

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 2009-10 **Issued December 4, 2009**

SYLLABUS: A judge may thank jurors for their service by a verbal expression of appreciation, a letter of appreciation, a certificate of appreciation, or a small but dignified memento, such as a bookmark. A memento, such as a bookmark, may be imprinted with the judge's name, picture, and a historic quote regarding jury service. Thanking jurors for their service is a courtesy that judges may extend in an election or non-election year. Preferably, a judge's thanks to jurors would be extended soon after the jury service is completed. A judge should use a uniform method of thanking the jury that is in keeping with the dignity of jury service and the furtherance of the administration of justice. In thanking jurors for their service, a judge should not discuss the merits of the case; and should not commend or criticize the jurors for their verdict. In thanking jurors for their service, a judge should carefully consider whether it is prudent to do so at personal expense, rather than at court expense. Applying the advice offered by the Ohio Elections Commission in Op. 89-4, if a judge at personal expense distributes items with the judge's name and office for the purpose of promoting a possible future candidacy, the expenditure reporting requirements under R.C. 3517.10 might be triggered.

OPINION: This opinion addresses a question regarding a judge's distribution of bookmarks to jurors, at personal expense.

Is it proper for a judge, at personal expense, to distribute bookmarks, imprinted with the judge's name, picture, and a historic quote regarding jury service, to jurors who serve in the judge's courtroom?

A judge has an ethical duty to be courteous to jurors. Rule 2.8(B) of the Ohio Code of Judicial Conduct requires that "[a] judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control."

A judge has an ethical duty to act in a manner that promotes confidence in the judiciary. Rule 1.2 requires that "[a] judge shall act at all time in a manner that promotes public

confidence in the *independence, integrity, and impartiality* of the judiciary, and shall avoid *impropriety* and the appearance of *impropriety*.”

A judge has an ethical duty to refrain from using the prestige of office to advance the judge’s economic or personal interests. Rule 1.3 states that “[a] judge shall not abuse the prestige of judicial office to advance the personal or *economic interests* of the judge or others, or allow others to do so.”

A judge must balance these ethical duties. A judge’s actions toward a jury must not be discourteous; must not undermine public confidence in the judge’s independence, integrity, or impartiality; and must not be undertaken solely to advance the judge’s personal or economic interests, such as to promote the judge’s reelection.

Ohio has never addressed the ethical propriety of a judge thanking jurors for their service by sending a letter or by distributing small tokens of appreciation, such as bookmarks, imprinted with the judge’s name, picture, and a historic quote regarding jury service, to jurors who serve in the judge’s courtroom.

Several states have addressed the ethical propriety of a judge writing letters of thanks to a jury. Alabama issued four advisory opinions on the topic. In 1995, the Alabama Judicial Inquiry Commission advised that a judge may send commendatory letters to jurors at the conclusion of service if the conditions in past advisory opinions are met.¹ An earlier 1983 Alabama Inquiry Commission advisory opinion, addressing the question of whether letters of thanks signed by all judges of the circuit could be sent at court expense, advised that “the Canons of Judicial Ethics do not preclude suitable commendatory letters being sent to veniremen at court expense and signed by all circuit judges where the letters are approved by court rule and where such letters accurately reflect their participation or the participation of the signatory judge in the judicial process.”² A 1982 Alabama Inquiry Commission advisory opinion, advised that a circuit judge may send commendatory letters to jurors at his own expense so long as the action does not conflict with an earlier 1982 advisory opinion (Op. 82-126) and a judge is mindful that under Canon 1 the letters should be sent only to jurors who participated in a proceeding over which the judge sending the letter presided.³ The earlier 1982 Alabama Inquiry Commission advisory opinion advised that “no judge should send commendatory letters to jurors using court stationery, stamps, or personnel except where such letters are either authorized by court rule or expressly permitted by the presiding circuit judge.”⁴

An Arizona Supreme Court, Judicial Ethics Advisory Committee, advised that “Canon 3(B)(10) authorizes expressions of appreciation for jury service and prohibits only the commendation or criticism of a particular verdict. Certificates or letters of appreciation

¹ Alabama, Judicial Inquiry Commission, Op. 95-552 (1995).

² Alabama, Judicial Inquiry Commission, Op. 83-178 (1983).

³ Alabama, Judicial Inquiry Commission, Op. 82-160 (1982).

