

**DISCIPLINE COMMITTEE DRAFT**

---

**Terminology (The following two terms are to be added to the existing Terminology Section.)**

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

- (a) Ordinary social hospitality limited to the provision of modest items, such as food and refreshments, that no reasonable person would believe are being provided to obtain any advantage, and which are extended for a non-business purpose by an individual, not an entity ;<sup>1</sup>**
- (b) items with little intrinsic value intended solely for presentation, such as plaques, certificates, trophies and greeting cards;**
- (c) loans from banks and other financial institutions that are made available based on factors other than judicial status;<sup>2</sup>**
- (d) opportunities and benefits, including favorable rates and commercial discounts, that are available based on factors other than judicial status;**
- (e) rewards and prizes given to competitors in contests or events, including random drawings, that are open to the public and that are available based on factors other than judicial status;**
- (f) scholarships and fellowships awarded on the basis of the same terms and based on the same criteria applied to other applicants;**
- (g) reimbursement or waiver of charges for travel-related expenses governed by Rule 4.14; or**
- (h) compensation for extra-judicial activities that is governed by Rule 4.15.**

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

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

**(a) A judge shall not solicit or accept a gift from anyone and shall urge family members, spouses and domestic partners residing in the judge’s household\* not to solicit or accept gifts. A judge may, however, accept:<sup>3</sup>**

- 1. a gift\* incident to a public testimonial;**

---

<sup>1</sup> Canon 4D(5)(c)

<sup>2</sup> Canon 4D(5)(f)

<sup>3</sup> Canon 4D(5)

**Canon 4 Gift Provisions Draft**  
**October 5, 2004 draft revised by C Geyh**

- 1                   2.       **books, magazines, journals, audio-visual materials and other**  
2                   **resource materials supplied by publishers or organizations on**  
3                   **a complimentary basis for official use;**
- 4                   3.       **an invitation to the judge and the judge’s spouse, domestic**  
5                   **partner or guest to attend without charge a widely attended**  
6                   **event, bar-related function or any activity devoted to the**  
7                   **improvement of the law,\* the legal system or the**  
8                   **administration of justice;<sup>4</sup>**
- 9                   4.       **a gift\*, award or benefit incident to the business, profession or**  
10                  **other separate activity of a judge’s spouse, domestic partner**  
11                  **or other family member who resides in the judge’s household,**  
12                  **including gifts, awards and benefits for the use of both the**  
13                  **spouse, domestic partner or other family member and the**  
14                  **judge (as spouse, domestic partner or family member),**  
15                  **provided that the gift, award or benefit will not reasonably be**  
16                  **perceived as intended to influence the judge in the**  
17                  **performance of judicial duties;<sup>5</sup>**
- 18                  5.       **a gift\* from a relative, spouse, domestic partner or friend, for**  
19                  **a special occasion, such as an anniversary or birthday, if the**  
20                  **gift is fairly commensurate with the occasion and the**  
21                  **relationship;<sup>6</sup>**
- 22                  6.       **a gift\* from a relative, spouse, domestic partner or personal**  
23                  **friend whose appearance or interest in a case would in any**  
24                  **event require disqualification under Rule 2.12;<sup>7</sup> or**
- 25                  7.       **a gift\* from any other source valued at [\$50] or less, or series**  
26                  **of gifts from the same source whose value in the aggregate**  
27                  **does not exceed [\$150], if the donor is not:**
- 28                   a.       **a lawyer, party, or third person who has come before**  
29                   **the judge, or a person or entity whose interests have come**  
30                   **before the judge, within the preceding [five] years, or**
- 31                   b.       **a lawyer, party, or third person who is likely to come**  
32                   **before the judge, or a person or entity whose interests are**  
33                   **likely to come before the judge, in the foreseeable future.**

---

<sup>4</sup> Canon 4.D.(5)(a).

<sup>5</sup> Canon 4.D.(5)(b).

<sup>6</sup> Canon 4.D.(5)(d).

<sup>7</sup> Canon 4.D.(5)(e).

