IL 60657  
(773) 248-6005  
FAX (773) 248-6015

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## INTRODUCTION

Commentary to Canon 4A of the *1990 American Bar Association Model Code of Judicial Conduct* states that “complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.”<sup>1</sup> The Committee on Judicial Ethics of the California Judges Association elaborated that separation of a judge from friends and the community is “not healthy” because “it tends to isolate judges from both the interests and concerns of their community, including the legal community.” *California Advisory Opinion 43* (1994). However, the committee continued, “all of a judge’s activities should be conducted in a manner which promotes public confidence in the integrity and impartiality of the judiciary and which does not lend the prestige of judicial office to advance the personal interests of others.”

This paper discusses the guidance that advisory committees have given judges trying to balance their social and community commitments with the requirements of the code of judicial conduct.<sup>2</sup> First, it covers the ethical limitations on a judge accepting hospitality from attorneys. Also described are the general rule encouraging a judge to participate in general bar association functions and the caveat to that rule advising caution about involvement in specialty bar associations. The paper gives examples of the limits on a judge’s participation in charitable fund-raisers and discusses guidelines for determining when a judge’s attendance at a charitable function may raise questions about the judge’s impartiality. Finally, it discusses a judge’s attendance at political gatherings, particularly programs about the justice system, inaugural events, and testimonials for public figures.

1. Unless otherwise indicated, references to the canons of the code of judicial conduct are to the *1990 American Bar Association Model Code of Judicial Conduct*. The 1990 model code retained most of the basic principles of the 1972 ABA model code but made several substantial changes and contains many differences in its details. This paper notes any relevant differences between the two model codes. Although the model code is not binding on judges unless it has been adopted in their jurisdiction, 49 states, the United States Judicial Conference, and the District of Columbia have adopted codes of judicial conduct based on either the 1972 or 1990 model codes. (Montana has rules of conduct for judges, but they are not based on either model code.)

2. Over 35 states and the United States Judicial Conference have judicial ethics advisory committees to which a judge can submit an inquiry regarding the propriety of contemplated future action. See *Judicial Ethics Advisory Committees: Guide and Model Rules* (AJS 1996).

Relevant provisions of the *1990 American Bar Association Model Code of Judicial Conduct*

### Canon 4C(3)(b)

A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise [of an organization devoted to the improvement of the law, the legal system or the administration of justice or an educational, religious, charitable, fraternal or civic organization]:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization’s funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

\* \* \*

### Commentary:

\* \* \*

A judge must not be a speaker or guest of honor at an organization’s fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

### Canon 4D(5)

A judge shall not accept a...gift, bequest, favor or loan from anyone except for:

(a) ...an invitation to the judge and the judge’s spouse 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;

\* \* \*

(c) ordinary social hospitality;

\* \* \*

### Canon 5A(1)(d)

[A] judge or a candidate for election or appointment to judicial office shall not...attend political gatherings....

## SOCIAL EVENTS

### *Socializing with Attorneys—Ordinary Social Hospitality*

Generally, judges are allowed to accept “ordinary social hospitality.” *Canon 4D(5)(c)*. Based on that provision, absent special circumstances, many advisory committees have allowed judges to attend social events hosted by attorneys. For example, advisory opinions allow judges to attend:

- the opening of an attorney’s new law office (*California Advisory Opinion 47* (1997); *New York Advisory Opinion 91-136*);
- a law firm holiday open house or party (*California Advisory Opinion 47* (1997); *Washington Advisory Opinion 91-27*; *New York Advisory Opinion 87-12(a)*; *New York Advisory Opinion 87-15(a)*; *Texas Advisory Opinion 194* (1996));
- a 75th birthday party given for an attorney (*New York Advisory Opinion 89-23*); and
- a hunt and supper given by an attorney (*South Carolina Advisory Opinion 10-1988*).

Commentary to the Maryland code of judicial conduct provides:

Judges are often invited by lawyers or other persons to attend social, educational, or recreational functions. In most cases, such invitations would fall within the realm of ordinary social hospitality and may be accepted by the judge. If there is more than a token fee for admission to the function, however, unless the fee is waived by the organization, the judge should pay the fee and not permit a lawyer or other person to pay it on the judge’s behalf.

New Jersey, however, has a less permissive rule for socializing with attorneys that prohibits judges from attending a holiday party hosted by a law firm. *New Jersey Informal Advisory Opinion 62-92*. The New Jersey Advisory Committee on Extrajudicial Activities has also stated:

- A judge may not attend a reception at a law firm given by an attorney to celebrate his or her promotion in the armed forces reserves. *New Jersey Informal Advisory Opinion 3-91*.

- A judge may not attend a dinner to honor a prosecutor on his or her reappointment because attendance might create an appearance of favoring law enforcement. *New Jersey Informal Advisory Opinion 19-88*
- A judge may not attend a reception following the swearing-in of the public advocate/public defender. *New Jersey Informal Advisory Opinion 41-92*

The California judicial ethics committee noted that “judges, like other members of society, must be able to extend common courtesies and social amenities to others, and be willing guests and willing hosts.” *California Advisory Opinion 43* (1994). The committee defined “ordinary social hospitality” as “that type of social event or other gift which is so common among people in the judge’s community that no reasonable person would believe that (1) the donor was intending to or would obtain any advantage or (2) the donee would believe that the donor intended to obtain any advantage.”

In determining whether a social event is ordinary social hospitality, the California committee directed judges to consider the following factors:

1. The cost of the event in the context of community standards for similar events. What may seem excessive in one part of the state or county may be within ordinary hospitality in other places depending on what is customary and reasonable in the community in question.
2. Whether the benefits conferred are greater in value than that traditionally furnished at similar events sponsored by bar associations or similar groups.
3. Whether the benefits are greater in value than that which the judge customarily provides his/her own guests. The events which a judge hosts tend to reveal the judge’s view of ordinary social hospitality.
4. Whether the benefits conferred are usually exchanged only between friends or relatives, such as transportation, housing or free admission to events that require a paid admission.
5. Whether there is a history or expectation of reciprocal social hospitality. If a judge is invited to a social event by an attorney who the judge has invited in the past or is likely to invite in the future to similar events, this is suggestive of ordinary hospitality.

6. Whether the event is a traditional occasion for social hospitality such as a holiday party or the opening of an office.

7. Whether the benefits received must be reported to any governmental entity.

Judicial ethics committees advise that “ordinary social hospitality” includes and judges may accept:

- a free meal from an attorney (*Utah Formal Advisory Opinion 98-1*);
- personal invitations to a social function held in an attorney’s home (*Georgia Advisory Opinion 13* (1997)); and
- attending a law firm’s holiday party that includes drinks and hors d’oeuvres (*Wisconsin Advisory Opinion 98-10*).

However, it does not include:

- a law firm party at an expensive restaurant, a cruise, or a similar expensive, lavish affair (*New York Advisory Opinion 87-12(a)*; *New York Advisory Opinion 87-15(a)*);
- a sit-down dinner at a country club sponsored by a law firm (*Wisconsin Advisory Opinion 98-10*);
- an out-of-state weekend outing sponsored by a law firm (*Georgia Advisory Opinion 13* (1977)); and
- gratuities associated with a free meals such as a free airline ticket for a meal in a neighboring city (*Utah Formal Advisory Opinion 98-1*).

