

CHAPTER V. COMPENDIUM OF SELECTED OPINIONS

Introduction

This Compendium contains a summary of selected published and unpublished opinions issued by the Committee on Codes of Conduct. In addressing an ethical issue, the reader should consult the current Codes of Conduct, the Ethics Reform Act of 1989, and the regulations promulgated thereunder, other relevant statutes such as 28 U.S.C. § 455, the published advisory opinions of this Committee, and this Compendium.

This Compendium contains summaries of the advice given in response to confidential fact-specific inquiries. While these summaries are intended to provide general guidance, the reader is encouraged to consult the Committee or one of its members with respect to any specific factual situation he or she is confronting. Each member of the Committee has a set of the Committee's unpublished opinions and can answer any questions the reader may have regarding a particular one, without, of course, disclosing the identity of the person who solicited the advice. The procedures for obtaining an advisory opinion from the Committee are set forth in the "Introduction" section of each code of conduct in Chapters I and II of this volume.

The Compendium has three Parts. Part One contains opinions interpreting the Code of Conduct for United States Judges, including some opinions interpreting the Codes that cover various judicial employees. Sections 1 through 7 of Part One correspond to Canons 1 through 7 of the Code of Conduct for United States Judges. It should be remembered that an activity which is permissible under a particular section may be subject to one of the more general caveats of the canons (e.g., appearance of impropriety). Similarly, the Ethics Reform Act of 1989 and the regulations promulgated thereunder by the Judicial Conference impose additional restrictions, in particular with respect to the receipt of gifts or compensation.

Part Two contains opinions interpreting the Ethics Reform Act of 1989 concerning gifts, 5 U.S.C. §§ 7351 and 7353 and the regulations thereunder promulgated by the Judicial Conference. The headings and the chronology of Part Two follow generally that of the gift regulations. Activities that are said to be permissible in Part Two may nevertheless be subject to restriction under the Codes of Conduct.

Part Three contains opinions interpreting the Ethics Reform Act of 1989 concerning outside earned income, honoraria, and outside employment, 5 U.S.C. App. §§ 501-505, and the regulations thereunder promulgated by the Judicial Conference. The headings and chronology of Part Three follow generally that of the outside employment regulations. Activities that are said to be permissible in Part Three may nevertheless be subject to restriction under the Codes of Conduct.

This Compendium may be cited as follows: Compendium § ____ (2001).

(b) Although the organization is devoted to the improvement of the administration of justice, a bankruptcy judge's service on the Board of Directors of a nonprofit corporation formed for the purpose of certifying specialization in the field of bankruptcy law would be contrary to Canons 2A and 2B. See Compendium §§ 2.1(g) and 4.6-3(b); see also Advisory Opinion No. 73.

(c) It would create an appearance of impropriety for a judge to permit a for-profit company to host a reception following the judge's investiture, where the judge had no preexisting relationship with the company, would not otherwise have been required to recuse, and the circumstances would convey the impression that the company was in a special position to influence the judge. Canon 2B. See Compendium §§ 5.4-5(b-2) and 25.1(a) (Ethics Reform Act Concerning Gifts).

(c-1) Judge should not permit organization to host reception following investiture where the organization is identified with particular legal, social or political positions likely to be advanced in the courts or where the judge has no preexisting relation with the organization and sponsorship could reasonably be viewed as putting the organization's members in a special position of influence.

(c-2) Although the gift regulations permit a judge to accept a gift commemorating years of service on the bench (as a gift incident to a public testimonial), it would present an appearance of impropriety under Canon 2 to accept a very expensive gift from a small, specialized bar association whose members will continue to appear before the judge.

(d) Although judge should not attend "brown bag" lunch with members, associates or clerks of a law firm in the law firm's offices because of Canon 2 implications (special influence), a judge may do so in the courthouse if the judge makes known a willingness to do this with interested groups. See Compendium § 4.6-1(c).

(d-1) Where it is widely known that clerk's office personnel are generally and equally available for this purpose to lawyers and law firms, their attendance at law firm "brown bag" luncheons as part of a program of educating the bar as to the procedures and workings of the clerk's office should not present an unacceptable risk of lending the prestige of the clerk's office or conveying the impression that a law firm is in a special position to influence the clerk.

(e) A law clerk who is serving a temporary clerkship on leave of absence from a law firm should not during the term of his or her clerkship work on cases handled by or receive any compensation or benefits from the law firm.

(f) No appearance of impropriety arises when a judge's former law clerks solicit law firms and lawyers to contribute to a scholarship bearing the judge's name. Judge should make reasonable efforts to remain unaware of the identities of contributors and those who declined to

§ 5.3-2 Organizations Devoted To Espousing Positions on Public Issues, or on Issues Likely To Be the Subject of Litigation

- Advisory Opinion No. 82 (joining organizations).
- Advisory Opinion No. 46 (judges' acceptance of public testimonials or awards).
- Advisory Opinion No. 40 (membership in such organizations as Anti-Defamation League of B'nai B'rith, Sierra Club, and NAACP)

(a) A judge should not serve as a director of the Lawyers Alliance for Nuclear Arms Control.

(b) Whether a judge should serve on the national board of an ethnic group depends upon the extent to which the group is likely to be involved in litigation, whether the group principally espouses particular points of view on public issues, and whether the judge would reasonably be perceived as personally and publicly supporting those positions. The same considerations govern a judge's service on a health system ethics committee.

