

Gifts or Grifts: Ethics Limitations for Attorneys, Judges & Judicial Staff

Martin Mitchell

Adjunct Associate Professor of Law

at Washington College of Law, American University

Alternative title

- MR. MITCHELL'S MANUAL OF MANNERS FOR MAGISTRATES, NOT MISCREANTS

Disclaimer

- *Disclaimer: The views in this presentation are those of the author and do not necessarily reflect the official policy or position of the the Department of Veterans Affairs (VA), the Department of Defense (DOD), or the United States Government (USG).*

NOT AN OGE Brief

- There are limits on gifts for federal employees
- This brief does not address these limitations
- For any questions about gifts that may be related to your status as a federal government employee, please consult your local OGE ethics official
- This brief is focused on Judicial Ethics and related Bar Rules of Professional Conduct

Not a Financial Disclosure Lecture

- Although Ethics rules may be a factor with financial disclosures
- And
- It may be an ethics violation to NOT disclose
- This lecture is not focused on the financial disclosure requirements

Sources of Law

- Code of Conduct for US Judges
- State Bar rules
 - To Include Virginia State Bar Rules
- State Bar disciplinary decisions and advisory opinions

Code of Conduct for US Judges

- Canon 1: A Judge Should Uphold the **Integrity and Independence** of the Judiciary
- Canon 2: A Judge Should **Avoid Impropriety** and the Appearance of Impropriety in All Activities
- Canon 3: A Judge Should Perform the Duties of the Office **Fairly, Impartially and Diligently**
- Canon 4: A Judge May Engage in Extrajudicial **Activities That Are Consistent** with the Obligations of Judicial Office
- Canon 5: A Judge Should **Refrain from Political Activity**

Bar Rules

- Rule 1.1, Competence
- Rule 3.3, Candor to Tribunal
- Rule 8.3, Reporting Misconduct
- Rule 8.4, Misconduct

Common Themes to the Judicial Canons

- Impartiality
- Avoid Appearance of Impropriety
- Integrity and Independence
- Minimize Conflicts
- What happens if you can't be impartial?
 - Recusal !!!
 - It's your duty to not perform your duty
- Not just for judges!
 - Canons also tell us how attorneys can and cannot interact with a judge

Common Themes to Bar Rules

- **A Lawyer's Responsibilities**
- A lawyer is a representative of clients or a neutral third party, an officer of the legal system and a public citizen having **special responsibility for the quality of justice.**
- - Rules of Supreme Court of Virginia
- (emphasis added)

See Something, Say Something

Virginia Edition

- **8.3 Reporting Misconduct**

1. *A lawyer having reliable information* that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law shall inform the appropriate professional authority.
2. *A lawyer having reliable information* that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

See Something, Say Something

DC Bar Edition

- **Rule 8.3: Reporting Professional Misconduct**
- (a) *A lawyer who knows* that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) *A lawyer who knows* that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or other law.

Know your State Bar Rules

- Virginia – Requires reporting based on having reliable information
- DC Bar – Requires reporting based on knowledge
- What is the difference?
- Why the difference?

No Judge is an Island

- Many of the examples that follow are focused on judicial misconduct
- However, attorneys were often the source of improper gifts, bribes or other illicit benefits
- Attorneys had a duty and obligation under Rule 8.4 to NOT:
 - (d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;
 - (e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

No Blabbing & No Bribes!

