

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 92-04
(February 20, 1992)

**Gift from Counsel of Self-published Book
on Medical Malpractice**

Issues

1. May a judge who presides over medical malpractice cases accept a self-published, co-authored book on medical malpractice for official use from counsel who frequently argues before the judge.

Answer: No. See discussion.

2. Would acceptance and display of a gift of a medical malpractice book lend the prestige of the judge's office to advance the private interests of others?

Answer: No.

3. Would acceptance of an improper gift of a medical malpractice book be a form of *ex parte* communication if the author has malpractice cases pending before the recipient judge?

Answer: Probably not.

Discussion

Issue 1

This issue implicates Canons 5C(4)(a) and 5C(4)(c). Canon 5C(4)(a) states that "a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice."

Canon 5C(4)(c) states 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 ABA's *Reporter's Notes* to this canon state that a lawyer who practices or has practiced before the judge falls into the "party or other person" category. E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct*, 85 (1973).

Is this issue controlled by Canon 5C(4)(a) or 5C(4)(c)? We believe that the latter governs, and that the judge may not accept a book as a gift when the donor is a lawyer or law firm whose interests are likely to come before the judge. See *In Re Corboy*, 528 N.E.2d 694, 699 (1988) (under Illinois canons, judges are forbidden from receiving gifts from attorneys by Canon 5C(4)(a)). The gift is not permitted either as "de minimus" or as justified by its educa-

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tional benefits to the judge. Arizona prohibits judges from accepting "business gifts" worth as little as five dollars (in this case "snacks" delivered to the courthouse) from attorneys. Ariz. Op. 90-05 (March 27, 1990). "The judicial branch, charged with the administration of justice, must guard against practice that might bring into question its fair and even-handed administration." *Id.* Even part-time judges must be scrupulously careful not to accept an assignment of a case involving any litigant from whom they have accepted loans, gifts or favors. Ariz. Op. 88-01 (April 20, 1988). And while Canon 5C(4)(a) reflects a policy interest in furthering the legal education of judges, that interest is outweighed by the need to avoid any appearance of impropriety. *See* Canon 2A.

Issue 2

It is the "gift" status of the book and the identity of the donor as a "party or person whose interest are likely to come before [the judge]" which creates the appearance of impropriety here. If the judge were to borrow the book from a library, if the court were to buy it for him, or if he were to buy the book himself, the judge might use and keep the book in view on his bookshelf without concern. Display of an improper gift merely aggravates the appearance of impropriety in accepting the gift and would not constitute an independent ethical problem. If a book is not an improper gift, its display does not lend the prestige of the judge's office to advance the private interests of others because merely seeing the book in the judge's chambers, presumably on the shelf with the other legal works, does not indicate to a reasonable person that the judge endorses the book, its author, or its publisher.

Issue 3

Unless the sole purpose of writing and distributing the book was to communicate information only to the judge, receiving or reading a law treatise does not generate an improper *ex parte* communication forbidden by Canon 3A(4). The law book is a work of general nature. It is not directed at any specific pending proceeding before a particular judge. The judge may consult any legal treatise without concern that it constitutes *ex parte* communication. Even if receipt of the book is forbidden because it is an improper gift, its receipt is not an *ex parte* contact.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2A, 3A(4), 5C(4)(a) and 5C(4)(c) (1985).

Other References

Arizona Judicial Ethics Advisory Committee, Opinions 88-01 (April 20, 1988); 90-05 (March 27, 1990).

E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct*, American Bar Association, 85 (1973).

In Re Corboy, 528 N.E.2d 694 (Ill. 1988).