

# ***The Supreme Court of Ohio***

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 95-8**

Issued June 2, 1995

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*

*[Not Current- subsequent rule amendments to Canons 1 through 6, Ohio Code of Judicial Conduct, eff. May 1, 1997]*

**SYLLABUS:** It is proper under the Ohio Code of Judicial Conduct and Ohio Ethics Law for a judge to accept from a trial lawyers association an offer to attend the association's meeting without paying a registration fee. If the registration fee is over seventy-five dollars it must be reported on the Financial Disclosure Statement filed with the Board of Commissioners on Grievance and Discipline. The acceptance of an invitation by a trial lawyers association to a judge to attend its seminar at no registration cost need not be reported on a Canon 6C form.

**OPINION:** This opinion addresses a judge's acceptance of an invitation to attend a continuing legal education seminar at which the registration fee is waived.

Is it proper for a judge to accept from a trial lawyers association an offer to attend the association's meeting without paying a registration fee?

Is a judge's acceptance of an offer by a trial lawyers association to attend the association's meeting without paying a registration fee a gift that must be reported?

Judges are regulated by both the Ohio Code of Judicial Conduct and Ohio Ethics Law. See Gov.Jud.R. I §1, Ohio Rev. Code Ann. §§102.01 (B), (C), and (F) (2). Both authorities are addressed within this opinion.

### Ohio Code of Judicial Conduct

Gifts are regulated under Canon 5C (4) of the Ohio Code of Judicial Conduct. Although many gifts are prohibited, a few gifts are permitted "as a matter of common sense and in deference to common usage." See E. Wayne Thode, Reporter's Notes to Code of Judicial Conduct 84 (1973). Under Canon 5C (4) (a) a judge may accept an invitation 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)** Neither a judge nor a member of his [her] family residing in his [her] household should accept a gift, bequest, favor, or loan from anyone except as follows:

- (a) a judge may accept a gift incident to a public testimonial to him [her], not to exceed \$100 in value; books supplied by publishers on a complimentary basis for official use; or **an invitation to the judge and his [her] spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice** (emphasis added);
- (b) a judge or a member of his [her] family residing in his [her] household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants.
- (c) a judge or a member of his [her] family residing in his [her] household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him [her], and, if its value exceeds \$100, the judge reports it in the same manner as he [she] reports compensation in Canon 6C.

An annual seminar of a trial lawyers association is a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice. The interchange of information among lawyers and judges in an educational setting improves the law, the legal system, and the administration of justice. An invitation by a trial lawyers association to a judge to attend its seminar at no cost is therefore an acceptable gift under Canon 5C (4) (a).

Canon 2 requires that "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His [Her] Activities." Before accepting any Canon 5C (4) (a) gift, "the circumstances surrounding each gift that falls within (4) (a) must be considered to determine if the requirement of Canon 2 is met." E. Wayne Thode, Reporter's Notes to the Code of Judicial Conduct, 84 (1973). Individual circumstances may dictate that an otherwise acceptable gift should not be accepted, but each judge must make that determination.

Canon 5C (4) (c) is a catch-all provision setting the standard for gifts outside the exceptions identified within 5C (4) (a) and (b). See E. Wayne Thode, Reporter's Notes to the Code of Judicial Conduct 85 (1973). There is a reporting requirement for Canon 5C (4) (c) gifts. Those gifts must be reported in the same manner as the judge reports compensation under Canon 6C. There is no reporting requirement within the Code of Judicial Conduct for Canon 5C (4) (a) or (b) gifts. Thus, the acceptance of an invitation by a trial lawyers association to a judge to attend its seminar at no registration cost need not be reported on a Canon 6C form.

#### Ohio Ethics Law

Under Ohio Ethics Law, a judge may not accept anything of value that is of such a character as to manifest a substantial and improper influence with respect to the judge.

**R.C. §102.03 (D)** No public official or employee shall use or authorize the use of the authority or influence of his [her] office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] duties.

**R.C. §102.03 (E)** No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him [her], with respect to his [her] duties.

**R.C. §102.03 (F)** No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] duties.

The term "anything of value" is broadly defined by statute to include, inter alia, money, goods and chattels, and every other thing of value. See Oh. Rev. Code Ann. §102.01 (G) and §1.03 (A) through (I) (Baldwin 1994). If a thing of value is more than nominal or de minimus it is considered a substantial influence. If a thing of value is from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's agency it is considered an improper influence. See Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Ops. 95-4 (1995), 92-18 (1992), 92-14 (1992); Ohio Ethics Comm'n, Ops. 89-014 (1989), 89-002 (1989), 86-011 (1986), 84-010 (1984), 80-004 (1980), 79-006 (1979), 79-002 (1979).