- Judge Maggio, Circuit Court Judge
 - aka geauxjudge on tiggerdroppings.com
- Posts about closed adoption by actress
 - Nonpublic information
 - “a friend who is a judge did her adoption today”
 - Q “are you a judge too”
 - A “Yes”
- “I have a bunch of public intoxication cases in 20 minutes and just can’t wait to slam the gavel”
- Results: 10 years in jail
- Took a bribe to reduce a verdict of \$5.2M to \$1M
- Ethics Violation: Permanent bar from judicial service

Flipped: Penalty For An Attorney

- Disbarment
- Criminal Liability

Racketeering is a Crime

- “Kid for cash” scheme
- 2 Pennsylvania Judges helped shut down county run facility and instead sent kids to prison
- “Ciavarella and Conahan abandoned their oath and breached the public trust”
- Judge Mark Civarella took \$997,600 kick back
 - 28 years in prison
- Judge Michael Conahan pled guilt to racketeering
 - 17 years in prison
- \$200 million in damages to the victims

The Other Side of the Crime

- Attorney Discipline
 - Disbarred
 - 18 months in prison

This IS Texas

- Texas state district judge has been convicted of bribery and obstruction
- 3 Bribes to release an attorney's clients on bond
 - \$520 for first 2 bribes
 - \$5,500 for the 3rd bribe
- "Corrupt judges can harm a community's confidence in our judicial system."
- 60 months in jail, 2 years supervised release

Attorney Discipline

- Relinquished law license
- Two-year prison sentence

Don't Make a Judge a Criminal

- Bribes to perform or not perform official duties are clearly illegal
- Your Bar admission and judicial status may be the least of your worries

Attorney Obligations

- Don't bribe judges!
 - Rule 8.4(b) Do not commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
 - Rule 8.4 (d): knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- Report Judicial Misconduct and Attorney Misconduct
 - Rule 8.3

Attorneys

- Both Intent & Appearance are at issue
- You have obligations
 - Do you want to risk you law license on the “I didn’t *know* it was a violation to....” defense?

How do you know what is against Judicial Ethics rules?

- Read the Rules
- Common Sense
- CLE Lectures

Canon 2:
A Judge
Should
Avoid
Impropriety
and the
Appearance
of
Impropriety
in all
Activities

- (B) *Outside Influence*. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge

§ 620 Judicial Conference Regulations on Gifts

- § 620.10 Authority Ethics Reform Act of 1989, Pub. L. No. 101-194, §§ 301 and 303, 103 Stat. 1716, 1745 1747 (1989), as amended.
- These regulations are promulgated by the Judicial Conference of the United States under the authorities of 5 U.S.C. §§ 7351(c), 7353(b)(1), and 7353(d)(1)(C)

§ 620.25 Definition of Gift

- “Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value but **does not include**:
 - (a) social hospitality based on personal relationships;
 - (b) modest items, such as food and refreshments, offered as a matter of social hospitality;
 - (c) greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

Not a Gift



- Not an Ostrich

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§ 620.35 Acceptance of Gifts by a Judicial Officer or Employee;

- A judicial officer or employee is **not permitted to accept a gift from anyone who is seeking official action from or doing business with the court** or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer's or employee's official duties

§ 620.35 Gift Exceptions

- (3) the gift consists of an invitation and travel expenses, including the cost of transportation, lodging, and meals for the officer or employee and a family member (or other person with whom the officer or employee maintains both a household and an intimate relationship) to attend a bar-related function, an educational activity, or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

§ 620.35 Gift Exceptions

- (4) the gift is from a relative or friend, if the relative's or friend's appearance or interest in a matter would in any event require that the officer or employee take no official action with respect to the matter, or if the gift is made in connection with a special occasion, such as a wedding, anniversary, or birthday, and the gift is fairly commensurate with the occasion and the relationship

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- (8) \$50 per occasion/\$100 per year (not cash!)

Christmas Gifts?

- QUESTION : May a judge accept nominal Christmas gifts such as boxes of chocolates and poinsettias from persons whose interests are likely to come before him?

Who is giving the gift?

- Person who is likely to appear before the judge
- But inter-office parties of chamber's staff is ok!

Current Canon is Canon 4C(5).



