



**New York
County
Lawyers'
Association**

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Report on In-Kind Campaign Contributions

This report was approved by the Board of Directors of the New York County Lawyers' Association at its regular meeting on September 13, 2004.

Introduction

The Feerick Commission proposed that campaign finance disclosure for judicial candidates be timely filed in an electronic format that the public could access and search via the Internet. NYCLA's Task Force on Judicial Selection supports this proposal and believes that all candidates seeking judicial election, not just those seeking election to the Supreme Court, should be required to file disclosure information electronically.

Judges and candidates for public election to judicial office are not allowed to personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for them and to accept contributions (Code of Judicial Conduct, Canon 5 (A)(5)). Contributions can be either monetary or in-kind.

The New York State Board of Elections (www.elections.state.ny.us) is the body governing the election of judges within the State of New York. Judges and other candidates for election fill out a "State of New York Board of Elections Disclosure Statement." Monetary, as well as in-kind contributions, must be reported in this disclosure statement. Schedule D of this disclosure statement pertains to in-kind contributions. It identifies three types of in-kind contributions: 1) services or facilities provided; 2) property given; and 3) campaign expenses paid.

The Task Force has considered what should be included as a reportable in-kind contribution and sets forth its recommendations in this Report.

Executive Summary

Currently, the New York Election Law, which governs judicial campaigns, excludes certain types of activities and services from the definition of a reportable contribution. Specifically, New York Election Law section 14-100 (9)(3)(A) excludes from the definition of "contribution" the following:

- 1) the value of volunteer services for time spent by an individual working on behalf of a candidate or political committee;

- 2) the use of real or personal property, and the cost of invitations, food and beverages voluntarily provided by an individual to a candidate or political committee on the individual's residential premises, for candidate-related activities, to the extent such services do not exceed \$500 in value; and
- 3) travel expenses of any individual who volunteers his or her personal services to any candidate or political committee to the extent such expenses are unreimbursed and do not exceed 500 in value.

NYCLA's Task Force on Judicial Selection agrees with the provision in the Election Law that excludes volunteer services from the definition of contribution. The Task Force disagrees, however, with the provisions that exclude costs of \$500 or less incurred in hosting candidate-related activities, e.g., fundraisers, and unreimbursed travel expenses from the definition of a contribution.

We recommend that the New York State Election Law be changed to include as a reportable contribution the value of the use of real or personal property, and the cost of invitations, food and beverages voluntarily provided by an individual to a candidate or political committee on the individual's residential premises, for candidate-related activities, regardless of the value of the goods, services and/or expenses incurred, and even if the value does not exceed \$500. To the extent, however, the value of use or costs does not exceed \$500, we do not believe it is necessary for a specific amount to be reported. In these circumstances, we believe that a verification that the value did not exceed \$500 would be sufficient.

Likewise, with respect to travel expenses, we recommend that the Election Law be changed to include as a reportable contribution, the value of all travel expenses of an individual who volunteers his or her personal services to any candidate or political committee to the extent such expenses are unreimbursed and exceed an amount that the volunteer would incur while commuting to the work place or a similar location on a regular basis.

New York Election Law

Judicial campaigns are governed by the Election Law.

[NY Elec. § 14-100](#) (9) defines "contribution" as:

- (1) any gift, subscription, outstanding loan (to the extent provided for in section 14-114 of this chapter), advance, or deposit of money or any thing of value, made in connection with the nomination for election, or election, of any candidate, or made to promote the success or defeat of a political party or principle, or of any ballot proposal,
- (2) any funds received by a political committee from

another political committee to the extent such funds do not constitute a transfer,

(3) any payment, by any person other than a candidate or a political committee authorized by the candidate, made in connection with the nomination for election or election of any candidate, or any payment made to promote the success or defeat of a political party or principle, or of any ballot proposal including but not limited to compensation for the personal services of any individual which are rendered in connection with a candidate's election or nomination without charge; provided however, that none of the foregoing shall be deemed a contribution if it is made, taken or performed by a candidate or his spouse or by a person or a political committee independent of the candidate or his agents or authorized political committees. For purposes of this article, the term "independent of the candidate or his agents or authorized political committees" shall mean that the candidate or his agents or authorized political committees did not authorize, request, suggest, foster or cooperate in any such activity; and provided further, that **the term contribution shall not include** (emphasis added):

(A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee,

(B) the use of real or personal property and the cost of invitations, food and beverages voluntarily provided by an individual to a candidate or political committee on the individual's residential premises for candidate-related activities to the extent such services do not exceed five hundred dollars in value, and

(C) the travel expenses of any individual who on his own behalf volunteers his personal services to any candidate or political committee to the extent such expenses are unreimbursed and do not exceed five hundred dollars in value.