*But see Alabama Advisory Opinion 96-610* (a judge may accept lodging, food, and entertainment for the judge and the judge’s spouse from a law firm in exchange for providing a legal seminar at the firm’s annual outing); *Texas Advisory Opinion 39* (1978) (a judge may accept a law firm’s invitation to be a guest at a lake lodge).

### ***Socializing with Attorneys—Avoiding the Appearance of Partiality***

Accepting even ordinary social hospitality from an attorney may violate the code of judicial conduct if an appearance of impropriety is created because, for example, the attorney is appearing before the judge. Thus, in *In the Matter of D’Auria*, 334 A.2d 332 (1975), the

New Jersey Supreme Court sanctioned a former judge who, on numerous occasions, had been a luncheon guest in public restaurants of attorneys or representatives of insurance companies that were parties in pending matters in the judge’s division. (The sanction was suspension from the practice of law for six months.) These persons invariably paid the luncheon bill, including the judge’s share. Although acknowledging that at no time did anyone expect or receive any preferential treatment from the judge, the court found that, in addition to the obvious appearance of impropriety, the judge’s acceptance of gratuities and favors from those who have business with the judge’s court “is inherently wrong. It has a subtle, corruptive effect, no matter how much a particular judge may feel that he is above improper influence.”

Similarly, in *Adams v. Commission on Judicial Performance*, 897 P.2d 544 (1995), the California Supreme Court disciplined a judge for, among other misconduct, receiving hospitality from attorneys whose interests had been or were likely to come before him. The judge had permitted an attorney to take the judge and his wife to dinner while litigation in which the judge had rendered a verdict in the attorney’s client’s favor was on appeal and the judge had other cases involving the attorney’s firm. In addition, the judge had attended a dinner hosted by the attorney in celebration of the satisfaction of the judgement in the litigation over which the judge had presided. The judge had also used a resort condominium owned by a partner of a law firm whose interests regularly came before the judge and had participated as a guest on fishing trips co-sponsored by the firm. *See also Texas Advisory Opinion 216* (1997) (a judge who is hearing a case out of town may not stay in the lake house of a lawyer who often appears in the judge’s court even if the lawyer has no connection with the case unless the county pays for the judge’s stay at a rate that is commensurate with the market value of the accommodations and the lawyer regularly rents out the house, not just to the judge).

To determine whether acceptance of even ordinary social hospitality from an attorney nevertheless creates an appearance of impropriety, the California committee directed judges to consider the following factors:

1. Whether the attorney or a member of the attorney’s law firm is currently appearing before the judge, has in the recent past appeared, or will in the near future. Being the guest of an attorney with whom the judge has a professional relation-



ship (e.g., with whom the judge serves on the local bar association governing board) may generally be proper, for example, but may be inappropriate during the pendency of a trial in which the attorney is appearing in the judge's court.

2. The frequency with which the attorney or a member of the attorney's law firm appears before the judge.

3. Whether the invitation is limited to the judge or a small number of judges as compared to judges and/or members of the legal community at large.

4. Whether there is a personal friendship or professional relationship between the judge and the attorney which exists independent of the event in question.

5. Any other circumstances relating to the event that, if the judge attended, might result in future disqualification under Canon 3E. *California Advisory Opinion 43* (1994).

Several advisory committees have stated that a judge must avoid private social interactions with an attorney on actual trial days. *New York Advisory Opinion 87-15(c)*; *New York Advisory Opinion 92-22*; *New York Advisory Opinion 95-99*; *Utah Formal Advisory Opinion 98-1*. At times other than during trial, the Utah judicial ethics committee stated that a judge is not required to decline a social invitation from an attorney who has a case pending before the judge, but the judge has discretion to determine whether a social invitation is appropriate, taking into consideration factors that would lead to reasonable and justifiable perceptions of partiality. *Utah Formal Advisory Opinion 98-1*. The committee suggested as an example that "a judge may choose to avoid interaction during the period that a disposition motion is to be argued." In contrast, the Wisconsin advisory committee stated a judge may not attend a holiday party sponsored by a law firm if the judge is presiding over a matter involving the firm. *Wisconsin Advisory Opinion 98-10*.

Another factor the judge should consider is whether the judge's attendance at a social gathering hosted by an attorney may advance the attorney's private interests or imply that the attorney is in a special position to influence the judge. See *U.S. Compendium of Selected Opinions §5.4-5(a)* (1995) (in the absence of reason to believe that attendance is likely to be exploited, a judge may attend cocktail parties hosted by law firms in connection with bar meetings and judicial conferences); *Washington Advisory Opinion 91-27* (whether a

judge may attend a social event sponsored by a law firm depends on the circumstances, including whether the judge's position will be exploited). A judge's attendance at a party hosted by a law firm might appear to be an exploitation of the judge's position to advance the personal interests of the firm:

- if the law firm's clients or potential clients are attending (*California Advisory Opinion 43* (1994); *Wisconsin Advisory Opinion 98-10*);
- if the attorney makes a point of introducing the judge to clients (*California Advisory Opinion 43* (1994)); or
- if the judge plays a prominent role at the gathering (*California Advisory Opinion 43* (1994)).

Moreover, if a judge attends a party sponsored by or as a guest of an attorney or law firm, he or she has a duty to continually re-assess the event and to leave if the guests, the nature of the entertainment, or some other factor place the judge in a compromising or uncomfortable position or present the danger of impugning the judge's impartiality. *Wisconsin Advisory Opinion 98-10*; *Maryland Advisory Opinion 102* (1984).

Although a judge need not necessarily disqualify from cases involving attorneys with whom the judge is friendly as long as the judge feels that he or she can be impartial, the judge must disclose the relationship to the parties on the record. *California Advisory Opinion 47* (1997); *New York Advisory Opinion 87-15(c)*. Of course, while socializing, the judge and the attorney cannot discuss any matter pending before the judge. *New York Advisory Opinion 95-99*. The California committee stated that a judge may participate in social groups consisting of former district attorneys or public defenders or similar alumni groups but should always be mindful of the duty to disclose a close relationship with a member of the bar who appears before the judge. *California Advisory Opinion 47* (1997). The California committee warned that a judge may not accept an invitation "without regard to the ethical constraints and then simply decide to disqualify himself or herself if the occasion subsequently arises, for a judge has an affirmative duty to minimize the number of cases in which he or she is disqualified." *California Advisory Opinion 43* (1994).



## *Other Social Events*

Socializing with non-attorneys associated with one side of a case can also raise questions of propriety.

- A judge may not attend an appreciation luncheon held by relatives of murder victims over whose trial the judge presided. *New York Advisory Opinion 91-132*.
- A judge may not attend a family picnic sponsored by the police department. *New Jersey Informal Advisory Opinion 22-92*.
- A judge should not attend an event hosted and financed by the local housing authority, which is likely to appear before his or her court, at the authority's expense, but may do so if he or she pays expenses and does not receive any gift or remuneration. *South Carolina Advisory Opinion 9-1998*.