A conference registration fee is a thing of value under Section 102.03 (D), (E), and (F). See Ohio SupCt, Op. 92-14 (1992); Ohio Ethics Commission, Op. 92-018 (1992). The association's seminar has a cost to other attendees and provides an opportunity for attendees to earn mandatory continuing legal education credits. Thus, the offer to a judge from a trial lawyers association to attend the association's meeting without paying a registration fee is a thing of value.

However, in this Board's view, a once a year offer to a judge from a trial lawyers association to waive a registration fee to the association's seminar held within this state is a nominal and de minimus thing of value to a judge. Judges are required to participate in continuing legal education programs. See Gov.Jud.R. IV. The requirement of mandatory continuing legal education creates both an expectation and a necessity that judges will attend such seminars. Thus, within the limited context of this opinion, the offer of a waived registration fee is considered nominal and de minimus.

Although the offer comes from an association of attorneys, the Board does not consider the source of the offer to be an improper influence with regard to the judge's duties within the context of this opinion. Members of the association may practice law within the courts of Ohio, but there is no reason to assume that the offer to attend the association's meeting without paying a registration fee would have any influence on a judge with respect to the judge's duty.

This view may seem at odds with Ohio Ethics Opinion 92-018 (1992) advising that "Divisions (D) and (E) of Section 102.03 of the Revised Code and Divisions (A) (1) of Section 2921.43 of the Revised Code prohibit officials and employees of the Division of Oil and Gas of the Ohio Department of Natural Resources from accepting, soliciting, or using their authority or influence to secure passes from the Ohio Oil and Gas Association to attend the Association's meetings without paying a fee." Nevertheless, this Board makes the distinction that an offer to a judge to attend a seminar at no cost is in most instances nominal or de minimus to a judge since the judge is required to attend seminars and seminars have little likelihood of influencing a judge with respect to his or her official duties.

The view in this opinion may also seem at odds with the Board's Opinion 92-14 advising that it is improper under Sections 102.03 (D) and (E) of the Ohio Revised Code, for referees or magistrates, who are members of a statewide association of court referees and magistrates, to solicit, accept, or use the

authority of their offices to secure financial or other support, from a law firm or from a business or an individual interested in matters before, regulated by, or doing or seeking to do business with the courts in which the referees or magistrates serve, in order to provide low registration fees, hospitality rooms, free meals, and free recreational activities for the referees, magistrates and spouses attending the annual educational meeting of the association. See Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Op. 92-14 (1992). That opinion is distinguishable because the referees and magistrates were soliciting and accepting things of value to enhance their own annual seminar.

The view in this opinion is consistent with Opinion 95-4 wherein the Board advised that “[i]t is not per se improper under the Ohio Code of Judicial Conduct or Ohio Ethics Law, Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code, for a justice or judge to accept on occasion a complimentary book from a publisher, even one that does business with the court.” See Ohio SupCt, Bd of Comm'rs on Griev & Disc, Op. 95-4 (1995). In that opinion, the Board distinguished an occasional offer of a free book from a year's free use of the entire Revised Code. Id.

Nevertheless, the acceptance of an offer to attend a seminar at no registration cost should be reported as a gift on a judge's financial disclosure form. Under Section 102.02 (A) (7) the source of each gift over seventy-five dollars must be reported by a judge on a financial disclosure statement filed with the Board of Commissioners on Grievances and Discipline.

**R.C. §102.02 (A) (7)** Except as otherwise provided in section 102.022 of the Revised Code, [a judge must disclose on the financial statement] the source of each gift of over seventy-five dollars . . . received by the person in his [her] own name or by any other person for his [her] use or benefit during the preceding calendar year, except gifts received by will or by virtue of section 2105.06 of the Revised Code, or received from spouses, parents, grandparents, children, grandchildren, siblings, nephews, nieces, uncles, aunts, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, or any person to whom the person filing the statement stands in loco parentis, or received by way of distribution from any intervivos or testamentary trust established by a spouse or by an ancestor.

In conclusion, this Board advises that it is proper under the Ohio Code of Judicial Conduct and Ohio Ethics Law for a judge to accept from a trial lawyers association an offer to attend the association's meeting without paying a registration fee. If the registration fee is over seventy-five dollars it must be reported on the Financial Disclosure Statement filed with the Board of Commissioners on Grievance and Discipline. The acceptance of an invitation by a trial lawyers association to a judge to attend its seminar at no registration cost need not be reported on a Canon 6C form.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline** are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office. Pursuant to Section 102.08 of the Ohio Revised Code, the requester may reasonably rely on the opinion as it applies to Ohio Ethics Law and related statutes.