**Canon 4 Gift Provisions Draft**  
**October 5, 2004 draft revised by C Geyh**

1           **(b) The judge shall publicly report in the same manner required by Rule**  
2           **4.16 of this Code any gift, other than a gift from a member of the**  
3           **judge’s family, spouse or domestic partner, that alone or in the**  
4           **aggregate with other gifts received from the same source in the**  
5           **[preceding twelve months] exceeds [\$250.00] in value.**<sup>8</sup>

6

7           **Commentary:**

8           [1] Because a gift to a member of the judge’s family, spouse or domestic partner residing  
9           in the judge’s household could reasonably be viewed as intended to influence the judge, a  
10           judge must inform those family members and his or her spouse or domestic partner of the  
11           relevant ethical constraints upon the judge in this regard and discourage those individuals  
12           from violating them. A judge cannot, however, reasonably be expected to know or  
13           control all of the financial or business activities of a domestic partner, spouse or all  
14           family members residing in the judge’s household.<sup>9</sup> A gift to a judge or to a judge’s  
15           spouse, domestic partner or family member living in the judge’s household that is  
16           excessive in value raises questions about the judge’s impartiality and the integrity of the  
17           judicial office, and might require disqualification of the judge where disqualification  
18           would not otherwise be required. Regardless of whether Rule 4.13 directly prohibits  
19           receipt of a particular gift by a judge, his or her spouse, domestic partner or a member of  
20           the judge’s family residing in the judge’s household, other Rules in this Code may  
21           prohibit the gift. For example, Rule 4.01(b) would apply if the gift would cast reasonable  
22           doubt on the judge’s capacity to act with impartiality, integrity and independence. See  
23           the Terminology Section for the definition of a gift pursuant to this Rule.

24           [2]A judge may accept a public testimonial or a gift incident thereto only if the donor  
25           organization is not an organization whose members comprise or frequently represent the  
26           same side in litigation, and the testimonial and gift are otherwise in compliance with  
27           other provisions of this Code. See Rules 4.01 and 2.09.<sup>10</sup>

28           [3] Rule 4.13 prohibits judges from accepting gifts from lawyers or their firms if they  
29           have come or are likely to come before the judge. Rule 4.13 also prohibits gifts from  
30           clients of lawyers or their firms when the clients’ interests have come or are likely to  
31           come before the judge. Rule 4.13(a)(7) (a) and (b) prohibit a judge from accepting gifts,  
32           even of a nominal value, from people or entities who are likely to appear before the  
33           judge. The Rule requires a judge to consider whether a donor, or the donor’s interest,  
34           might come before the judge in the foreseeable future.<sup>11</sup>

---

<sup>8</sup> Canon 4D(5)(h) partial

<sup>9</sup> Canon 4.D.(5).

<sup>10</sup> Canon 4D(5)(a) Commentary.

<sup>11</sup> Canon 4.D.(5)(h) commentary.

**Canon 4 Gift Provisions Draft**  
**October 5, 2004 draft revised by C Geyh**

1 [4] Rule 4.13 does not apply to contributions to a judge's campaign for judicial office .  
2 Such contributions are governed by Canon 5 and Rules of this Code.<sup>12</sup> Rule 4.13  
3 likewise does not apply to the reimbursement of or waiver of charges for travel-related  
4 expenses, which is governed by Rule 4.14.

5 [5] Acceptance of an invitation to a law-related function is governed by Rule 4.13(a) (3)  
6 and includes acceptance of an invitation paid for by an individual lawyer or group of  
7 lawyers.<sup>13</sup> The judge's acceptance of such an invitation is subject to the provisions of  
8 Rule 4.13 (a)(7)(a) and (b).

9 **Rule 4.14 Reimbursement or Waiver of Charges for Travel-Related Expenses of the**  
10 **Judge, the Judge's Spouse, Domestic Partner or Guest.**

11 **(a) A judge may accept reimbursement of or a waiver of charges from**  
12 **sources other than the judge's employing entity of necessary travel,**  
13 **food and lodging expenses associated with the judge's participation**  
14 **in extra-judicial activities permitted by this Code, if such**  
15 **acceptance does not cast reasonable doubt on the judge's capacity**  
16 **to act with impartiality, integrity, or independence.<sup>14</sup>**

17 **(b) Expense reimbursement and waiver of charges shall be limited to**  
18 **the actual cost of travel, food and lodging reasonably incurred by**  
19 **the judge and, where appropriate to the occasion, by the judge's**  
20 **spouse, domestic partner or guest. Any reimbursement or waiver**  
21 **of charges that alone or in the aggregate with other expenses**  
22 **reimbursed from the same source in the [preceding twelve months]**  
23 **exceeds [\$250] shall be reported and made accessible to the public**  
24 **in the same manner as required by Rule 4.16.<sup>15</sup>**