In *In the Matter of Blackman*, 591 A.2d 1339 (1991), the New Jersey Supreme Court publicly reprimanded a judge who had attended a widely publicized picnic hosted by a convicted felon who had been a friend of the judge for eighteen years. The picnic had been held two days before the friend's sentence was to begin and was attended by 150 to 200 people. The court recognized that the judge may have had wholly innocuous reasons for attending the party. However, noting that subsequent newspaper accounts interpreted the judge's attendance as support for the felon and characterized the event as a going-away party, the court stated that the judge had a duty to realize that the public cannot know the judge's subjective motives and to foresee that they may perceive it as evidencing disagreement with the criminal justice system that convicted the individual, which may raise questions concerning the judge's allegiance to the system. *See also Alabama Advisory Opinion 97-657* (even though not per se improper, a judge should not foster a friendship with a lawyer-friend who had been convicted in federal court).

Similarly, the California Commission on Judicial Performance publicly admonished a judge who had attended the premiere of a movie that was the subject of a lawsuit over which she had presided. *Public Admonishment of Chirlin* (August 28, 1995). (The judge was also admonished for making a public comment about the suit while it was pending on appeal.) The judge had presided over the jury trial of an action for

breach of contract based on the alleged withdrawal by the defendant, actress Kim Basinger, from the plaintiff's movie "Boxing Helena," which was completed and released with a different female lead. There was a verdict for the plaintiff on March 23, 1993, and a notice of appeal was filed by defendants on July 16, 1993. In August 1993, the judge attended the premiere of the movie at the invitation of the plaintiff, which was noted in the media. The commission found that the judge's attendance at the premiere contributed to an appearance of bias in that the judge was seen as joining in the plaintiff's celebration of the movie's release and its legal victory.

## BAR ASSOCIATION FUNCTIONS

Commentary to Canon 4B encourages judges to participate in activities of bar associations and other groups that are dedicated to the improvement of the legal system. The Rhode Island Supreme Court has explained that:

avoiding intellectual exchange among lawyers and academics may lead the judge to a form of mental asphyxiation that will diminish his or her effectiveness. A judge should not be isolated from the current of ideas abroad in his or her profession or those that may be contributed by related disciplines. Attendance at meetings of bar associations and such organizations as [the Rhode Island Trial Lawyers Association] will stimulate the judge's thought process whether the judge agrees or disagrees with the positions that may be taken by these organizations. *In re Petition of Wiley*, 671 A.2d 308 (1996).

Thus, overturning an advisory opinion, the court stated that a judge could attend the annual dinner dance of the state trial lawyers association. (The court noted that although the association was initially formed by attorneys who generally represented plaintiffs, its membership was open to all lawyers interested in litigation.)

Similarly, the California committee encouraged judges to participate in the activities of state and local bar associations and their sections, business trial lawyer associations, family lawyer groups, inns of court, and similar organizations. *California Advisory Opinion 47* (1997). Moreover, the committee stated that judges' "participation in the educational activities of such groups is particularly desirable." According to the committee, at such events, a judge may discuss legal issues, ideas, and philosophies.

Moreover, a judge may attend functions sponsored by a law-related organizations as a guest of the organization. One of the gifts Canon 4D(5) expressly permits a judge to accept is "an invitation to the judge and the judge's spouse to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice." In concluding that judges may accept free dinner/dance invitations from bar associations, the Maryland Judicial Ethics Committee stated that, when the bar association extends the invitation, "no individual lawyer

or group of lawyers within the bar association could be seeking to achieve any special favor or position with the judge." *Maryland Advisory Opinion 91* (1981). The committee concluded that "interaction between the judiciary and bar associations is to be encouraged and that is the obvious reason that such invitations traditionally have been extended for many years."<sup>3</sup>

Other examples:

- A judge may attend on a complimentary basis a breakfast, luncheon, dinner, or seminar sponsored by a local, state, or national bar association. *Washington Advisory Opinion 91-27*.
- A judge may accept free memberships and lunches from local bar associations. *Florida Advisory Opinion 84-4*.
- A judge and the judge's spouse may attend a bar association function such as a dinner when the expenses will be paid by the bar association. *Washington Advisory Opinion 91-8*.
- A judge may attend a "changing of the guard" dinner given by the criminal law division of the county bar association to welcome new county prosecutors and new public defenders. *New Jersey Informal Advisory Opinion 31-93*.
- A judge may attend a party for the outgoing president of a general organization of the trial bar. *New Jersey Informal Advisory Opinion 64-90*.
- A judge may attend the annual dinner dance of the state trial lawyers association as a guest of the association (*In re Petition of Wiley*, 671 A.2d 308 (1996)).
- A judge may attend as a guest a retreat sponsored by the bench and bar committee of the bar association (*Georgia Advisory Opinion 50* (1982)).

However, these committees caution that, when attending these events, a judge should:

- take care that a broad range of the trial bar participates in the event (*Georgia Advisory Opinion 50* (1982));
- avoid situations where lawyers may attempt to have an ex parte communication to influence

the judge on a pending case (*In re Petition of Wiley*, 671 A.2d 308 (1996); *California Advisory Opinion 47* (1997)); and

- avoid discussing specific cases even if the case is pending before another judge (*California Advisory Opinion 47* (1997)).

Moreover, according to the Wisconsin advisory committee, if an event is excessive, for example, a cruise meeting, a judge should not accept an invitation from a bar association to attend as a guest of the association. *Wisconsin Advisory Opinion 98-10*. However, the New York committee stated that a judge may attend a function of the bar association as a guest of the association even if the function is expensive. *New York Advisory Opinion 87-15(a)*.

The advisory committee for federal judges stated that it is permissible for judges to attend bar association events such as receptions where a legal publishing firm has donated the hors d'oeuvres and beverages to the bar association. *U.S. Compendium of Selected Opinions §2.9(a)* (1995). Similarly, the committee stated that judges may attend social events sponsored by businesses or law firms in conjunction with bar association meetings in the absence of reason to believe that such attendance will reasonably reflect unfavorably on the judge's impartiality or is likely to be exploited by the sponsor. *U.S. Compendium of Selected Opinions §§4.1(e), 5.4-5(a)* (1995). In contrast, the South Carolina advisory committee stated that it would create an appearance of impropriety for a judge to participate in a reception in the judge's honor sponsored by the local bar association but underwritten in part by a local financial institution. *South Carolina Advisory Opinion 14-1996*.

### ***Specialty Bar Associations***

Judges are advised to exercise more caution in participating in specialty bar associations. The D.C. advisory committee defined specialty bar associations as "associations of lawyers who, in the main, represent a particular class of clients (*e.g.*, plaintiffs or defendants) or engage in a specialized practice (*e.g.*, communications) or reflect a particular group of lawyers (*e.g.*, legal services, women, racial minorities)." *D.C. Advisory Opinion 4* (1994). The committee distinguished specialty bar associations from "associations, such as the unified District of Columbia Bar or a profession-wide

private bar association, whose members reflect all, or many different, segments of the bar and represent all sides of various issues confronting the profession." The California advisory committee used the term "partisan" lawyer organizations and defined such organizations as intended to promote the interests of a limited segment of the bar, such as district attorneys or public defender organizations, plaintiff or defense-oriented bar associations, and similar organizations. *California Advisory Opinion 47* (1997).

The D.C. committee concluded that:

a judge may accept an invitation to attend functions sponsored by a specialty bar association or other lawyers' organization, provided the judge's attendance would not create in the public's mind a reasonably held perception that the judge is promoting the public policy goals or the regularly advanced litigative positions of the host organization.

