

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 91-06
(October 10, 1991)

**Constraints on Accepting Waivers of
Membership Fees in Private Clubs**

Issue

May a judge accept membership in a private club on a fee basis that is less than that accorded the general public?

Answer: No.

Facts

This opinion relates to an inquiry regarding an invitation to a select number of judges, as well as other government officials, to become honorary members of a private club that operates dining and meeting facilities. As honorary members, the judges would be entitled to use the club's facilities without initiation fee or monthly dues but would be expected to pay the ordinary charges for meals and other activities. Honorary memberships are available to top elected officials of state government, leadership of the legislature, state appellate court judges, federal judges and numerous local government leaders. The club has members from a wide variety of professional and business fields, and many lawyers have served as officers and as members of the board of directors.

Discussion

Canon 5C(4) states that "neither a judge nor a member of his family residing in his household should accept a gift, favor, or loan from anyone," except under the conditions enumerated in the canon. The exceptions include minor gifts in recognition of public service or incident to official activities, ordinary social gifts, gifts or loans from relatives, wedding gifts, and loans or scholarships awarded on the same terms applied to other applicants. In addition, Canon 5C(4)(c) provides that "a judge or a member of his family residing in his household may accept any other gift, favor or loan only if the donor is not a party or other person whose interests are likely to come before him."

The thrust of Canon 5C(4) is to prohibit a judge from accepting gifts or favors that are excessive in value and that would raise questions about the judge's impartiality and the integrity of the judicial office. The commentary to the 1972 version of the Model Code of Judicial Conduct, upon which the Arizona code is based, suggests that judges must use common sense in determining the amounts and types of gifts that can be accepted, and that gifts that are "clearly not ordinary social hospitality" should be declined. E. Thode, *Reporter's Notes to Code of Judicial Conduct*, 85. Judges should also keep in mind that the standard relating to impropriety and the appearance of impropriety found in Canon 2 is applicable to this area of personal conduct as well.

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After considering the nature and extent of the invitation to join the club described here, we see three major problems with a waiver of membership fees for judges. The first and most obvious is that the waiving of fees constitutes a significant gift or favor that goes beyond the types of gifts permissible under Canon 5C(4). Second, inviting a judge to join a private club under these circumstances may be perceived as a way for the judge to socialize with business leaders, community leaders and other political and public officials who may come before the courts from time to time. In Opinion 90-05, this committee discussed the prohibition of accepting gifts from counsel or others with whom they may have a professional relationship. We also recognize that most private clubs have within their membership and on their governing boards, attorneys and other individuals who may appear before a court from time to time. While we do not want to discourage public discourse nor isolate the judiciary from contact with other public officials and members of their communities, the social activity contemplated here should not be accomplished by means of waivers or other forms of gifts and favors that would not be offered to other members of the public.

A final problem involves the perception of the invitation. Although there are several categories of memberships, fees in the club are not waived for the public nor for the business and legal communities from which the club draws its members. Certain judges and other high-ranking government officials qualify for waivers because of their positions. Only those judges in influential leadership positions are invited to join the club at no cost; waivers are not available to the judiciary as a whole. Assuming the purest of intentions, this arrangement would still suggest to the ordinary citizen that the offer is motivated by something other than generosity toward government officials. A judge who accepts the waiver in order to join the club would not, in our opinion, be promoting public confidence in the integrity and impartiality of the judiciary as required under Canon 2.

Before arriving at these conclusions, we reviewed opinions on this issue from other jurisdictions. In an opinion issued in the same year that the Arizona Supreme Court adopted the 1972 Model Code, the committee that oversees the conduct of federal judges concluded that honorary discount memberships are not of themselves violative of the Code of Judicial Conduct. The committee cautioned, however, that a judge "must be sure that the honorary membership is not being offered to persuade others to become members of the club, or lend the prestige of his office to advance the private interests of the club." Op. 47, Committee on Codes of Conduct of the Judicial Conference of the United States (October 14, 1975) at 2.

We fear, however, that honorary memberships in private clubs may be offered to members of the judiciary for these very reasons. In this regard, we find the reasoning of the Florida Committee on Standards of Conduct Governing Judges persuasive:

Friendship is not the motive for the gift in those cases. It is simply an attempt to curry favor with the court or other public officials, or to garner the prestige of those offices. . . . The gifts of membership convey the impression to the rest of the community that membership in the club presents the opportunity to hob-nob with public officials and to bask in their favor. It is a dubious

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proposition that this is acceptable for the other branches of the government. It is simply not permitted the judiciary. It violates Canon 2B. Fla. Op. 83-5 (May 16, 1983) at 2.

In conclusion, we are of the opinion that a judge should not accept a waiver of membership fees in order to join a private club. If a judge wishes to belong to such a club, then the judge must pay whatever membership fee is required of ordinary members of the public.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2B and 5C(4)(c) (1985).

Other References

Arizona Judicial Ethics Advisory Committee, Opinion [90-05](#) (March 27, 1990).

Committee on Codes of Conduct of the Judicial Conference of the United States, Opinion 47 (Oct. 14, 1975).

Florida Committee of Standards of Conduct Governing Judges, Opinion 83-5 (May 16, 1983) and related opinions 74-9 (Aug. 2, 1974) and 78-17 (Aug. 16, 1978).

E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct*, American Bar Association (1973).