

(Issued: October 30, 2006)

**PROPRIETY OF JUDGES ATTENDING EVENTS
HOSTED OR SPONSORED BY LAW ENFORCEMENT**

I. Issue: May a judge ethically attend events hosted or sponsored by law enforcement agencies or organizations?

II. Applicable Authorities:

Canon 1: An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. . . .

Canon 2A: A judge . . . shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3E(2): In all trial court proceedings, a judge shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.¹

Canon 4A(1): A judge shall conduct all of the judge's extrajudicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially.

Canon 4D(5): Under no circumstances shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge.

Canon 4D(6): A judge shall not accept . . . a gift . . . except as hereinafter provided:

- (a) any gift incidental to a public testimonial . . . or an invitation to the judge and the judge's spouse or guest to attend . . . an activity devoted to the improvement of the law, the legal system or the administration of justice;
- . . .
- (d) ordinary social hospitality

III. Discussion:

"Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."

-Advisory Committee Commentary to Canon 4A

"Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly."

-Advisory Committee Commentary to Canon 2A

¹ The Supreme Court Advisory Committee on the Code of Judicial Ethics has proposed an amendment to Canon 3E(2) that would change the current subjective test for disclosure to a more objective one. The analysis of this opinion will not change if the Supreme Court amends Canon 3E(2) as anticipated.

A. Introduction

Judicial officers frequently receive invitations to attend a variety of civic and social events in their communities. The Commentary to Canon 4A cautions that a judge should not become isolated from the community. However, there are ethical limitations on a judge's extrajudicial activities that may make attendance at certain types of events improper. This opinion focuses specifically on the propriety of judicial participation in events hosted or sponsored by law enforcement agencies or organizations.

B. General Considerations

As with any activity outside the courtroom, a judge's attendance at an event hosted or sponsored by law enforcement is prohibited if it casts reasonable doubt on the judge's capacity to act impartially. Canon 4A(1). A judge's association or affiliation with persons or groups identified with one side of a court case tends to create an appearance of bias. Clearly, a judge should never attend an event hosted or sponsored by a law enforcement agency or organization that is a party to litigation pending before that judge. In addition, judges in criminal assignments, who preside over matters in which law enforcement personnel nearly always appear as witnesses, must be particularly cautious about attending law enforcement events. An appearance of bias, even if not reflective of the judge's actual state of mind, erodes public confidence in the integrity and impartiality of the judiciary.

In assessing whether attendance at a particular law enforcement event will create an appearance of bias, judges should carefully consider a number of different factors. First and most importantly, how often does the law enforcement agency or organization, or its individual members, appear before the judge? If there is a likelihood that the judge will have significant contact at the event with witnesses who appear before the judge, attendance is problematic. Second, what is the nature of the event? For example, is its purpose educational, to raise money for a particular cause, to pay tribute to an officer's service, or is it primarily a social gathering? The appearance of bias will vary depending on the nature of the event, as described in section C below. Third, are the invited guests solely judicial officers, or will there be a diverse cross-section of the legal community present? As explained more fully below, judges need to be wary of events that are billed as "Judges' Night" or the like.

Even if a judge's initial assessment of an event is that attendance is not prohibited by the canons, the judge has a duty to continually assess the event and leave if some unanticipated development places the judge in a position whereby his or her impartiality might reasonably be questioned.

Apart from the appearance of impropriety in attending a law enforcement event, a judge must also consider issues relating to disqualification and disclosure. A judge must not engage in any extrajudicial activity that is reasonably likely to require the judge to self-recuse on cases in the future. If a judge is satisfied that he or she can attend a particular law enforcement event without creating a later disqualification issue, the judge must then consider whether there is an attendant duty to disclose the fact of attendance when matters involving the agency, organization or officers participating in the event come before the judge. Canon 3E(2).

C. Particular Types of Events

With respect to each of the various types of events discussed below, it would be inappropriate for a judge to attend if the law enforcement agency or organization hosting or sponsoring the event is a party to an action before the judge or is reasonably likely to come before the judge as a party in the future.

1. Educational Programs

A judge invited to an educational program sponsored by law enforcement should scrutinize the curriculum and content of the program to ensure that the program is not designed to advocate a particular point of view. For example, while it might be proper for a traffic court judge to attend a presentation by

police about the engineering and mechanics of the equipment used to photograph motorists running red lights, it would be improper for the judge to attend a program that focuses on the most effective use of the photographs as evidence in court. And, of course, a judge should never attend an educational program in which specific matters pending before the court are the subject of discussion.