The committee stated that a "judge should not attend a function sponsored by a bar association or other lawyers' organization that is currently engaged as a body in litigation before the judge."

The committee continued that a judge's attendance posed an increased risk of apparent impropriety:

- if the sponsoring organization pays for the judge's attendance;
- if the organization limits the audience to its membership and does not allow presentation of competing viewpoints;
- the more oriented the organization is to particular issues or to the interests of a certain class of clients; or
- if the organization has taken a public stance on issues in a case of substantial importance before the court on which the judge sits.

The committee also suggested that judges consider whether the organization is private or governmental and, if private, whether for-profit or non-profit, "keeping in mind that a non-profit, as well as for-profit, organization can be financed by special interests that may dictate the agenda."

The California advisory committee stated that a judge may participate as a speaker or in other capacities in educational programs for a partisan lawyer organization if the judge:

- maintains a neutral position,
- is equally available to groups representing opposing viewpoints, and
- is particularly careful not to permit the group to advertise the event in a manner that makes it appear that the judge promotes the goals of the organization.

*California Advisory Opinion 47* (1997). Moreover, the committee cautioned:

- A judge should avoid regularly attending a partisan organization's meetings or should also regularly attend meetings of an organization espousing opposing views.
- A judge should not display in chambers periodicals published by a partisan lawyer organization or should also display the periodicals of organizations espousing opposing views.
- A judge should not accept honors from such organizations, such as judge of the year awards.
- A judge should not participate in the activities of any organization that as a body is or may be involved in litigation before the court of which the judge is a member or that publicly promotes highly controversial positions
- A judge may participate in entertainment programs of specialty groups but should be alert to the danger of appearing to endorse what may be critical and tasteless portions of the program.

The Tennessee judicial ethics committee stated that a judge should not attend a defense lawyers' association meeting or convention if the judge's registration, lodging, and travel would be paid by the association. *Tennessee Advisory Opinion 96-4*. The committee did conclude that if the judge made a presentation at the conference, the association could reimburse the judge for reasonable expenses. *See also Wisconsin Advisory Opinion 98-10* (a judge and the judge's spouse may accept an invitation from a bar association to attend a dinner or other function as a guest of the association so long as the organization's members do not frequently represent the same side in litigation).

The Arizona judicial ethics committee permitted judges to attend a holiday reception given by an association of lawyers who represent defendants in tort cases

as long as the event was not inappropriately extravagant. *Arizona Advisory Opinion 95-13*. The event was described as "honoring Arizona judges" and did not single out any one judge as a guest of honor or speaker.

The committee concluded:

[A] reasonable and objective observer would not believe that this association of lawyers has a special advantage in court, or that the judge favored the association, merely because the judge consumed cocktails and appetizers. Moreover, any hint of impropriety is greatly diluted—if not negated—by the fact that many law firms and special interest lawyer groups sponsor similar receptions.

The committee reasoned that the "informal exchanges that such functions allow may help reduce tensions between the bench and bar and alleviate some of the isolation from former colleagues that judges experience upon their elevation to the bench."

A judge may participate in a bar organization that promotes the interests of particular racial, ethnic, or gender groups, as long as it does not restrict membership to a particular race, ethnic group, or gender. *California Advisory Opinion 47* (1997).



## CIVIC & CHARITABLE FUNCTIONS

Generally, a judge may be a speaker or guest of honor at an event sponsored by a charitable organization as long as the event is not a fund-raiser. For example, advisory committees have stated that:

- A judge may speak at a Boy Scouts event, which is not a fund-raiser, to honor an old friend for service in the Scouts. *New Jersey Informal Advisory Opinion 33-93*.
- Judges of Hispanic origin may attend and be recognized at a non-fund-raising reception given by the Puerto Rican Congress during its convention. *New Jersey Informal Advisory Opinion 47-91*.
- A judge may co-host a law school reception that is not a fund-raiser but is social and informational. *South Carolina Advisory Opinion 18-1997*.

Furthermore, commentary to Canon 4C states that a judge's "mere attendance" at an organization's fund-raising event is generally permissible. For example, advisory committees have stated that a judge may attend a fund-raising event:

- for the benefit of a scholarship fund that supports minority law students. *New Jersey Informal Advisory Opinion 12-91*.
- for a private high school's capital building campaign. *New Jersey Informal Advisory Opinion 29-92*.
- for a religious organization. *New York Advisory Opinion 89-11*.
- for a legal services organization. *New York Advisory Opinion 89-46*.
- for a non-profit organization that provides support for persons with AIDS where the organization does not appear in court and is not an advocacy group for any class of litigants. *New Jersey Informal Advisory Opinion 46-93*.
- for a conservation organization. *New York Advisory Opinion 89-58*.

However, as a corollary to the prohibition on a judge "personally participating in the solicitation of funds or other fund-raising activities" (*Canon 4C(3)(b)*), the commentary of the model code states that a "judge must not be a speaker or guest of honor at an organization's fund-raising event...." *But see Canon 4C(3)(b)(iv), California Code of Judicial Ethics* (a judge may "be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds....") That restriction applies both to charitable organizations in general and to organizations devoted to the improvement of the law, the legal system, and the administration of justice. *But see Part 100.4(c)(3)(b)(ii), New York Rules Governing Judicial Conduct* (a judge may be a speaker or guest of honor at a bar association or law school function).

Advisory committees have stated that:

- A judge may not receive an award in recognition of his interest in and support of children at a fund-raising dinner held by a charitable foundation. *New York Advisory Opinion 94-16*.
- A judge may not be a guest of honor at a fund-raising event held by a non-profit organization that operates half-way houses for individuals released from penal institutions. *Tennessee Advisory Opinion 94-1*.
- A judge may not be the speaker at a fund-raiser for a county magistrate's association. *New York Advisory Opinion 94-07*.
- A judge may not appear as one of several speakers at a prevention of blindness fund-raising event honoring an outstanding public figure. *Florida Advisory Opinion 86-5*.
- A judge may not be a speaker at a benefit sponsored by a local shelter for victims of domestic violence. *New York Advisory Opinion 94-90*.
- A judge may not be the subject of a local League of Women Voters annual fund-raising roast. *Texas Advisory Opinion 198* (1996).

The prohibition on being a speaker or guest of honor at a fund-raising event includes:

- being an award recipient (*Pennsylvania Advisory Opinion 14* (1974));

- introducing honorees or speakers (*Illinois Advisory Opinion 96-3*); and
- speaking even if the judge would leave before any fund-raising takes place (*Washington Advisory Opinion 95-2*).

But see *Alabama Advisory Opinion 93-492* (a judge may speak at a program on behalf of the need for a “Big Brothers/Big Sisters” organization even though other speakers will solicit contributions).

### Defining “fund-raiser”

A charitable function is considered a fund-raiser if the guests are requested to donate money or if the tickets are priced to exceed the costs of the function. See, e.g., *Arkansas Advisory Opinion 94-03* (a judge may not be a speaker at a church banquet where the portion of the proceeds from ticket sales that exceeds the costs of the banquet will go to the church’s scholarship fund); *New York Advisory Opinion 88-66* (a judge may receive an award at a dinner sponsored by the Boy Scouts if the tickets are not priced to cover substantially more than the costs of the dinner); *Rhode Island Advisory Opinion 84-2* (a judge may accept an award from a local civic group where the price for the dinner covers only expenses).

