

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 2009-2

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SYLLABUS: It is improper for a juvenile court judge (or court staff) to accept travel expenses (payment or reimbursement of travel, meals, and lodging) from the owners of a private placement facility that receives or seeks to receive placements of juveniles by the court, for travel to the facility for an informational tour or to assess a juvenile placed there by the court.

It is improper for a juvenile court judge (or court staff) while attending a conference to accept a gratuitous non-conference meal paid for by a private placement facility that receives or seeks to receive placement of juveniles by the court.

A juvenile judge's (or court staff's) reporting on an annual financial disclosure statement does not resolve all of the impropriety in accepting travel expenses (payment or reimbursement of travel, meals, and lodging) or a gratuitous non-conference meal from an improper source such as a private placement facility that receives or seeks to receive placements of juveniles from the court, but fulfills ethical and legal reporting requirements as to the annual financial disclosure statement under the Ohio Code of Judicial Conduct and Ohio Ethics Law.

OPINION: References within this opinion to the Ohio Code of Judicial Conduct are to the Ohio Code of Judicial Conduct, as amended effective March 1, 2009, which supersedes the former Ohio Code of Judicial Conduct in effect through February 28, 2009.

This opinion addresses questions regarding the proper conduct of juvenile court judges and court staff when a private placement facility for juveniles offers payment or reimbursement of travel expenses to the facility or extends gratuitous dinner invitations.

This opinion does not address questions regarding payment or reimbursement of travel expenses of a judge or court staff when included in bid specifications and in a public contract. See e.g., Ohio Ethics Commission, Op. 87-007 (1987).

This opinion does not address questions regarding a vendor's sponsorship of a conference meal, reception, open house, or other similar activity at an association's educational conference. See Ohio SupCt, Bd of Comm'rs on Grievances & Discipline, Op. 2005-2 (2005), Op. 92-14 (1992).

1. Is it proper for a juvenile court judge (or court staff) to accept travel expenses (payment or reimbursement of travel, meals, and lodging) from the owners of a private placement facility that receives or seeks to receive placements of juveniles by the court, for travel to the facility for an informational tour or to assess a juvenile placed there by the court?
2. Is it proper for a juvenile court judge (or court staff) while attending a national conference to accept a gratuitous non-conference meal paid for by the owners of a private placement facility that receives or seeks to receive placements of juveniles by the court?
3. Does a judge's (or court staff's) reporting on an annual financial disclosure statement resolve all of the impropriety in accepting payment or reimbursement of travel expenses (travel, meals, and lodging) or a gratuitous non-conference meal paid for by a private placement facility that receives or seeks to receive placements of juveniles from the court?

Introduction

Juvenile court judges who preside over juvenile delinquency cases sometimes find it necessary in disposition or sentencing to order juveniles into private placement facilities located within or outside the state. Information about placement facilities, programs offered, results obtained, and costs involved help a judge make placement decisions that will benefit juveniles.

Naturally, the owner of a private placement facility may be eager to provide information about a facility and its programs to a juvenile judge who orders placement of juveniles and to the court staff who assist the judge. But, enticing offers of payments or reimbursements of travel expenses or gratuitous dinners from owners of a private placement interested in placements from the court should sound ethical alerts for judges and court staff.

Ohio Code of Judicial Conduct and Ohio Ethics Law

The questions presented must be considered under both the Ohio Code of Judicial Conduct and Ohio Ethics Law. Judges and magistrates are governed by the Ohio Code of Judicial Conduct and Ohio Ethics Law. Judicial employees are

subject to Ohio Ethics Law. Judicial employees are also subject to administrative policies of the judge and the employing court.

The Board of Commissioners on Grievances and Discipline provides advice to judges as to the application of the Ohio Code of Judicial Conduct and is the appropriate ethics advisory body for judges and judicial employees as to Ohio Ethics Law. Gov.Bar R. V(2)(C), Ohio Rev. Code Ann. §§ 102.01(F)(2) (West Supp. 2008), 102.08 (West 2002). Under Ohio Ethics Law, a judicial officer or judicial employee is a “public official or employee” and a court is a “public agency.” Ohio Rev. Code Ann. § 102.01(B), (C) (West Supp. 2008).

