

1 American Bar Association
2 Model Code of Judicial Conduct

3 **OCTOBER 2004 DRAFT**

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5
6 **CANON 4**
7 **Rules 4.13-4.16**
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10 **Terminology (The following two terms are to be added to the existing**
11 **Terminology Section.)**

12 **“Gift” means any gratuity, favor, discount, entertainment, hospitality, loan,**
13 **forbearance, or anything of monetary value, but does not include:**

- 14 (a) ordinary social hospitality extended for a non-business purpose by
15 an individual, not a corporation, limited to the provision of modest
16 items, such as food and refreshments common among people in the
17 judge’s community;¹
18 (b) items with little intrinsic value intended solely for presentation, such
19 as plaques, certificates, trophies and greeting cards;
20 (c) loans from banks and other financial institutions that are made
21 available based on factors other than judicial status;²
22 (d) opportunities and benefits, including favorable rates and commercial
23 discounts, that are available based on factors other than judicial
24 status;
25 (e) rewards and prizes given to competitors in contests or events,
26 including random drawings, that are open to the public and that are
27 available based on factors other than judicial status; or
28 (f) scholarships and fellowships awarded on the basis of the same
29 terms and based on the same criteria applied to non-judge
30 applicants;
31 (g) reimbursement or waiver of charges for travel-related expenses
32 governed by Rule 4.14;
33 (h) compensation for extra-judicial activities that is governed by Rule
34 4.15.
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¹ Canon 4D(5)(c)

² Canon 4D(5)(f)

1 “Widely attended event” means a convention, conference, symposium,
2 forum, panel discussion, dinner, viewing, reception or similar event at
3 which more than 25 persons are expected to attend.

4 **4.13 Solicitation and Acceptance of Gifts.**

5 (a) A judge shall not solicit or accept and shall urge members of the
6 judge’s family residing in the judge’s household* not to solicit or accept a
7 gift from anyone except that a judge may accept:³

- 8 1. a gift* incident to a public testimonial;
- 9 2. books, magazines, journals, audio-visual materials and
10 other resource materials supplied by publishers or
11 organizations on a complimentary basis for official use;
- 12 3. an invitation to the judge and the judge’s spouse or
13 guest to attend without charge a widely attended event
14 or a bar-related function or any activity devoted to the
15 improvement of the law,* the legal system or the
16 administration of justice;⁴
- 17 4. a gift*, award or benefit incident to the business,
18 profession or other separate activity of a spouse or
19 other family member of a judge residing in the judge’s
20 household, including gifts, awards and benefits for the
21 use of both the spouse or other family member and the
22 judge (as spouse or family member), provided the gift,
23 award or benefit could not reasonably be perceived as
24 intended to influence the judge in the performance of
25 judicial duties;⁵
- 26 5. a gift* from a relative or friend, for a special occasion,
27 such as a wedding anniversary or birthday, if the gift is
28 fairly commensurate with the occasion and the
29 relationship;⁶
- 30 6. a gift* from a relative or close personal friend whose
31 appearance or interest in a case would in any event
32 require disqualification under Rule 2.12;⁷ or

³ Canon 4D(5)

⁴ Canon 4D(5)(a)

⁵ Canon 4D(5)(b)

⁶ Canon 4D(5)(d)

⁷ Canon 4D(5)(e)

1 7. **any other individual gift* valued at [\$50] or less, or**
2 **series of gifts from the same source whose value in the**
3 **aggregate does not exceed [\$150], if the donor is not:**

4 **(a) a lawyer, party, or third person who has come**
5 **before the judge, or a person or entity whose interests**
6 **have come before the judge, within the preceding five**
7 **years, or**

8 **(b) a lawyer, party, or third person who is likely to**
9 **come before the judge, or a person or entity whose**
10 **interests are likely to come before the judge, in the**
11 **foreseeable future.**

12 **(b) For any gift, other than a gift from a member of the judge's**
13 **family, that alone or in the aggregate with other gifts received**
14 **from the same source in the same calendar year exceeds**
15 **\$250.00 in value, the judge must publicly report in the same**
16 **manner as the judge reports compensation, reimbursement or**
17 **waiver of charges pursuant to Rule 4.16.⁸**

18 **Commentary:**

19 [1] A judge may accept a public testimonial or a gift incident thereto only if
20 the donor organization is not an organization whose members comprise or
21 frequently represent the same side in litigation, and the testimonial and gift
22 are otherwise in compliance with other provisions of this Code. See Rules
23 4.01 and 2.09.⁹

24 [2] Because a gift to a member of the judge's family residing in the judge's
25 household might be viewed as intended to influence the judge, a judge
26 must inform those family members of the relevant ethical constraints upon
27 the judge in this regard and discourage those family members from
28 violating them. A judge cannot, however, reasonably be expected to know
29 or control all of the financial or business activities of all family members
30 residing in the judge's household.¹⁰

31 [3] A gift to a judge or to a member of the judge's family living in the
32 judge's household that is excessive in value raises questions about the
33 judge's impartiality and the integrity of the judicial office, and might require
34 disqualification of the judge where disqualification would not otherwise be
35 required.