However, if the distribution of surplus proceeds to a charity is “merely a contingent, incidental aspect” of the function, the Maryland advisory committee stated that the event is not a fund-raiser. *Maryland Advisory Opinion 74* (1980). The committee advised that, to determine whether to participate, a judge should consider:

- the purpose of the function,
- the degree of charitable involvement, and
- the extent to which a charity may financially benefit.

For example, the committee concluded that a judge may be the guest of honor at a dinner given by an organization that promotes better relations among the races even though the surplus from ticket sales will go to a charity. The invitation and ticket made clear that:

- the essential purpose of the dinner was to honor persons who have contributed to improved race relations, not to raise money;

- the surplus would be turned over to a charity such as a hospital or needy college student; and
- no particular charity was named as the beneficiary.

See also *Michigan Advisory Opinion JI-9* (1989) (a judge may attend a dinner in the judge’s honor held by a charitable organization where the proceeds are allocated to a charitable purpose). However, the New York committee stated that if the proceeds in excess of costs for a foundation’s brunch will be applied to the foundation’s own medical research, the judge cannot receive an award at the event even if the primary purpose is to advance public awareness of the foundation. *New York Advisory Opinion 91-61*.

There is a division of authority on the question whether production of a fund-raising journal in conjunction with a function makes the function a fund-raiser. The New York advisory committee stated that a judge may be the honoree at a bar association’s annual dinner-dance where the bar subsidizes the dinner by soliciting advertising for a souvenir journal that is distributed at the dance because the judge is not personally participating in public fund-raising but is a passive participant. *New York Advisory Opinion 89-39*. The committee also advised that the judge’s name could be listed in the journal as the honoree. However, the rule permitting judges to be honored at an event funded by a journal has the following conditions:

- the judge may not participate in any actual fund-raising or solicitation (*New York Advisory Opinion 94-48*);
- no fund-raising may take place at the event (*New York Advisory Opinion 88-13*);
- the judge’s name may not be used in connection with solicitation (*New York Advisory Opinion 88-13*); and
- the judge’s name may not be included with other honorees in a mailing to solicit ads (*New York Advisory Opinion 95-147*).

In contrast, the Maryland committee stated that a judge may not be the guest of honor at an American Jewish Congress luncheon honoring her as “woman of the year” because, although tickets would cover only the costs of the luncheon, funds would be raised through publication of a souvenir program containing



messages of congratulations from business and community leaders. *Maryland Advisory Opinion 27* (1975). The committee concluded that, if the judge were the guest of honor, she would be lending the prestige of her office for the solicitation of funds. *Accord Massachusetts Advisory Opinion 92-4*.

### *Participating in fund-raisers*

The restriction on being a speaker or guest of honor at a fund-raiser extends to other types of participation as well, particularly if the judge's name will be used in the publicity for the event.

- A judge may not play on a softball team that would play against teams of the executive and legislative branches of state government where the judge's participation would be highly publicized and spectators would support their favorite teams or players by agreeing to contribute money to a charitable organization. *Arkansas Advisory Opinion 93-03*.
- A judge may not appear as an operatic singer at a fund-raiser. *Texas Advisory Opinion 41* (1979).
- A judge may not participate as a celebrity judge to judge restaurant chefs' entries in a fund-raising event for a charitable organization. *Wisconsin Advisory Opinion 98-1*.
- A judge may not participate as a celebrity server for a fund-raising dinner for an organization of court-appointed child advocates even if the judge will not participate in any fund-raising but will only serve desert to the amusement of the guests. *Texas Advisory Opinion 220* (1997).
- A judge may not sell or encourage people to buy pull tab tickets at a festival, the proceeds of which will be used for charitable and educational purposes. *Louisiana Advisory Opinion 133* (1996).

*But see Michigan Advisory Opinion JI-71* (1993) (a judge may participate as a model in a fashion show the proceeds of which will be allocated to charitable purposes).

Judges, however, are not prohibited from all activities at fund-raisers. For example, a judge can probably work in the kitchen or serve food at a fund-raising dinner so long as the judge's participation is not advertised to entice people to attend and is not designed to encourage donors to buy concessions, leave

tips for the organization, or increase donations. *California Advisory Opinion 41* (1989). The Indiana judicial ethics committee stated that a judge may personally participate in a fund-raising event for a charitable organization if the judge's participation is anonymous or behind the scenes or would have little to do with a donor's decision to make a contribution. *Indiana Advisory Opinion 1-96*. As examples, the commission listed selling refreshments at a festival fund-raiser, selling Christmas trees for a service organization, or selling crafts at a school benefit.

Several states have added an exception for "de minimis" fund-raising activities in their codes of judicial conduct. For example, commentary to the Alaska code explains that although direct solicitation of funds (including being the speaker or guest of honor at an organization's fund-raising event) is prohibited, "judges may participate as workers at fundraising events such as car washes and carnivals, purchase admission to fundraising social events, and purchase goods and services (e.g., candy bars, commemorative buttons, or car wash) that are being sold as a fundraising effort." Similarly, Rhode Island and Wisconsin added commentary to their codes to clarify that a judge may participate:

in de minimis fund-raising activities so long as a judge is careful to avoid using the prestige of the office in the activity. Thus, e.g., a judge may pass the collection basket during services at church, may ask friends and neighbors to buy tickets to a pancake breakfast for a local neighborhood center and may cook the pancakes at the event, but may not personally ask attorneys and others who are likely to appear before the judge to buy tickets to it.

*See also West Virginia Advisory Opinion* (October 7, 1994) (a judge may work in a concession stand run by groups that support school activities and may collect an entrance fee at the county fair on behalf of the local Kiwanis Club); *Illinois Advisory Opinion 96-3* (a judge may sit at the head table of a charitable fund-raiser provided the judge is not a speaker or the guest of honor).

One way that organizations have attempted to avoid the appearance that a judge is using the prestige of office to raise funds is to omit the judge's name from any announcements or advertisements about a fund-raising function in which the judge will participate. That approach has been sanctioned by several advisory committees. For example, the Rhode Island committee advised that a judge may accept an honor be-

stowed by a non-profit civic group at a fund-raising dinner as long as the judge's name is not on the tickets or used in the advertisements and the value of the award and the profits at the dinner will be small. *Rhode Island Advisory Opinion 83-1*. The committee did state that the judge's name could be mentioned in press releases or reports of the dinner.

Other advisory committees have also approved similar practices.

- A judge may receive an award at a fund-raising dinner for a law school if it is not advertised or announced before the dinner. *Tennessee Advisory Opinion 94-3*.
- A judge may participate as a model in a fashion show that is a fund-raiser for a local legal aid society provided the judge's participation would not be disclosed until the judge walked on-stage, there would be no prior notice of a "mystery guest" model, and no fund-raising would take place after the judge's appearance. *Florida Advisory Opinion 93-65*.
- A judge may act in a play even if the sponsoring organization hopes to raise money from the production where the judge's name will not appear on any of the materials other than as a member of the cast and will not be used on solicitation materials. *Illinois Advisory Opinion 95-23*.
- A judge may host a table of judges at a fund-raising luncheon if the sponsorship is not advertised and the judge does not directly or indirectly participate in any fund-raising during the luncheon. *Washington Advisory Opinion 93-30*.
- If a fund-raiser is not promoted as a judicial appreciation banquet, judges may attend a fund-raising event and be individually recognized. *Tennessee Advisory Opinion 96-2*.

