

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 09-01
(September 17, 2009)

Accepting Nominal Gifts From Conference Sponsors

Issues

May judges or judicial employees attending conferences accept food, refreshments or gifts from trade associations whose members litigate in the courts or from vendors who frequently do business with the courts?

Answer: Yes, with reservations.

Facts

Judges and judicial employees occasionally attend conferences where trade associations, vendors interested in doing business with the courts, or organizations whose members litigate in court may provide food, refreshments and other benefits at no charge to the participants. Attendance may be at the invitation of the conference organizers or may be paid for by the judge or the judge's court. Some conferences are organized and sponsored by judges, court-related groups, bar associations, or other continuing education organizations. Conferences, or portions of conferences, may be sponsored by trade associations representing frequent litigants, such as landlords and tenants, or vendors of products used by courts or lawyers. Sponsorship may consist of subsidizing a portion of the conference, such as a lunch or snacks at a break, or operating a booth at which information about products is presented. Operating a booth may not involve financial sponsorship of the event, but simply payment of the actual cost of putting on the vendors fair. Often vendors will hand out free items of nominal value to persons stopping at their booth, such as pens, cups, key chains and tote bags.

Discussion

A judge, at all times, must act in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary. Rules 1.2, 3.1(C). Rule 2.4(C) provides that judges should not convey or permit others to convey the impression that any person or organization is in a special position to influence the judge.

Rule 3.13 states that a "judge shall not accept gifts, loans, bequests, benefits, or other things of value, if acceptance . . . would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality" except under certain limited circumstances. Rule 3.13(B)(9) and (10)(a) state that a judge may accept a "gift incident to a public testimonial" or an invitation to attend without charge an event associated with a bar-related function or an activity relating to the law, the legal system, or the administration of justice.

Rule 3.13(B)(2) states that a judge may accept gifts or other things of value from friends, relatives, or other persons, including lawyers, "whose appearance or interest in a proceeding

pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11.”

We have previously concluded that neither a judge nor the judge’s staff may accept “business gifts” from counsel or others with whom they have a professional relationship. Adv. Op. 90-05. We have also explained that a court cannot either solicit or accept financial sponsorship from non-profit or for-profit organizations to assist the court in presenting a symposium. Adv. Op. 04-03; *see also* U.S. Adv. Op. 91 (1994) (judicial employees may not solicit funds from vendors who do business with the courts to defray the expenses of a conference devoted to the improvement of the judicial system or accept even a truly voluntary offer by a vendor to provide funding). These conclusions apply to a financial sponsor of events organized by courts or judges. The question presented requires us to determine if similar conclusions are required for events that are not organized by the courts or members of the judiciary, or to vendors who appear at a court-sponsored event but are not financial contributors to the event.

The State of Washington Ethics Advisory Committee has addressed these more general questions in several recent opinions. In Opinion 05-02, it considered whether a court employee could accept snacks, lunches, raffle items, or nominally valued items from vendors. The opinion concluded such items could be accepted, with the reservation that receipt should not call into question the court’s impartiality.

The court managers may accept snacks or lunch if the food is made available to all of the attendees and is of nominal value. Vendors may raffle off items to attendees who have visited a vendor booth and entered a drawing provided that the items raffled are of nominal value or [involve] a court related product on the condition that it will be used by the court in its operation. Court managers may accept nominally valued items which they receive from a vendor for visiting the vendor’s booth. The court manager is not required to bring these items to the court for official use but may use them personally. Even though all of this conduct is permitted by the Code of Judicial Conduct the judge must advise the court manager that the court employee must continue to monitor the participation of vendors at court management conferences to ensure the participation is permitted by the Code of Judicial Conduct and does not call either the court’s or its employees’ impartiality into question.

We agree with this analysis and extend its application to judges as well.

Washington has further qualified these conclusions by stating that vendors and sponsors of conferences should not be “publicly acknowledged in a way that creates the impression that the judicial officer is lending the prestige of office to advance the private interests of the contributors.” Wash. Adv. Op. 08-07.

In the same opinion, it was noted that specific circumstances regarding a vendor or sponsor may require a judge or court employee to avoid accepting anything from a vendor or sponsor.

A judicial officer, whose court is contemporaneously negotiating with the vendor for a contract, should not attend an event if the judicial officer is aware that the vendor is a significant contributor to the event because it

creates an appearance of a conflict of interest and undermines the public confidence in the integrity of the judiciary.

We also agree with this limitation. Even if a sponsorship or vendor's booth is not specifically targeted at any particular judge, if a judge knows that a sponsor or vendor will be appearing in the judge's court, or has interests that will come before the judge, attendance at an event or acceptance of items of even nominal value should be avoided.

Applicable Code Sections

Arizona Code of Judicial Conduct (2009), Rules 1.2, 2.4(C), 2.11, 3.1(C), 3.13(A), 3.13(B)(2), 3.13(B)(9).

Other References

Arizona Judicial Ethics Advisory Committee, Opinions 90-05 (March 22, 1990); 04-03 (December 6, 2004).

Washington State Ethics Advisory Committee, Opinions 05-02 (March 15, 2005); 08-07 (September 28, 2008).

United States Courts Committee on Codes of Conduct, Advisory Opinion No. 91 (July 8, 1994; reviewed January 16, 1998).