⁸ Canon 4D(5)(h) partial

⁹ Canon 4D(5)(a) Commentary

¹⁰ Canon 4D(5)

1 [4] Rule 4.13 prohibits judges from accepting gifts from lawyers or their
2 firms if they have come or are likely to come before the judge; it also
3 prohibits gifts from clients of lawyers or their firms when the clients'
4 interests have come or are likely to come before the judge. Rule
5 4.13(a)(7) prohibits a judge from accepting gifts, even of a nominal value,
6 from people who are or will be substantively involved in a matter before
7 the judge. The Rule requires a judge to consider whether a donor, or the
8 donor's interest, might come before the judge in the foreseeable future.¹¹

9 [5] Rule 4.13 does not apply to contributions to a judge's campaign for
10 judicial office, a matter governed by Canon 5.¹² Rule 4.13 likewise does
11 not apply to the reimbursement for or waiver of charges for travel-related
12 expenses, which is governed by 4.14. See the Terminology section for the
13 definition of "gift" and its exclusions.

14 [6] Acceptance of an invitation to a law-related function is governed by
15 Rule 4.13(a)(1); acceptance of an invitation paid for by an individual
16 lawyer or group of lawyers is governed by Rule 4.13(a)(5).¹³

17 [7] Regardless of whether Rule 4.13 directly prohibits receipt of a
18 particular gift by a judge or a member of the judge's family residing in the
19 judge's household, other Rules may prohibit the gift. For example, Rule
20 4.01(b) would apply if the gift would cast reasonable doubt on the judge's
21 capacity to act with impartiality, integrity and independence.

22 **Rule 4.14 Reimbursement or Waiver of Charges for Travel-Related**
23 **Expenses of the Judge or the Judge's Spouse or Guest.**

24 **(a) A judge may receive reimbursement for or accept a waiver of**
25 **charges from sources other than the judge's employing entity**
26 **for the expenses of necessary travel, food and lodging**
27 **associated with the judge's participation in extra-judicial**
28 **activities permitted by this Code, if such receipt or acceptance**
29 **does not cast reasonable doubt on the judge's capacity to act**
30 **with impartiality, integrity, or independence.¹⁴**

31 **(b) Expense reimbursement and waiver of charges shall be limited**
32 **to the actual cost of travel, food and lodging reasonably**
33 **incurred by the judge and, where appropriate to the**
34 **occasion, by the judge's spouse or guest. Any reimbursement**
35 **or waiver of charges that alone or in the aggregate with other**
36 **costs reimbursed from the same source in the same calendar**
37 **year exceeds \$100 shall be publicly disclosed and the**

¹¹ Canon 4D(5)(h) Commentary

¹² Canon 4D(5) Commentary

¹³ Canon 4D(5)(a) Commentary.

¹⁴ Canon 4H(1)

1 **information relating to such reimbursement and/or waiver of**
2 **charges shall be reported as required by Rule 4.16 and made**
3 **accessible to the general public at least quarterly.”¹⁵**

4 **Commentary:**

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6 [1] Judicial education in law-related and academic disciplines is in
7 keeping with a judge’s duty to remain competent in the law and is
8 consistent with the provisions of Canon 4. Attendance at educational
9 seminars where the expenses are underwritten by individuals or entities
10 other than the judge, the judicial system, or a government entity, should
11 be evaluated by the judge to determine whether attendance is consistent
12 with the judge’s obligations under the Canons, particularly the duty to
13 preserve impartiality and independence, and the appearance of
14 impartiality and independence.

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16 [2] A variety of factors may affect the propriety of attendance at such
17 seminars, including the educational nature of the seminar, the sources of
18 funding, the identity of the seminar sponsor, and the reasonableness of
19 the expenses paid or reimbursed. The judge should consider whether the
20 sponsor or the funding source of the seminar is currently appearing, or
21 likely to appear, before the judge in a matter. In addition, the judge should
22 determine whether attendance may create a conflict of interest, may result
23 in disqualification or recusal in matters coming before the judge, may give
24 rise to the judge’s independence being questioned, or may interfere with
25 the judge’s performance of his or her judicial duties. A judge’s decision
26 whether to attend should be based on an assessment of all the
27 circumstances and the judge should undertake a reasonable inquiry to
28 obtain the information necessary to make an informed judgment.

29 [3] Consistent with Rules 4.13(b) and 4.16, a judge should take
30 reasonable steps to ensure that information concerning his or her
31 participation in seminars and other events, as well as reasonable
32 information regarding the nature and circumstances of such events, are
33 available to the public. A judge should therefore promptly and publicly
34 disclose participation in extra-judicial events at which the judge’s
35 expenses are paid by sources other than the judge’s employing
36 governmental entity.

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¹⁵ Canon 4H(1)(b)

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4.15. Compensation for Extra-judicial Activities.

(a) A judge may receive compensation for the extra-judicial activities permitted by this Code, if such receipt or acceptance does not cast reasonable doubt on the judge’s capacity to act with integrity, impartiality, or independence.¹⁶

(b) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.¹⁷

Commentary:

[1] The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Neither should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge’s ability or willingness to be impartial.¹⁸ See Rule 4.01.

4.16 Reporting of Compensation, Reimbursement and Waiver of Charges. A judge shall report the date, place and nature of any activity for which the judge received compensation, reimbursement or waiver of charges, and the name of the payor or waivor and the amount of compensation, reimbursement, or charges waived. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge’s report shall be made at least quarterly and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law,* and when technically feasible, posted on the website of that court or office.¹⁹

¹⁶ Canon 4H(1)
¹⁷ Canon 4H(1)(a)
¹⁸ Canon 4H(2) Commentary
¹⁹ Canon 4H(2)