Codifying this rule, in 1996, the Wisconsin Supreme Court adopted a provision in its new code of judicial ethics that states:

A judge may be a speaker or guest of honor at an organization's fund-raising event provided there is no advertising of the judge as speaker or guest of honor in order to encourage people to attend and make contributions and provided that any contributions at the event are made prior to the judge's speech or presentation as guest of honor.

Similarly, the code of judicial conduct adopted in New York in 1996 allows a judge to accept an "unadvertised award ancillary to" an organization's fund-raising event. After that code was adopted, the ethics committee stated that a judge could accept an award from a charitable organization at a fund-raising event provided the judge's name was not used for solicitation of contributions and the granting of the award was unadvertised. *New York Advisory Opinion 96-52*. Previous opinions of the New York committee had rejected that approach. *See New York Advisory Opinion 88-9* (a judge should decline a plaque for public service to be presented at a civic association's annual fund-raising dinner even though there would be no prior notice to others and the judge's name would not be used in connection with the solicitation of tickets).

However, the Illinois judicial ethics committee stated that, even if the names of individual judges were not made public, a judge may not participate in a "Run for the Robes," featuring judges running the 100-yard dash in their robes or a dunk tank to raise funds for Special Olympics where the participation by one or more judges would be the impetus for donations and part of the advertising and solicitation. *Illinois Advisory Opinion 96-10*. The committee reasoned that "judges should not participate collectively in an activity which would be prohibited to them individually."

Other indirect participation in fund-raising has also been criticized by advisory committees. The Maryland committee, for example, stated that a judge may not attend a reception and dinner given to acquaint potential contributors with a charitable organization, where, although no direct solicitation was contemplated, those in attendance would be asked for contributions a short time after the dinner. *Maryland Advisory Opinion 104* (1984). The committee concluded that the judge was invited for the purpose of creating a favorable impression of the institution and that use of the prestige of office would violate the canons. *See also New York Advisory Opinion 93-24* (a judge may not preside or act as master of ceremonies at an awards breakfast of a local community services organization where a raffle is held to raise funds for another awards breakfast). *But see U.S. Compendium of Selected Opinions sec. 5.3-4(m)* (1995) (a judge may participate in a seminar during the celebration of a law school's history even though a fund-raiser would be announced during the celebration but not at the seminar).

## *Avoiding the appearance of partiality*

A judge may be precluded from being a guest of honor at a non-fund-raising event or from even attending a fund-raiser if the judge's identification with the event or the sponsoring organization might compromise the judge's independence or impartiality. Thus, in *In re Bonin*, 378 N.E.2d 669 (1978), the Massachusetts Supreme Judicial Court censured and suspended a superior court judge for attending a public lecture given as a benefit for the defendants in criminal cases alleging sex acts between men and boys then pending in the superior court, though not before the respondent judge. The next day, a photograph of the judge with the speaker was published in a newspaper under the headline "[Judge] at benefit for sex defendants." The court said that the judge had exposed himself to "ex parte or one-sided statements and argumentation on matters before his court," and also "compromised his position by seeming to favor or to have particular sympathy with the views of the partisan group which sponsored the affair."

The Washington ethics advisory committee advised judges to consider the nature of the organization, the judge's role, and the particular activity before participating in a charitable function. *Washington Advisory Opinion 93-19*. The committee listed factors for assessing whether participation in a function is appropriate, including:

- whether the organization advocates positions on disputed issues;
- whether the organization regularly engages in adversarial proceedings in court;
- whether the organization files amicus briefs on disputed issues;
- whether participation may convey the impression that the judge is engaging in political activity beyond improving the law, the legal system, or the administration of justice;
- whether the organization endorses non-judicial political candidates;
- whether the organization subscribes to a particular legal philosophy or position that would give the appearance of partiality, *i.e.*, imply commitment to causes that may come before the court for adjudication;

- whether attendance may give the appearance that the judge is lending the prestige of the office to support a position that would impair the judge's impartiality;
- whether the organization is devoted to the improvement of the law, the legal system, or the administration of justice;
- whether the organization serves primarily a social function; and
- whether an invitation to the activity would be seen as ordinary social hospitality.

The Indiana commission cautioned that participation in a fund-raising event may be inappropriate:

- if the potential donors to an event include lawyers or litigants who have appeared or who are likely to appear before the judge and the judge will have any contact with them;
- if contributions are substantial or the group of donors is small; or
- if the beneficiary or host of the fund-raising event is a controversial group, is connected with disputed social or legal issues, or is representative of a faction of lawyers or litigants.

*Indiana Advisory Opinion 1-96*.

Applying similar principles, advisory committees have stated that **a judge may not:**

- speak at a fund-raiser for a battered women's advocacy group if the organization is partisan. *Illinois Advisory Opinion 93-4*.
- be an honoree at a dinner of the Fraternal Order of Police if that organization is controversial and advocates particular positions on issues coming before the judge. *Illinois Advisory Opinion 93-4*.
- attend a fund-raiser for an organization that advances the legal rights of women, the activities of which include lobbying and participation in litigation. *Washington Advisory Opinion 91-28*.
- speak at a dinner sponsored by Mothers Against Drunk Driving honoring law enforcement officers who issued the most driving under the

influence citations in the past year. *Washington Advisory Opinion 95-8*.

- speak at the annual recognition and awards luncheon of a club that gives monetary and other assistance to police officers and fire fighters where the expected audience consists of members of the club and law enforcement professionals. *New Jersey Informal Advisory Opinion 16-93*.
- speak at a Mothers Against Drunk Driving dinner on the topic of the role of MADD and the court system. *Washington Advisory Opinion 96-9*.
- attend functions sponsored by victim assistance programs, sexual assault centers, family violence prevention programs, police agencies, and similar organizations. *West Virginia Advisory Opinion* (April 24, 1997).

However, a judge **may**:

- speak at a fund-raiser for a battered women's advocacy group if the organization is service oriented. *Illinois Advisory Opinion 93-4*.
- be a speaker or honoree at a dinner sponsored by the Lawyers' Assistance Program where that organization does not appear before judges or take positions on issues before judges but serves judges and lawyers who suffer from substance abuse. *Illinois Advisory Opinion 93-4*.
- attend a function sponsored by a pro-life organization with speakers from both parties, but should be careful not to give the appearance of adopting the organization's agenda. *Florida Advisory Opinion 96-10*.
- attend "A Day of Remembrance" ceremony to honor victims of domestic violence but should take care that his or her mannerisms, actions, or speech do not cast doubt upon the judge's impartiality and should not act as an advocate or in any manner indicate a predisposition as to how he or she might rule in a domestic violence case. *Washington Advisory Opinion 96-16*.
- attend the Maine Civil Liberties Union annual awards dinner unless it is apparent to the judge in advance that the speakers would advocate positions relating to specific cases and the judge's

attendance might reasonably be interpreted as an endorsement of these positions. *Maine Advisory Opinion 93-1*.