Question 1

Is it proper for a juvenile court judge (or court staff) to accept travel expenses (payment or reimbursement of travel, meals, and lodging) from the owners of a private placement facility that receives or seeks to receive placements of juveniles by the court, for travel to the facility for an informational tour or to assess a juvenile placed there by the court?

As set forth in Rule 3.14 of the Ohio Code of Judicial Conduct, a judge is permitted to “accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items if both of the following apply: (1) The expenses or charges are associated with the judge’s participation in activities permitted by this code; (2) The source of the reimbursement or waiver does not give the appearance of influencing the judge in his or her judicial duties or otherwise appear to a reasonable person to undermine the judge’s *independence, integrity, or impartiality.*”

As set forth in Ohio Ethics Law, R.C 102.03(I) of the Ohio Revised Code, a judge is permitted to “accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to official duties if the travel, meals, and lodging expenses, or reimbursement is not of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.” Ohio Rev. Code Ann. § 102.03(I) (West Supp. 2008).

The proposed payment or reimbursement of travel expenses to the judge (or court staff) by the private placement facility does not satisfy the requirements of the ethics rule (Rule 3.14) or the ethics law (R.C. 102.03(I)). The proposed travel is proper, but the source of payment or reimbursement of the travel expenses is improper.

Travel to a private placement facility to tour and obtain information or to assess a juvenile placed at the facility by the court is considered both an activity permitted by the Code of Judicial Conduct and an event related to official duties under Ohio Ethics Law. Understandably, a judge or court staff may need information about a facility and its programs in order to make effective placements or may need to assess a juvenile in placement at a facility.

But, payment or reimbursement of travel expenses from an owner of a private placement facility that receives or seeks to receive placement of juveniles by the court is considered to be an improper source of travel expense. Under the Ohio Code of Judicial Conduct, the source of the travel expenses gives the appearance of influencing the judge in his or her judicial duties and would otherwise appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. Under Ohio Ethics Law, the source of the travel expenses is improper because it comes from someone who receives or seeks to receive placements of juveniles ordered by the court or who does business or wants to do business with the court. Travel, meals, and lodging are a thing of value. A thing of value that is more than nominal or de minimis is considered a substantial influence. A thing of value that is from a person interested in matters before, regulated by, or doing or seeking to do business with a court is considered an improper influence. See e.g., Ohio SupCt, Bd of Comm'rs on Grievances & Discipline, Op. 2005-2 (2005).

The propriety of accepting travel expenses does not hinge on whether the travel is to an in-state facility or an out-of-state facility. A private placement facility, in-state or out-of-state, seeking to receive or already receiving placement of juveniles is an improper source for travel, meals, and lodging to a juvenile judge whose official duties involve placement of juveniles as part of a disposition or sentencing. A reasonable person would question whether influence was wielded and whether partiality was exercised in the placement of a juvenile in a facility that pays or reimburses the travel, meals, and lodging expenses of the judge or court staff.

Thus, in answer to Question One, the Board advises as follows: It is improper for a juvenile court judge or court staff to accept travel expenses (payment or reimbursement of travel, meals, and lodging) from the owner of a private placement facility that receives or seeks to receive placements of juveniles by the court, for travel to the facility for an informational tour or to assess a juvenile placed there by the court.

Question 2

Is it proper for a juvenile court judge (or court staff) attending a national conference to accept a gratuitous nonconference meal paid for by a private placement facility that receives or seeks to receive placement of juveniles by the court?

A “conference meal” for purposes of this opinion is a meal provided to attendees or speakers by the conference organizers as part of a conference event. Generally, a conference meal opened to all attendees or speakers and paid for by either the registration fees or by a conference sponsor does not pose an ethical problem for a judge or judicial employee under either the Code of Judicial Conduct or Ohio Ethics Law.

Under the Ohio Code of Judicial Conduct a judge may properly accept a conference meal. Pursuant to Rule 3.13(A)(11) a judge is permitted to accept “[a]n invitation to the judge and the judge’s spouse, *domestic partner*, or guest to attend without charge either of the following: (a) An event associated with a bar-related function or other activity related to the *law*, the legal system, or the administration of justice; (b) An event associated with any of the judge’s educational, religious, charitable, fraternal, or civic activities permitted by this code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.” Such invitations would reasonably include meals associated with the event.