⁴ Alabama, Judicial Inquiry Commission, Op. 82-126 (1982) (Clarification of Op. 82-126).

that simply acknowledge a juror's performance of his or her civic duty without reference to the outcome of a particular case are entirely consistent with this canon."⁵

A California, Committee on Judicial Ethics of the California Judges Association, advised that "[i]t is permissible for a judge to write a thank you letter to jurors and solicit constructive criticism of how the court proceedings are conducted, including having the jurors fill out a questionnaire with comments regarding the proceedings and court personnel."⁶

A New York, Advisory Committee on Judicial Ethics advised that "the judge may thank the jurors for their service but should not praise or criticize them for their verdict. Accordingly, the practice of writing letters to the jurors expressing the court's thanks for their service does not violate any ethical standards."⁷

A Texas Committee on Judicial Ethics advised that a judge may write letters of appreciation to persons who have served as jurors in the court, but that the judge "should avoid the appearance of impropriety in selecting the content of the letter" and "should also mail the letter immediately after the service has been rendered on a routine basis."⁸

As to Ohio, it is this Board's view that a judge is permitted to thank jurors for their service, pursuant to the duty of courtesy under Rule 2.8(B). A verbal expression of appreciation, a letter of appreciation, a certificate of appreciation, or a small but dignified memento of jury service are all appropriate methods of thanking a jury. The giving of bookmarks to jurors is but one way of thanking jurors for their service. Thanking jurors for their service is a courtesy that a judge may extend in an election or non-election year.

In thanking jurors, a judge should take certain measures to uphold the requirements of Rule 1.2 (acting in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and avoiding impropriety and the appearance of impropriety) and Rule 1.3 (not abusing the prestige of office to advance the judge's personal or economic interests).

Preferably, a judge's thanks to jurors would be extended soon after the jury service is completed using a uniform method of thanking the jury that is in keeping with the dignity of the juror's service and the furtherance of the administration of justice.

In thanking jurors for their service, the method of courtesy extended should be a matter of thoughtful court policy in keeping with the dignity of the juror's service and the furtherance of the administration of justice. As a California committee on judicial ethics advised "[a] judge should be careful of giving any mementos to the jury which in any way makes light of their services or the court."⁹ If an individual judge or a court chooses

⁵ Arizona, Sup.Ct., Judicial Ethics Advisory Committee, Op. 01-01 (Reissued Jan. 22, 2003)

⁶ California Judges Association, 2001/2002 Committee of Judicial Ethics, Op. 52 (2002).

⁷ New York, Advisory Committee on Judicial Ethics, Op. 95-53 (1995).

⁸ Texas, Committee on Judicial Ethics, Op. 69 (1983).

⁹ California, 2001/2002 Committee on Judicial Ethics, California Judges Association, Op. 52 (2002).

a memento, such as a bookmark, as a method to thank jurors for service, it should be dignified in design. Each individual judge or court may decide whether or not a picture of a judge or judges is to be included on a letter, certificate, or memento to jurors.

In thanking jurors for their service, a judge should carefully consider whether it is prudent to do so at personal expense, rather than at court expense. Judges are reminded that the Ohio Elections Commission advised in Op. 89-4 that “[a]n office holder who purchases with his personal funds such items as emery boards, rulers, or pencils with his [her] name and office printed thereon and distributes them for the purpose of promoting a possible future candidacy . . . must report such expenditures in compliance with Revised Code section 3517.10.” The Ohio Elections Commission explained that “[t]he purpose for the distribution of the described items . . . determines whether there is a contribution or expenditure under Chapter 3517 of the Revised Code.”

Further, in thanking jurors for their service, a judge should not commend or criticize the jurors for their verdict. Rule 2.8(C) requires that “[a] judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.” The act of thanking jurors for their service must be distinct from commending or criticizing jurors for their verdict.

Finally, in thanking jurors for their service, a judge must not discuss the merits of the case. Comment [3] to Rule 2.8 of the Ohio Code of Judicial Conduct states: “A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.” As required by Rule 2.9(A), “[a] judge shall not initiate, receive, permit, or consider *ex parte communications*,” except as permitted in divisions (A)(1) through (A)(6) of the rule. And, as required by Rule 2.10(A), a judge “shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter *pending* or *impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.”

In conclusion, the Board advises as follows. A judge may thank jurors for their service by a verbal expression of appreciation, a letter of appreciation, a certificate of appreciation, or a small but dignified memento, such as a bookmark. A memento, such as a bookmark, may be imprinted with the judge’s name, picture, and a historic quote regarding jury service. Thanking jurors for their service is a courtesy that judges may extend in an election or non-election year. Preferably, a judge’s thanks to jurors would be extended soon after the jury service is completed. A judge should use a uniform method of thanking the jury that is in keeping with the dignity of jury service and the furtherance of the administration of justice. In thanking jurors for their service, a judge should not discuss the merits of the case; and should not commend or criticize the jurors for their verdict. In thanking jurors for their service, a judge should carefully consider whether it is prudent to do so at personal expense, rather than at court expense. Applying the advice offered by the Ohio Elections Commission in Op. 89-4, if a judge at personal expense distributes items with the judge’s name and office for the purpose of promoting a

possible future candidacy, the expenditure reporting requirements under R.C. 3517.10 might be triggered.

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.