## POLITICAL GATHERINGS

Canon 5A(1)(d) prohibits a judge who is not subject to public election from attending “political gatherings.” Furthermore, some states, such as Florida and New York, have adopted codes that prohibit even a judge who is subject to public election from attending political gatherings except while a candidate.

Although the code does not define “political gatherings,” advisory opinions indicate that the term refers to functions sponsored by political parties or other political organizations, such as committees, caucuses, and re-election campaign committees. For example, advisory committees have stated that:

- A judge may not attend a victory party in honor of a recently re-elected assemblyman if it is sponsored by a political party or committee. *New York Advisory Opinion 88-132*.
- A judge may not attend an event sponsored by the state senate Democratic caucus to raise money in support of party candidates even if the judge does not contribute. *Washington Advisory Opinion 89-17*.
- A judge may not attend a picnic sponsored by a company’s political activities committee, whether the judge is a guest or pays for admission. *New York Advisory Opinion 92-95*.
- A judge may attend a community meeting at which the liaison of the President of the United States to the lesbian and gay community will speak if there will be no partisan political activity. *New York Advisory Opinion 96-66*.
- A judge who is not a candidate may not attend partisan political functions for the purpose of socializing, speaking, and/or being introduced to the audience. *Florida Advisory Opinion 79-10*.
- A judge who is not a candidate may not attend political party meetings to provide the judge with information about the party and to meet political candidates. *Florida Advisory Opinion 84-8*.
- A judge may not attend the Democratic Party Jefferson-Jackson Day Dinner. *Georgia Advisory Opinion 23* (1976).

- A judge may not attend functions hosted by a county legislator or a county executive that are sponsored by the officials’ political campaign committees. *New York Advisory Opinion 97-31*.
- A judge may not attend a political function where the funds raised through ticket sales are donated to a state political caucus. *South Carolina Advisory Opinion 9-1999*.

The South Carolina advisory committee distinguished between governmental activities—in which judges can participate—and political activities—in which judges cannot participate. *South Carolina Advisory Opinion 6-1996*. The committee noted “the existence of certain governmental activities that symbolize and celebrate the orderly and legal functions of government and in which every citizen should be allowed to participate.” However, the committee also recognized that “governmental activities can be easily transformed into political activities if a party uses the activity as a fund raising vehicle.” The committee stressed “that the determination between political and governmental activities does not lend itself to general rules but requires a detailed examination of the facts.”

In some states, there is an exception to the rule that allows judges to attend political gatherings in order to speak about the justice system. For example, the Washington committee stated that a judge may address the county chapter of the Federation of Republican Women on the role of the judiciary, the problems the judiciary faces, and the dispute resolution process in general. *Washington Advisory Opinion 95-7*. Similarly, the committee stated that a judge may speak to county partisan political groups about judicial elections and educate the attendees about the role of the courts. *Washington Advisory Opinion 98-1*. *Accord Georgia Advisory Opinion 1* (1976); *Arizona Advisory Opinion 76-1*. The North Dakota code expressly creates an exception that allows a judge to speak publicly “on behalf of measures to improve the law, the legal system, or the administration of justice, whether or not at a gathering sponsored by a political organization.”

In giving judges permission to speak to political gatherings about how the courts work, however, the Washington committee mentioned several caveats:

- the meeting must have an educational, not a partisan, purpose;

- the judge should not be present for any business meeting;
- there should be no announcement of the judge's speech to the general public, although the members of the organization may be informed of the judge's address beforehand;
- the judge may not answer any questions involving issues that might come before the judge; and
- the judge may not endorse any candidate, legislation, or proposition that may be the subject of voter action.

However, not all states approve of judges speaking to political gatherings about the justice system under any condition. The Florida Judicial Ethics Committee, for example, stated that a judge may not speak before a local partisan political meeting for the purpose of explaining and discussing the new judicial system. *Florida Advisory Opinion 74-3*. The committee stated, “[t]here is a question of, ‘how educational the educational talk would be’ or appear to be.” See also *Florida Advisory Opinion 84-8*. The Florida committee does allow a judge to present an educational program on the judicial system to a non-partisan citizen group established by a partisan group if the non-partisan group is bona fide and not just a subterfuge. *Florida Advisory Opinion 97-30*.

The New York advisory committee has also stated that a judge may not speak at a political club about the legal system (*New York Advisory Opinion 88-32*; *New York Advisory Opinion 88-136*) except during while the judge is a candidate for re-election or during the six-month window period following the judge's election during which the judge is allowed to attend political gatherings. *New York Advisory Opinion 97-35*.

### *Inaugural events*

Whether a judge may attend an inaugural ball depends on whether the ball is a fund-raising event for a political organization. Two New Jersey judges were publicly reprimanded for attending the inaugural ball for the state's governor with their spouses. *Statement on Behalf of the New Jersey Supreme Court Concerning Judge Alexander D. Lehrer and Judge Sybil R. Moses* (January 29, 1990). Noting that after the payment of the expenses of the ball the net proceeds were to go to

the Democratic State Committee, the court found that the ball was “a political fund-raiser, publicized to some extent as such and, in any event, surrounded by circumstances that should have alerted any judge to its probable nature.” The court concluded that “both Judges knew or should have known that this was a political function or that it would appear to the public to be such; and...both Judges knew or should have known that their attendance had the strong potential of creating an appearance of judges' involvement in politics.”

However, a judge may attend inaugural events that are not political fund-raisers.

- A judge may attend the presidential inauguration and an inaugural ball provided no funds were paid to a partisan political organization and attendance was not limited to members of one political party. *Florida Advisory Opinion 92-41*.
- A judge may swear in newly-elected officials and attend a municipally funded induction ceremony, but may not attend a “Gala Ball” that is a post-campaign fund-raiser. *New York Advisory Opinion 97-145*.
- A judge may attend an inaugural ball for a mayor where any proceeds will go to a not-for-profit charitable organization and the event is not a political gathering. *New York Advisory Opinion 98-12*.

A judge may attend an inauguration and an inauguration ball for which a fee must be paid as long as the fee covers the cost of the ball only. *South Carolina Advisory Opinion 2-1995*.

Under the Kentucky code of judicial conduct, judges may attend political gatherings at any time, and the Kentucky judicial ethics committee allowed judges to attend an inaugural ball that would be held simultaneously with the national ceremonies in Washington, D.C. on the evening of a presidential inauguration where the ball was officially non-partisan and any profit would be donated to the Kidney Foundation. *Kentucky Advisory Opinion JE-19* (1981). However, the committee did note that the ball would be considered by the public as a Republican celebration of victory.

Similarly, in Arkansas, where judges may in general attend political gatherings at any time, the Arkan-



sas advisory committee concluded that those judges may purchase tickets to and attend the inaugural ball for Bill Clinton regardless whether the ball was considered a celebration or a political gathering and regardless whether the admission charge was used to defray the costs of the event, was given to a charitable organization, or was used to support Democratic Party activities. *Arkansas Advisory Opinion 92-5*. See also *New Jersey Informal Advisory Opinion 63-92* (a municipal court judge, who was a college classmate and friend of President Clinton, may attend his inaugural ball).