Under Ohio Ethics Law a judge and judicial employees may properly accept a conference meal. Pursuant to R.C. 102.03(I), a judge or judicial employee is permitted to accept meals in connection with a conference, seminar, or similar event related to official duties if the meal is not of such a character as to manifest a substantial and improper influence upon the judge or judicial employee with respect to their duties. Ohio Rev. Code Ann. § 102.03(I) (West Supp. 2008). In most circumstances, a conference meal offered to all attendees or speakers would not pose substantial and improper influence upon an individual judge or judicial employee with respect to their duties.

The proposed offer by the private placement facility is not for a conference meal. The proposed offer is for a nonconference meal.

A “non-conference meal,” for purposes of this opinion, is a meal that is not provided by the conference organizers as part of a conference event. A non-conference meal requires different scrutiny than a conference meal.

Under the Ohio Code of Judicial Conduct, a gratuitous non-conference meal will be viewed categorically as either “ordinary social hospitality” under Rule 3.13(A)(3) or as “any other thing of value” under Rule 3.13(A)(12).

Rule 3.13(A)(3) permits a judge to accept ordinary social hospitality. Social hospitality is not defined in the Code of Judicial Conduct, but it is the Board’s view that the concept applies to a “no strings attached” situation, like a dinner at the home of a close friend who is not interested in matters before the judge and who is not doing or seeking to do business with the court on which the judge serves.

The proposed offer by a placement facility is not “social hospitality.” A gratuitous invitation to a judge or court staff for dinner paid for by a private placement facility that receives or seeks to receive placements of juveniles is not social hospitality—strings are attached. The offer is from someone who is seeking the good graces of a court whose judge’s duties include ordering the placement of juveniles into a placement facility.

Rule 3.13(A)(12) permits a judge to accept “[a]ny other thing of value, if the donor is neither of the following: (a) A party or other person who has come or is likely to come or whose interest have come or are likely to come before the judge; (b) A person who is doing or seeking to do business with the court.

The proposed offer by a placement facility is “any other thing of value” from someone who receives or wants to receive placement of juveniles who are under court order to enter a private placement facility. Thus, by application of Rule 3.13(A)(12) the gratuitous non-conference meal paid for by the owner private placement facility should not be accepted because the owner is interested in the court’s orders to place juveniles in private facilities.

As to Ohio Ethics Law, R.C. 102.03(I) permits a judge or judicial employee to accept a meal incurred in connection with official duties, but not if it is of such a character as to manifest a substantial and improper influence upon them with respect to their duties. Ohio Rev. Code Ann. § 102.03(I) (West Supp. 2008). A gratuitous non-conference meal paid for by a private placement facility that receives placements of juvenile ordered by the court is of such a character as to manifest a substantial and improper influence upon the judge or judicial employee with respect to their duties. A meal is an improper influence when the source of the meal is a person interested in matters before, regulated by, or doing or seeking to do business with the court. A meal is a substantial influence when the meal is more than de minimis. Thus, by application of R.C. 102.03(I) the gratuitous non-conference meal paid for by the private placement facility should not be accepted.

Thus, in answer to Question 2, the Board advises as follows: It is improper for a juvenile court judge (or court staff) attending a conference to accept a gratuitous non-conference meal paid for by a private placement facility that receives or seeks to receive placement of juveniles by the court.

Question 3

Does a judge’s (or court staff’s) reporting on an annual financial disclosure statement resolve all of the impropriety in accepting travel expenses (payment or reimbursement of travel, meals, and lodging) or a gratuitous non-conference meal from a private

placement facility that receives or seeks to receive placements of juveniles from the court?

The answer to the Question 3 is no. A judge's disclosure on an annual financial disclosure statement does not resolve all impropriety in accepting travel expenses (payment or reimbursement of travel, meals, and lodging) or a gratuitous non-conference meal from a private placement facility that receives or seeks to receive placements of juveniles from the court, but fulfills the ethical and legal reporting requirements of disclosure as to the annual financial disclosure statement under the Ohio Code of Judicial Conduct and Ohio Ethics Law.

A judge is required by Rule 3.15 to file with the Board of Commissioners on Grievances and Discipline the annual financial disclosure statement required by R.C. 102.02. Some court staff may also be required to file annual financial disclosure statements. See 1(A) in the Application section of the Ohio Code of Judicial Conduct stating "[t]his code applies to all fulltime judges." and 1(B) stating "[a] judge . . . is a lawyer who is authorized to perform judicial functions within a court, including an officer such as a magistrate, court commissioner, or special master."