Contributions, as defined by NY Elec. §14-100, must be reported. NY Elec. § 14-104 (1) lays out the requirements for reporting "campaign receipts, contributions, transfers and expenditures by and to candidates."

Any candidate for election to public office, or for nomination for public office at a contested primary election or convention, or for election to a party position at a primary election, shall file statements sworn, or subscribed

and bearing a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law, at the times prescribed by this article setting forth the particulars specified by section [fig 1] 14-102 of this article, as to all moneys or other valuable things, paid, given, expended or promised by him to aid his own nomination or election, or to promote the success or defeat of a political party, or to aid or influence the nomination or election or the defeat of any other candidate to be voted for at the election or primary election or at a convention, including contributions to political committees, officers, members or agents thereof, and transfers, receipts and contributions to him to be used for any of the purposes above specified, or in lieu thereof, any such candidate may file such a sworn statement at the first filing period, on a form prescribed by the state board of elections that such candidate has made no such expenditures and does not intend to make any such expenditures, except through a political committee authorized by such candidate pursuant to this article. A committee authorized by such a candidate may fulfill all of the filing requirements of this act on behalf of such candidate.

New York City Campaign Finance Board

The New York City Campaign Finance Board (www.cfb.nyc.ny.us) handles all municipal elections, including but not limited to, the election of the Mayor, City Council, Public Advocate, Borough President and Comptroller. It does not control judicial elections; however, its rules regarding in-kind contributions are fairly specific and relevant to our discussion. In the New York City Campaign Finance Handbook, the New York City Campaign Finance Board addresses in-kind contributions. It states, in chapter 2, pp. 4-5, 29, the following:

In-kind contributions are goods or services donated to a candidate free of charge or at a special discount not available to others. Examples of in-kind contributions include, but are not limited, to office space, office equipment, and the use of phone banks by a campaign free of charge or below market cost. You must report the fair market value of all in-kind contributions. "Fair market value" is the price you would normally pay for the goods or services at the time they were received. Because the campaign would have had to pay for these goods or services if they had not been donated, an in-kind contribution is treated as both a contribution and an

expenditure. In-kind contributions cannot be received from a corporation, are not matchable, and are subject to the Program's contribution and expenditure limits. If you purchase goods or services at a price below the fair market value, the difference between the fair market value and the amount charged to you is the amount of the in-kind contribution and expenditure....

... You must keep a contract or other written documentation of all in-kind contributions, including how the fair market value was determined. The documentation should come from, and be signed by, the contributor. In addition, the same contributor information required for monetary contributions is required for in-kind contributions.

The New York City Campaign Finance Board Rules, Rule 1-02 Definitions, defines an in-kind contribution as:

(1) a gift, subscription, loan, advance of, or payment for, any thing of value (other than money) made to or for any candidate or authorized committee; and (2) the payment by any person other than an authorized committee of compensation for the personal services of another person which are rendered to the candidate or authorized committee without charge.

It specifically excludes:

... personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or authorized committee.

The New York City Campaign Finance Board Rules, Rule 1-04(g), further discusses in-kind contributions.

(g) In-kind contributions.

(1) As expenditures. An in-kind contribution to a participant is also an expenditure made by the participant. The date an in-kind contribution is received is also the date of its expenditure. If a debt, other than a loan, incurred by a participant is forgiven, the act of forgiving is an in-kind contribution to but not an expenditure by the participant.

(2) Valuation. The participant shall use a reasonable estimate of fair market value in determining the monetary

value of an in-kind contribution and shall maintain a receipt or other written record supporting the valuation. "Fair market value" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time the goods are received. "Fair market value" for services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

(3) Goods and services provided at a price below fair market value. If goods or services are provided at less than fair market value, the amount of the resulting in-kind contribution is the difference between the fair market value of the goods or services at the time the goods or services are received and the amount charged to the participant.