25  
26 **Commentary**

27 [1] Judicial education in law-related and academic disciplines enables a judge to perform  
28 his or her duties competently as required by Rule 2.03. Attendance at educational  
29 activities where the expenses are underwritten by individuals or entities other than the  
30 judge, the judicial system, or a government entity, should be evaluated by the judge to  
31 determine whether attendance is consistent with the judge's obligations under this Code,  
32 particularly the duty to preserve impartiality and the independence of the judiciary. A  
33 judge's decision whether to attend should be based on an assessment of all of the  
34 circumstances and the judge should undertake a reasonable inquiry to obtain the  
35 information necessary to make an informed judgment.

---

<sup>12</sup> Canon 4.D.(5) commentary.

<sup>13</sup> Canon 4.D.(5)(a) commentary.

<sup>14</sup> Canon 4.H.1.

<sup>15</sup> Canon 4.H.1(b).

**Canon 4 Gift Provisions Draft**  
**October 5, 2004 draft revised by C Geyh**

1  
2 [2] A variety of factors may affect the propriety of attendance at educational activities,  
3 including, but not limited to, the educational nature of the activity, the sources of funding,  
4 the identity of the activity's sponsor, and the reasonableness of the expenses paid or  
5 reimbursed. The judge should consider whether the sponsor or the funding source of the  
6 activity is currently appearing, or likely to appear, before the judge in a matter. The  
7 judge should also determine whether attendance may create a conflict of interest, result in  
8 disqualification or recusal in matters coming before the judge, may give rise to the  
9 judge's independence reasonably being questioned, or may interfere with the judge's  
10 performance of his or her judicial duties.

11 [3] Consistent with the requirements of Rule 4.16, a judge must ensure that information  
12 concerning his or her participation in educational activities and other events, as well as  
13 reasonable information regarding the nature and circumstances of such events, is  
14 promptly reported and made available to the public.

15 **Rule 4.15. Compensation for Extrajudicial Activities**

16 (a) **A judge may accept compensation for extra-judicial activities**  
17 **permitted by this Code, if such acceptance does not cast reasonable doubt on**  
18 **the judge's capacity to act with impartiality, integrity, or independence.<sup>16</sup>**

19 (b) **Compensation shall not exceed a reasonable amount nor shall it**  
20 **exceed what a person who is not a judge would receive for the same**  
21 **activity.<sup>17</sup>**

22 **Commentary:**

23 [1] The Code does not prohibit a judge from accepting honoraria or speaking fees  
24 provided that the compensation is reasonable and commensurate with the task performed.  
25 A judge should ensure, however, that no conflicts are created by the arrangement. A  
26 judge must not trade nor appear to trade on the judicial position for personal advantage.  
27 Neither should a judge spend significant time away from court duties to meet speaking or  
28 writing commitments for compensation. The source of the payment of any such  
29 compensation must not raise any question of undue influence or the judge's ability or  
30 willingness to be impartial.<sup>18</sup>See Rule 4.01.

31 **Rule 4.16 Reporting of Compensation, Reimbursement of Expenses and Waiver of**  
32 **Charges. A judge shall report the date, place and nature of any activity for which**  
33 **the judge received compensation, reimbursement of expenses or waiver of charges,**

---

<sup>16</sup> Canon 4.H.1.

<sup>17</sup> Canon 4.H.1(a).

<sup>18</sup> Canon 4.H.(2) commentary.

**Canon 4 Gift Provisions Draft**  
**October 5, 2004 draft revised by C Geyh**

1 **the name of the payor or waivor and the amount of compensation, reimbursement**  
2 **of expenses, or charges waived. The judge's report shall be made at least quarterly**  
3 **and shall be filed as a public document in the office of the clerk of the court on**  
4 **which the judge serves or other office designated by law,\* and when technically**  
5 **feasible, posted on the website of that court or office.**<sup>19</sup>

6

7 **Commentary**

8 [1] Compensation or income of a spouse attributed to the judge by operation of a  
9 community property law is not extra-judicial compensation to the judge.

10

11

---

<sup>19</sup> Canon 4H(2)