### **Testimonials**

Whether a judge may attend a testimonial for a political officeholder depends on the circumstances. Permission for a judge to attend a testimonial honoring a politician is more likely to be granted:

- if the event is a bona fide testimonial, with no fund-raising or campaigning;
- if the judge has had a long, personal relationship with the honoree;
- if the testimonial is sponsored by a community group or group of friends, not a political organization; or
- if the politician is retiring from public life.

Thus, while a judge may not attend a testimonial dinner given by the Democratic organization for a citizen active in the community and in the party (*New Jersey Informal Advisory Opinion 16-91*), a judge may attend a dinner for the Anti-Defamation League of B'nai B'rith honoring the speaker of the state house of representatives with the "Torch of Liberty Award" (*Georgia Advisory Opinion 81* (1986)). While a judge may not attend a chamber of commerce dinner honoring a state senator retiring from the senate but still active on local boards (*New Jersey Informal Advisory Opinion 48-91*), a judge may attend a testimonial dinner given by friends for a lifelong friend who was a member of the borough council where the honoree is retiring from public life (*New Jersey Informal Advisory Opinion 57-91*). While a judge may not speak on behalf of the recipient of a local Democratic committee's "Man of the Year" award, even if the honoree is an old and dear friend (*Rhode Island Advisory Opinion 89-9*), a judge may attend a non-partisan, non-fund-raising

testimonial dinner honoring a member of Congress for contributions to the state and community (*South Carolina Advisory Opinion 7-1987*).

Other examples of permitted attendance:

- A judge may attend a function honoring a legislative delegation that will be hosted by the president of a university where there will be no fund-raising. *Florida Advisory Opinion 86-12*.
- A judge may attend a dinner honoring the first public defender and celebrating the 25th anniversary of the creation of the office of public defender even though current and former governors would attend and speak. *New Jersey Informal Advisory Opinion 14-93*.
- A judge may attend a dinner at which the mayor will receive the Israel Peace Medal for his commitment to betterment of community relations and dedication to public service. *New Jersey Informal Advisory Opinion 51-93*.
- A judge may attend an appreciation dinner for a friend who is retiring from the general assembly. *Georgia Advisory Opinion 124* (1988).
- A judge may attend a non-political ceremony honoring Italian-Americans who have been elected to public office. *New York Advisory Opinion 98-37*.
- A judge may attend a dinner honoring a person who has been politically active to raise funds for the honoree's medical expenses. *Pennsylvania Informal Advisory Opinion 99-4-12a*.
- A judge may not attend a testimonial dinner honoring the county administrator. *New Jersey Informal Advisory Opinion 32-92*.

Other examples of prohibited gatherings:

- A judge may not attend a dinner for a political figure in honor of his more than 30 years of public service where the judge has only known the honoree in a political context, not personally. *New Jersey Informal Advisory Opinion 3-92*.
- A judge may not attend a Rutgers Law School reception honoring an alumnus on his appointment to the New Jersey Senate. *New Jersey Informal Advisory Opinion 15-91*.

- A judge may not attend a fund-raising testimonial for a retiring congressman. *Florida Advisory Opinion 96-10*.
- A judge may not be the guest of honor at a testimonial dinner sponsored by a political party where the price of admission exceeds the reasonable cost of attendance. *Michigan Advisory Opinion JI-115 (1997)*.
- A judge may not attend and buy a ticket for a dinner honoring the retirement of an officer of a political party if the dinner is a fund-raiser but may attend if the dinner has no partisan political activity. *Pennsylvania Informal Advisory Opinion 99-5-3*.
- A judge who is a past chair of a political party may not attend a political fund-raiser honoring past chairs when the judge is not a candidate for election for judicial office where the judge's name would not have been mentioned in the letters of solicitation, advertising, or other publicity but would have been listed on a program given to those who attended the event. *Pennsylvania Informal Advisory Opinion 99-1-15*.

## SUMMARY

To assure compliance with the code's requirement that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary," judges' social, bar association, community, and political activities have been the subject of judicial ethics advisory opinions.

According to those opinions, socializing by judges with attorneys is more likely to be appropriate under the standards of the code of judicial conduct:

- if the cost of the event is consistent with community standards for similar events and is comparable to events sponsored by the bar association and to the judge's own entertaining; and
- if there is a history or expectation of reciprocal social hospitality or the event is a traditional occasion for social hospitality, such as a holiday party or the opening of an office.

Attending events hosted by attorneys is less likely to be appropriate:

- if the attorney or a member of the attorney's firm is currently appearing before the judge, has appeared in the recent past, or is likely to appear in the near future; or
- if the judge's attendance will advance the attorney's private interests.

Socializing with non-attorneys associated with one side of a case can also raise questions of propriety.

Judges are encouraged to attend general bar association events and allowed to do so as a guest of the bar association. Attending a function sponsored by a specialty bar association, however, requires a judge to consider factors such as:

- whether the sponsoring organization is currently engaged in litigation before the judge or has taken a public stand on issues to be litigated in a case before the court on which the judge sits;
- whether the organization pays for the judge's attendance;
- whether the organization limits the audience to its membership and does not allow for the presentation of competing viewpoints;

- how oriented the organization is to particular issues or to the interests of a certain class of clients; and
- whether the organization is private or governmental and, if private, whether for-profit or non-profit.

Generally, a judge may be a speaker or guest of honor at an event sponsored by a charitable organization as long as the event is not a fund-raiser and may attend an organization's fund-raising event. However, a judge may not be a speaker or receive an award at an event where guests are requested to donate money or the tickets are priced to substantially exceed the costs of the function. Furthermore, in most states, the restriction on being a speaker or guest of honor at a fund-raiser extends to other types of participation as well, such as playing ball in a charity baseball game. Judges are permitted, however, to engage in de minimis activity at fund-raisers, such as working in the kitchen or serving food at a fund-raising dinner, so long as the judge's participation is not designed to entice people to attend or to increase donations.

A judge may be precluded from being a guest of honor at a non-fund-raising event or from attending a fund-raiser if the judge's identification with the event or the sponsoring organization might compromise the judge's independence or impartiality. To assess whether participation in a function is appropriate, a judge should consider:

- whether the sponsoring organization advocates positions on disputed issues;
- whether the organization regularly engages in adversarial proceedings in court;
- whether the organization files amicus briefs on disputed issues;
- whether the organization endorses non-judicial political candidates; and
- whether the organization subscribes to a particular legal philosophy or position that would imply commitment to causes that may come before the court for adjudication.

In many states, a judge is prohibited from attending functions sponsored by political parties or other political organizations, such as committees, caucuses, and re-election campaigns, at least when the judge is

not a candidate for election. Some states, however, allow a judge to attend political gatherings in order to speak about the justice system.

A judge may attend testimonials for a political officeholder under certain circumstances. A judge should consider:

- whether the event is a bona fide testimonial or an occasion for fund-raising or campaigning;
- whether the judge has a long personal relationship with the honoree;
- whether the testimonial is sponsored by a community group or group of friends, not a political organization; and
- whether the politician is retiring from public life.

The appropriateness of a judge attending an arguably political gathering may depend on whether the function is best characterized as a governmental activity that symbolizes and celebrates the orderly and legal functions of government or a political activity designed as a fund-raising vehicle for a political party.