Discussion of Recommendations

1. Fundraisers/travel expenses

The NYCLA Task Force on Judicial Selection believes that the New York Election Law threshold requirement of a \$500 value before the [use of real or personal property, and the cost of invitations, food and beverages voluntarily provided by an individual to a candidate or political committee on the individual's residential premises, needs to be reported](#) as an in-kind contribution should be changed. We believe that any use of residential or business premises, and any costs incurred with respect to invitations food and beverages, should be reported. If the value does not exceed \$500, however, we believe it is sufficient to report it as an in-kind contribution with a value of not more than \$500, without specifying the exact amount.¹

The Task Force notes that providing a location for a fundraiser can be extremely valuable to a campaign because it facilitates the collection of monetary contributions that can far exceed \$500. Thus, the actual costs incurred in hosting a fundraiser, i.e., refreshments and use of the space, do not accurately reflect the value of the fundraiser to the campaign. We also believe that a cut off of \$500 is an arbitrary amount. The hosting of a fundraising event is significant and should be reported as a contribution, even if the costs incurred in hosting the event do not exceed \$500.

We also believe the requirement of reporting only unreimbursed travel expenses in excess of \$500 incurred by an individual who volunteers personal services should be

¹ In many residential fundraisers, the costs of invitations and refreshments do not exceed \$500. The Task Force believes it is sufficient for public disclosure purposes for information to be available in an electronic format that a particular individual hosted such an event for the judicial candidate, and that the costs involved did not exceed \$500. We do not wish to unduly burden individuals who are hosting these types of fundraisers, nor to discourage people from doing so.

changed. We recommend that unreimbursed travel expenses that exceed an amount that the volunteer would incur while commuting to the work place or a similar location on a regular basis should be reported. Travel expenses that exceed normal everyday commuting costs can also generate returns to a campaign that are far greater than \$500. The \$500 cut-off amount is an arbitrary figure in this context, and an expense that might fall just short of the \$500 is still noteworthy.

2. Volunteers

Both the New York Election Law and the New York City Campaign Finance Board Rules exclude the value of services provided by volunteers who spend a portion or all of their time on behalf of a candidate from the definition of an in-kind contribution. The Task Force agrees that time spent in volunteer activity should not be reported as an in-kind campaign contribution. Reporting time spent by volunteers as an in-kind campaign contribution is impractical, difficult to value, and might discourage political participation. For example, volunteers often carry petitions for multiple candidates, and candidates might not know the identity of all these individuals. Furthermore, defining what constitutes volunteer activity may be difficult. For example, if an individual speaks to a political party official in support of a candidate, would that constitute reportable volunteer activity? The Task Force believes that the current reporting exceptions with respect to volunteer services in the New York Election Law are appropriate.

The Task Force was concerned about a potential situation where an attorney, a member of an attorney's law firm, or a party to a case spends substantial time volunteering legal services to a judicial campaign, and that volunteer activity is not reportable under the law and thus would not be revealed in an Internet search of campaign contributions to a particular judge. The Task Force notes, however, that in this type of situation, the Code of Judicial Conduct would require the Judge to disclose details about the representation, or even recuse herself or himself, if counsel for one of the parties, a member of counsel's law firm, or one of the parties previously represented the judge or provided legal advice to the judge.

The following sections of the Code of Judicial Conduct apply to this type of situation. Canon 2 (A) states: A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2 (B) states: A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. Canon 3 (E) addresses situations when a judge shall disqualify himself or herself from presiding over a case or legal matter. It states in relevant part in (E)(1): A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where . . . (the section then discusses specific situations.) The situation described above would certainly be characterized as one in which the judge's impartiality might reasonably be questioned. Canon 3 (F) addresses circumstances under which, if the judge discloses on the record the basis of the judge's disqualification, the parties and attorneys agree that the judge should

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not be disqualified, and the judge believes that he or she will be impartial and is willing to hear the matter, the judge may preside over the proceeding.

The Task Force believes its concerns are adequately addressed by these provisions set forth in the Code of Judicial Conduct.