

From: Charles G. Geyh, Reporter to the Joint Commission to Review the Model Code of Judicial Conduct
Re: Revisions to the Gift-Related Rules
Date: October 4, 2004

Accompanying this memorandum is a draft of the Commission's revisions to provisions of the Model Code of Judicial Conduct relating to gifts, reimbursement, compensation and reporting. We welcome any and all reactions to the draft, but call specific attention to the following issues.

- 1) In a number of instances, the Commission has created dollar limits establishing thresholds for permissible and reportable gifts. Do you regard the dollar limits specified in 4.13(a) (7), 4.13(b), and 4.14(b) as reasonable?
- 2) To ensure that the public is made aware of the gifts, compensation, reimbursements and waivers of charges that judges receive, the Commission has imposed a quarterly reporting requirement. Do you regard the reporting requirements of 4.16 as appropriate?
- 3) Do you think that invitations to "widely attended events" should be included among the "gifts" a judge may accept, under 4.13(a)(3)?

What follows is an explanation of the changes that are being proposed to the gift and related provisions of the present Code.

Rule 4.13 Acceptance of Gifts

Although the text of this rule remains largely unchanged from its former incarnation as Section 4D(5), the basic structure of the rule has been revised.

The term "Gift" has now been added to the Terminology section of the Code. The new definition of gift excludes several items from its scope that are not, in common parlance, thought of as gifts: ordinary social hospitality; trivial tokens of appreciation such as greeting cards, commemorative plaques, et cetera; and loans, discounts, prizes, scholarships, and the like, that judges receive for reasons generally unrelated to their being judges.

Like predecessor Section 4D(5), Rule 4.13 prohibits the receipt of gifts generally, which the new rule enlarges slightly to reach the solicitation of gifts as well. And like its predecessor, Rule 4.13 then lists a series of gifts that are exempted from the general prohibition. Note, however, that three items previously classified as "gifts" subject to an exception from the general ban—ordinary social hospitality, loans and scholarships—are now characterized as falling outside the scope of the definition of gift altogether. Thus, for example, if a judge is taken to a \$100 dinner at a restaurant that otherwise falls within

the scope of ordinary social hospitality, the dinner does not meet the definition of a gift and is not subject to the terms of 4.13.

Under 4.13(a)(1), the Commission has created an exception permitting gifts of tickets to “widely attended events”, which is separately defined in the terminology section.. The Commission believed that judges should be encouraged to interact with the public they serve and would not be in a position to attend the many community events to which they are invited if they were obligated to pay their way.

Rule 4.13(a)(7) remains substantially similar to former Canon 4D(5)(h), but includes several important changes. The new rule would prohibit judges from accepting gifts in excess of specified dollar limits that are comparable to those established for gifts received by those serving in the other branches of government; the present rule simply requires that gifts be reported. The provision thus serves as a limited catch-all, enabling judges to receive modest and innocuous gifts not exempted elsewhere in the rule, but no longer permits gifts of unlimited size. The provision has been restructured to improve clarity. Finally, the Rule has been qualified in subtle ways, by limiting the ban on gifts from persons who previously appeared before the judge to a period of five years, and likewise limiting its application to those who may come before the judge “later” to the “foreseeable future.”

Rule 4.13(b) is new, and imposes a reporting requirement on gifts in excess of \$250.

Comment 4 has been revised to add that the question of whether a party will later appear before the judge should be determined with reference to whether a suit involving the donor or the donors will likely arise in “the foreseeable future.”

Comment 5 has been amended to make clear that private reimbursement for travel related expenses associated with extrajudicial activities such as attendance at educational seminars is regulated separately.

Rule 4.14 Reimbursement or Waiver of Charges for Travel-Related Expenses

Reimbursement and compensation, previously regulated by Section 4H(1) have now been segregated into different rules, with 4.14 limited to reimbursement and waiver of travel expenses, and 4.15 addressing the issue of compensation. Rule 4.14, like former Rule 4H(1), permits judges to be reimbursed for travel associated with their attendance at programs or with other permissible extrajudicial activities.

There are, however, several changes from the former rule. First, Rule 4.14(a) now applies to waiver of charges as well as reimbursement of expenses. Second, permissible reimbursement is now specifically limited to necessary travel and lodging. Third, the condition precedent to accepting reimbursement or waiver of charges—that it not create an appearance of impropriety—has been amended to identify specifically the potential that the acceptance of gifts has for creating the perception that judicial integrity, impartiality or independence have been compromised. Subpart (b), in turn, subjects reimbursement to the disclosure requirement of Rule 4.16, now modified to impose the more stringent quarterly, rather than annual, reporting requirement.

Comments 1 and 2. Comment 1 begins with the recognition that judicial education is of considerable value in promoting judicial competence. The remainder of

Comment 1 and all of Comment 2 are designed to provide judges with guidance when analyzing whether their reimbursement for attendance at a given event may be perceived as casting doubt on their integrity, independence or impartiality. Thus, some of the same concerns identified above — such as the sources of funding, the reasonableness of the expenses paid, and the identity of the sponsor —are among those that judges should consider when deciding whether to attend an expense-paid seminars.

Comment 3, in turn, underscores the importance of transparency to the process, and the need for public access to relevant information relating to the seminars judges attend at private expense.

Rule 4.15. Compensation for Extrajudicial Activities

Rule 4.15 simply segregates compensation into a rule separate from reimbursement and is otherwise the same as former rule 4H(1).

4.16 Reporting of Compensation, Reimbursement and Waiver of Charges

This rule is quite similar to former Canon 4H(2), with one important difference: reimbursement of expenses and waiver of charges for travel expenses are now subject to at least quarterly reporting, and to publication on court web pages where feasible.