Rule 3.14(C) specifically requires that the acceptance of reimbursement of expenses for travel, food, or lodging (and other things mentioned in the rule such as incidental expenses, or waiver or partial waiver of fees or charges for registration, tuition, and similar items) be reported as required by Rule 3.15. Rule 3.13(B) specifically requires the reporting of "any gift, loan, bequest, benefit, or other thing of value as required by Rule 3.15." [Comment [2] to Rule 3.12 explains that compensation from extrajudicial activities is also subject to public reporting as required by Rule 3.15.]

As to travel, a judge is required by R.C. 102.02(A)(8) to disclose "the source and amount of every payment [or reimbursement] of expenses incurred for travel to destinations inside or outside this state that is received by the person in the person's own name or by any other person for the person's use or benefit and that is incurred in connection with the person's official duties, except for expenses for travel to meetings or conventions of a national or state organization to which any state agency [the court], . . . pays membership dues." Ohio Rev. Code Ann. § 102.02(A)(8) (West Supp. 2008).

Thus, if a judge receives travel expenses incurred in connection with official duties, the source and amount of payment or reimbursement must be reported pursuant to R.C. 102.02(A)(8) with one exception: the judge need not report travel expenses to meetings or conventions of a national or state organization to which the court pays membership dues.

As to meals, food, or beverages, a judge is required by R.C. 102.02(A)(9), to disclose "the source of payment [or reimbursement] of expenses for meals and

other food and beverages, other than for meals and other food and beverages provided at a meeting at which the person participated in a panel, seminar, or speaking engagement, or at a meeting or convention of a national or state organization to which any state agency [the court], . . . pays membership dues, that are incurred in connection with the person's official duties and that exceed one hundred dollars aggregated per calendar year." Ohio Rev. Code Ann. § 102.02(A)(9) (West Supp. 2009).

Thus, if a judge receives meals and other food and beverage expenses incurred in connection with the person's official duties and which exceed one hundred dollars aggregated per calendar year, the source and amount of payment or reimbursement must be reported pursuant to R.C. 102.02(A)(9) with two exceptions: 1) a judge need not disclose meals provided at a meeting in which the judge participated as a speaker; and 2) a judge need not disclose meals provided at a meeting of a national or state organization to which the court pays membership dues.

Applying these reporting requirements to the first two questions raised in this opinion, a juvenile court judge is required to disclose improperly accepted travel expenses (payment or reimbursement of travel, meals, and lodging) incurred in connection with official duties from the owners of a private placement facility that receives or seeks to receive placements of juveniles by the court, for travel to the facility for an informational tour or to assess a juvenile placed there by the court. A juvenile court judge attending a conference is required to report an improperly accepted gratuitous non-conference meal incurred in connection with official duties from the owners of a private placement facility that receives or seeks to receive placement of juveniles if the meal exceeds one hundred dollars aggregated in the calendar year.

Summary of Conclusions to Questions One, Two, and Three

The Board advises as follows. It is improper for a juvenile court judge (or court staff) accept travel expenses (payment or reimbursement of travel, meals, and lodging) from the owners of a private placement facility that receives or seeks to receive placements of juveniles by the court, for travel to the facility for an informational tour or to assess a juvenile placed there by the court.

It is improper for a juvenile court judge (or court staff) while attending a conference to accept a gratuitous non-conference meal paid for by a private placement facility that receives or seeks to receive placement of juveniles by the court.

A juvenile judge's (or court staff's) reporting on an annual financial disclosure statement does not resolve all of the impropriety in accepting travel expenses (payment or reimbursement of travel, meals, and lodging) or a gratuitous non-conference meal from an improper source such as a private placement facility

that receives or seeks to receive placements of juveniles from the court, but fulfills ethical and legal reporting requirements as to annual financial disclosure statement under the Ohio Code of Judicial Conduct and Ohio Ethics Law.

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 Ohio Rules of Professional Conduct, the Ohio Code of Judicial Conduct, and the Attorney's Oath of Office. Pursuant to Section 102.08 of the Ohio Revised Code, the requester of the opinion may reasonably rely on the opinion as it applies to Ohio Ethics Law and related statutes.