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
STATE CAPITOL
700 CAPITAL AVENUE, SUITE 200
FRANKFORT, KENTUCKY 40601-3489

ANTHONY M. WILHOIT
COURT OF APPEALS

DANIEL SCHNEIDER
CIRCUIT COURT

B. M. WESTBERRY, CHAIRMAN
ATTORNEY

STEPHEN P. RYAN
DISTRICT COURT

UHEL O. BARRICKMAN
ATTORNEY

JUDICIAL ETHICS OPINION

JE-86

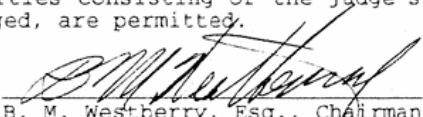
March 7, 1995

QUESTION: May a judge accept nominal Christmas gifts such as boxes of chocolates and poinsettias from persons whose interests are likely to come before him?

ANSWER: No. The Judicial Ethics Codes prohibits a judge from accepting even nominal Christmas gifts from persons whose interests are likely to come before him, and the prohibition extends to the judge's staff.

The question presented is whether a judge may accept nominal Christmas gifts such as boxes of candy and poinsettias from persons whose interests are likely to come before him. This question is governed by Canon 5, and the Code prohibits such gifts. Jeffrey M. Shaman, Steven Lubet and James J. Alfini, Judicial Conduct and Ethics § 8.13 (1990); E. Wayne Thode, Reporter's Notes to Code of Judicial Conduct 85 (1973); Canon 5C(4)(c). The prohibition extends to the judge's staff. Arizona Ethics Opinion 90-5 (March 27, 1990).

However, inter-office parties consisting of the judge's own staff, where gifts are exchanged, are permitted.


B. M. Westberry, Esq., Chairman
Judicial Ethics Committee

Fun or Mandatory Fun



Gifts of Food?



Food Platter from Former Judge?

- May a former judge who now appears as a lawyer gift a food platter to judge & staff
- OR
- May local bar association gift the food platter w/former judge delivering the food platter
- Answer?

Anonymous Food Donation?

- Whether, as a full-time judge, it is ethically permissible to accept an anonymous gift of food, modest in value, which was left at your chambers?
- Answer:

Free Bloomin' Onions?

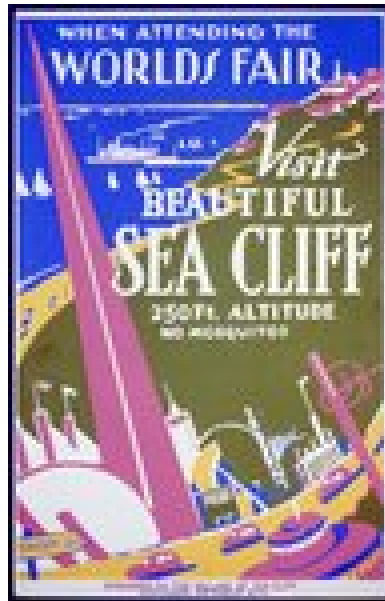
- if his/her judicial association may accept a modest in-kind donation of “finger food” from a local restaurant for an event celebrating a particular cultural heritage.
- It is free, open to the public, and features a keynote speech from a member of the legal community, and will be held at a courthouse.

Have the will to party

- If the court may host a holiday party using approximately \$1,000 bequeathed to it for this purpose, as approved by the surrogate's court?

Have the will to party

- If the court may host a holiday party using approximately \$1,000 bequeathed to it for this purpose, as approved by the surrogate's court?
- Caution about the guest list - make it open to ALL attorneys
- Yes, even that ONE...



Gifts of Travel?

No Mosquitos!

Free trip to Union Convention

- invitation from a trade union to attend strictly social components of the union's upcoming member convention, specifically a dinner and guest accommodations for the judge and the judge's spouse for one night, followed by breakfast the next day.
- long-time close personal friendships with many members of the union, which also supported the judge's recent candidacy for election or re-election to judicial office.
- none of the members or the union itself have appeared or are likely to appear before the judge

Prosecutor's Annual Conference?