An appearance of bias may also arise if attendance at the educational program is limited to police officers and judges only. An outside observer might view this as an opportunity by law enforcement to privately lobby judges on issues before the court. To avoid this perception, an educational program should be open to other members of the legal system, including representatives from the district attorney's office, public defender's office and private practitioners.

A judge who is invited to speak or teach at an educational program attended by law enforcement personnel must be careful that nothing in the judge's presentation could reasonably be viewed as coaching or otherwise assisting police officers on how to prepare cases for trial or testify as witnesses. To dispel any appearance of favoritism arising from the event, the judge should also be available to teach similar courses to non-law enforcement groups.

If the educational program includes a meal, a judge may accept the meal without violating the gift prohibition of the canons, because the meal could reasonably be viewed as falling within the exemption to the gift ban permitting receipt of a gift incidental to an activity devoted to the improvement of the law, the legal system or the administration of justice.² Canon 4D(6)(a).

2. Public Testimonials and Official Ceremonies

A judge's attendance at a public testimonial paying tribute to an officer's career in law enforcement would not normally create an appearance of bias, unless the officer is being honored for something related to a court matter, such as the officer's investigative work leading to the arrest and conviction of a defendant in a particular case. However, even though attendance at a public testimonial may be permitted, a judge should not participate on a committee responsible for selecting the recipient of a law enforcement award. As with other events, a judge should be satisfied before attending that invitations to the testimonial are extended to other members of the legal system.

Judges may also be invited to other types of official law enforcement ceremonies. For example, it is not uncommon for a judge to be asked to administer the oath of office at a ceremony to swear in new police officers or a new police captain. The Ethics Committee has advised that a judge's performance of this type of official function does not create an appearance of bias.

If the public testimonial or other official ceremony is followed by a reception where refreshments are served, a judge may attend the reception pursuant to the exemption to the gift ban permitting receipt of a gift incidental to a public testimonial.³ Canon 4D(6)(a).

3. Fundraisers

The propriety of attending a police-sponsored fundraiser will depend in large part on the goal of the fundraising. If the object is to raise money for youth activities or some other neutral charitable cause, attendance is permissible as long as the judge is not personally soliciting donations. If, on the other hand, the purpose of the event is to raise money for a project that directly benefits law enforcement, like the construction of a new police station, a judge's attendance might reasonably raise a question of partiality.

4. Social and Recreational Events

² The value of this type of gift is considered to be the value of the food and drink and is subject to the annual gift limitation set forth in CCP §170.9.

³ See fn. 2, *infra*.

When the primary purpose of an event hosted by law enforcement is social or recreational, there is a much greater risk that attendance will create an appearance of bias. Where the only invitees are bench officers, *e.g.*, “Judges’ Night” at the local police academy, attendance is clearly improper. Even if the invitation list is not limited to judges, it is important that the other invited guests represent a diverse group from all facets of the legal system, including the criminal defense and plaintiff’s bar. And whenever socializing with people involved in the court system, judges should be particularly careful to avoid conversations that might inadvertently lead to the judge engaging in an improper *ex parte* communication.

The Ethics Committee has received a number of inquiries in the past about a particular law enforcement recreational event known as the Baker to Vegas Challenge Cup Relay. This is an annual long-distance foot race sponsored by the Los Angeles Police Revolver and Athletic Club in which law enforcement agencies from around the country are invited to enter teams. In response to questions about the propriety of judges participating on a race team, the Committee has concluded that participation by judges would create an improper appearance of bias because the event is advertised as being open only to law enforcement personnel.

If, after considering all of the factors, a judge determines that attendance at a particular social or recreational event would not create an appearance of bias, the judge must then decide whether the event, which usually includes the provision of food and beverage for which the judge is not charged, constitutes “ordinary social hospitality” and, as such, is exempt from the ban on gifts.⁴ Canon 4D(6)(d). Judges are referred to Formal Opinion No. 43 for a thorough analysis of this issue.

IV. Conclusion:

Judicial participation in events hosted or sponsored by law enforcement is neither absolutely prohibited nor unconditionally permitted, but depends on a number of different factors bearing primarily on whether attendance would cast reasonable doubt on the judge’s capacity to act impartially. When presented with an invitation to attend a law enforcement event, judges are encouraged to contact the Ethics Committee for advice.

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⁴ See fn. 2, *infra*.