(c) A judge who is a member of the National Rifle Association should recuse from cases in which the NRA is a party, and from cases involving issues on which the NRA has taken a public position.

(d) It is permissible for a judge to serve on the council of academic advisors of the American Enterprise Institute, unless the judge concludes that such service would reasonably be viewed as endorsing the views of that organization on issues which are likely to come before the court.

(d-1) Similarly, it is permissible for a judge to serve on the Advisory Board of the National Alumni Forum under the same circumstances.

(e) A judge may remain a member of the American Bar Association, notwithstanding its stated position on certain controversial issues such as abortion.

(f) It is inappropriate for a judge to accept an award from ACLU, an organization which is likely to come before the judge's court; however, it is permissible where the judge has retired and will hear no more cases.

(g) A judge may contribute financially to legal service associations that provide counsel for the poor. A judge need not recuse merely because lawyers who accept appointments by such associations are also counsel of record in cases before that judge.

(h) It is inappropriate for a law clerk to serve on the governing board of an advocacy organization that actively lobbies state officials on issues that are subject to debate in the political arena. Such service would be likely to lend the prestige of the law clerk's office to the organization and the positions it espouses.

(b-1) Although mere attendance (along with others similarly situated) without paying registration fee would not create an appearance of impropriety, it would create an appearance of impropriety for employees of the Administrative Office to accept from a legal publishing firm a gift of transportation, lodging and meals in connection with a professional training program sponsored by the firm. See Compendium § 2.9(b).

(b-2) It would create an appearance of impropriety for a judge to permit a for-profit company to host a reception following the judge's investiture; where the judge had no preexisting relationship with the company, would not otherwise have been required to recuse, and the circumstances would convey the impression that the company was in a special position to influence the judge. Canon 2B. See Compendium §§ 2.10(c) and 25.1(a) (Ethics Reform Act Concerning Gifts).

(b-3) No appearance of special influence in violation of Canon 1 or 2 or acceptance of prohibited gift in judge's acceptance of testimonial reception honoring retirement, sponsored and paid for by bar associations, or in acceptance (and acknowledgment thereof) of donated invitations from company which has no direct business with the court and is owned by retiring judge's old friend.

(b-4) Additional contribution by lawyers who have appeared before the judge and business which has done business with the court to retirement party for judge is different from Compendium § 5.4-5(b) because judge is retiring so that it is unlikely that such lawyers or businesses will appear before the judge in the future and because the event is sponsored by the bar association and the modest additional contributions in this case will not change that perception of who is sponsoring the event.

(c) It is permissible for a judge to be the guest of honor at a public dinner arranged by former law clerks, attended by lawyers and other members of the public, as well as the law clerks. The law clerks should make clear on the invitations and other papers relating to the dinner not only the fact that the dinner is sponsored solely by present and former law clerks, but that the amount paid by other attendees is solely to cover the cost of the dinner, that no fund raising activity is involved, and that no part of the amount paid by the attendees for the dinner will be employed in the purchase of a gift for the honoree.

(d) A law clerk may occasionally go to lunch or dinner with law firms that are considering extending employment offers, and it is not inappropriate for the law firms to pay for the law clerk's meal.

§ 5.4-6 Attendance at Seminars

(a) Subject to the conditions and limitations set forth in Advisory Opinion No. 67, a judge may accept reimbursement of expenses and tuition waivers for attendance at a seminar given by a hospital association, but not if the interest of that association has, or is likely to, come before the court or if the association has interests that may be substantially affected by the performance.

or nonperformance of the judge's official duties. The judge should be satisfied that there is no appearance of attempting to influence decision of specific cases. See Advisory Opinion No. 17.

(a-1) A judge may accept reimbursement of expenses to attend a private environmental law seminar where neither the sponsor nor source of funding is involved in litigation before the judge's court (i.e., is a party; controls, is controlled by, or is under common control with a party; or is a party's attorney); but the judge should consider recusal if he or she gains extra-judicial knowledge of disputed facts in a case before the judge.

(b) It is permissible for a judge to participate in an international conference concerning minimum standards of judicial independence, and to accept reimbursement of travel expenses from the (foreign) university-sponsor.

(c) A judge may serve as advisor for a bankruptcy law institute which conducts educational seminars, and may accept reimbursement of expenses for attending meetings of that body.

(d) A judge may accept reimbursement of expenses for attending law-related seminars.

(d-1) Bankruptcy judges may accept from a bankruptcy bar association (open to all bankruptcy practitioners and representative of all interests in bankruptcy court) reimbursement for expenses incurred in attending National Conferences of Bankruptcy Judges.

(d-2) Judges may accept invitation to attend free mediation training session offered by organization previously selected by court to provide training to court mediators.

(d-3) Judge may accept reimbursement of expenses to address meeting of an association of corporate attorneys, where the association is not a likely litigant in judge's court.

(e) Law clerks and staff attorneys may accept waiver of tuition for attending a law-related seminar, although the sponsor of the seminar is a profit-making educational institution, when the sponsor is not likely to come before nor seeking to do business with the court and its interests would not be substantially affected by the performance or nonperformance of the judicial employees' official duties.

(f) Law clerk may accept reimbursement of costs of attending a legal education conference from prospective employer that does not practice before law clerk's court.