- Judge as a guest of their spouse, a multi-day annual conference, located in a different part of the state from where you preside, attended solely by prosecutors
- attend the association's annual dinner, a social event at which the only business conducted is the installation of new officers
- Judge will not attend any of the substantive programs given at the conference but, instead, will simply be staying at the hotel hosting the conference

Lavish Law Firm party?

- Attend your former law firm's private anniversary dinner for current and former employees
- The invitation extends beyond ordinary social hospitality based on the event's venue
- The firm does not appear before you, and it is very unlikely any of the lawyers will appear before you.

Box seats at Sporting Event

- A judge asks if they may attend sporting events or concerts in a “luxury box” sponsored by the employer of the judge’s spouse, as the spouse’s guest.
- The judge’s spouse is a high-level officer of a company in the hospitality/entertainment field, which, as a part of its operations, purchases reserved luxury box seats for sporting events and concerts and provides tickets to “customers, staff and vendors” for business purposes.
- The judge’s spouse is “required to host a luxury box a few times each year” and “is permitted to bring a guest.”
- The judge indicates that the company does not have any matters pending in the judge’s court and plans to recuse from any such matters in the future.
- The judge further states that those in attendance in the luxury box are unlikely to include attorneys.
- The judge also asks, in the alternative, if they may visit the spouse in the luxury box if they have independently purchased tickets to the event.



Non-profit?

- Does the character of the donor matter?

Nonprofit Overseas trip?

- not-for-profit entity's overseas trip
- the purpose of the trip is primarily educational in nature, as is intended to "deepen understanding" of a particular region of the world "within the international academic community."
- The entity covers all costs of the trip, including "airfare, hotels and the lectures/seminars."
- The entity does not appear before your court.

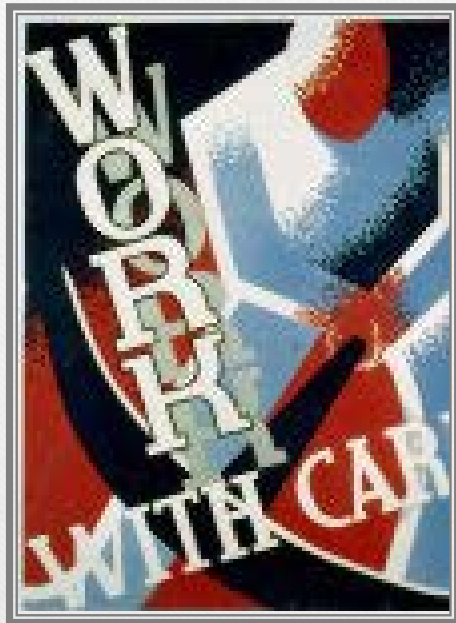
Artist Colony?

- A full-time judge who writes non-fiction as an extra-judicial activity asks whether he/she may apply to and, if accepted, reside for one month in an artists' colony to finish a book.
- The colony is funded by an endowment established more than 100 years ago, by contributions solicited from individuals and organizations on an ongoing basis, and by grants from the National Endowment for the Arts and the New York State Council on the Arts.
- Members of the general public may apply to reside at the colony.
- Although participants receive no payment or salary, they receive free room and board valued at \$10,000 per month, and their names are listed in an annual report about the colony along with their photographs and biographical information.
- The judge notes that he/she will take annual leave for the time he/she spends at the artist's colony

Back to College Dorm?

- whether you may accept an invitation to be a Fellow in residence at an undergraduate dormitory of your college alma mater.
- You indicate that you will receive an honorarium for the fellowship, meals will be provided and travel expenses covered.
- In addition, you plan to take annual leave for the proposed period of stay and the preparation for your talks will take place after business hours.
- Moreover, you will not comment on any pending or impending case or in any way indicate a predisposition to decide a case in a particular way.

Take Aways for Attorneys, Judges & Judicial Staff



- 1. Don't be a Criminal
- 2. Know the definition of Gift
- 3. Know the Exceptions
- 4. Know when & what to Report
- 5. You can always politely say NO