

**JUDICIAL ETHICS COMMITTEE**  
**Advisory Opinion No. 10-1**  
**Issued September 22, 2010**

Issues

May a judge attend a reception hosted by the Maine Trial Lawyer's Association ("MTLA") honoring past presidents of the organization, followed by a dinner in recognition of the career of a prominent Maine trial attorney? If so, may a judge attend the function at a reduced rate offered by the MTLA so as to avoid making a monetary contribution to the organization?

Statement of Facts

The MTLA is a statewide trial advocacy group whose positions generally favor the plaintiff's bar. However, it includes both lawyers who ordinarily represent plaintiffs and some lawyers who ordinarily represent defendants. The MTLA is hosting a reception in which they will honor past presidents of the organization for their roles in building the organization. Immediately following the reception, the MTLA is sponsoring a dinner in recognition of the honoree's career and his contributions to the Maine legal community.

Generally, tickets to the reception and dinner cost \$65.00, of which \$45.00 represents the actual cost of the event, and \$20.00 comprises a contribution to the MTLA. However, the MTLA has offered to sell tickets to judges at the reduced price of \$45.00 so that judges may attend the event without making a contribution to the organization. Members of the general public do not have the option of paying the reduced ticket price.

Applicable Provisions

Canons 2A and 2B of the Maine Code of Judicial Conduct provide, in pertinent part, as follows:

- A. Promotion of Public Confidence.** A judge shall . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. Preventing Improper Influence.** A judge shall not . . . convey or permit others to convey the impression that they are in a special position to influence the judge.

Similarly, Canon 4A(1) provides that:

- A.** A judge shall conduct all of the judge’s extra-judicial activities so that they do not:
  - (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge.

Further, Canon 4A(B) provides the following:

- B. Avocational Activities:** A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code.

Finally, Canon 4D(5)(a) provides, in relevant part:

**D. Financial Activities.**

- (5) A judge shall not accept, and shall urge the judge’s spouse or dependent children not to accept, a gift, bequest, favor, or loan from anyone except for:
  - (a) a gift incident to a public testimonial . . . or an invitation to the judge . . . to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice.

Discussion

The first issue that must be addressed, as the Committee understands it, is whether it would be proper for a judge to attend the MTLA’s reception for its past presidents and the ensuing dinner in recognition of a prominent trial attorney. For the following reasons,

it is the opinion of the Committee that a judge would ~~ne~~ not violate the Canons by attending these events.

a. Attendance at the Events

Canon 4A(B) specifically allows judges to participate in “extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects” so long as the other Canons are not violated. The events in question appear to fall under the category of “activities concerning the law”, as they are both devoted to highlighting the careers of distinguished members of the Maine bar and paying respect to those members for their various contributions to the local legal system. Further, the MTLA has geared its advertisements for the event towards attorneys and judges, and it does not seem that individuals without a connection to the legal system would have any occasion to attend these events. Thus, as the function is related to the law, a judge may attend unless attendance would lead to a violation of other provisions of the Canons.

The most relevant Canons that must be analyzed to determine whether attendance would be violative of other provisions in the Code are Canons 2A, 2B, and 4(A)(1), all dealing with the appearance of judicial impropriety. In the opinion of the Committee, attendance would not violate these Canons. The functions are aimed at honoring individuals for their past contributions to the legal system, and it is not anticipated that current cases or projects will be discussed. Accordingly, there is no reasonable risk that a topic of discussion at the event would later appear in a case before a judge. Nor would mere attendance at such an event lead one to reasonably believe that the MTLA or the attorney being honored are in a special position to influence the judge. As such, a judge’s

attendance would not undermine judicial integrity within the meaning of Canons 2A and 2B, nor would it cast reasonable doubt upon a judge's ability to remain impartial in future cases involving the MTLA or the individual honored at the event within the meaning of Canon 4(A)(1).<sup>1</sup>

For the above reasons, it is the Committee's opinion that a judge would not violate any of the Canons by attending the function in question.

#### B. Attending at a Reduced Rate

The second and final issue that must be addressed is whether a judge may attend the function for the reduced rate of \$45.00 without violating the Code of Judicial Conduct. After careful consideration, it is the opinion of the Committee that a judge may attend the function for a reduced rate without violating the Code.

A similar question to the one at issue was analyzed in Maine Judicial Ethics Committee Advisory Opinion No. 93-1. In that instance, the Committee determined that a judge could ethically attend the Justice Louis Scolnik Award Dinner, an annual event hosted by the Maine Civil Liberties Union ("MCLU") in honor of individuals who furthered the cause of civil liberties. However, the price of tickets to the dinner included a donation to the MCLU. To remedy that problem, the MCLU offered to sell tickets to judges that reflected solely the price of the dinner. In Opinion No. 93-1, the Committee determined that allowing judges to attend the dinner at a reduced price was "favor"

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<sup>1</sup> It has long been the opinion of the Committee that a judge may ethically attend an honorary function in order to pay respect to the guest of honor. *See* Me. Jud. Ethics Comm., Advisory Op. No. 93-1 (May 24, 1993).

within the meaning of Canon 5(C)(4)<sup>2</sup> because other individuals did not have the option to purchase a ticket without making a contribution to the MCLU. Thus, the Committee determined that the reduced ticket price constituted a “technical violation” of the Code.

In hindsight, an unfortunate result of Opinion No. 93-1 is that it has created a “catch-22” for judges. On the one hand, the opinion states that judges can attend honorary dinners sponsored by various law-related associations, even when those dinners are also partly fundraisers. On the other hand, the opinion is clear that judges cannot contribute to the fundraiser, nor may they pay a reduced ticket price so as to avoid making such a contribution.<sup>3</sup>

After revisiting this issue, the Committee feels it is a mischaracterization to consider the reduced ticket price a “favor.” It is important to note that the sole purpose of the reduced ticket price is simply to allow judges to attend the dinner without raising any issues under the Code of Judicial Ethics—it is not an attempt to confer special benefits upon judges at the detriment to others. If the reduced rate were not available, judges might not be able to attend the event without raising questions as to whether they might not be perceived as impartial in tort cases brought by the plaintiff’s bar. The Committee feels that there is a distinct benefit to judicial attendance at functions aimed at honoring prominent members of the bar for their past contributions to the Maine legal system. By allowing judges to accept a reduced ticket price under the circumstances as presented, the Committee feels that the undesirable result of Opinion No. 93-1 is avoided while still

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<sup>2</sup> This Canon has been re-codified at Canon 4D(5), *supra*.

<sup>3</sup> Further, the opinion’s purported solution to the problem—allowing all attendees to pay the reduced ticket price—is an option entirely outside the control of the judiciary.

adhering to the requirements and general intent of the Code.<sup>4</sup> Therefore, it is the opinion of the Committee that the reduced ticket price does not constitute a “favor” within the meaning of Canon 4D(5).

Alternatively, even if the reduced ticket price could be considered a “favor”, it is the opinion of the Committee that a judge may still accept a reduced ticket price pursuant to Canon 4D(5)(a). As outlined above, the Committee believes that the MTLA function constitutes an activity that is devoted to the legal system. Under Canon 4D(5)(a), judges may accept favors that are “an invitation to the judge . . . to attend a bar-related function.” Here, the reduced ticket price allows judges to attend a function honoring a prominent attorney that the judges might not otherwise be able to attend because they would have to make a contribution which might lead to questions as to their impartiality. Accordingly, a judge could accept the reduced ticket price without violating the Code.

### Conclusion

A judge may attend the MTLA reception in honor of the organization’s past presidents, as well as the MTLA dinner in honor of a prominent trial attorney. Further, a judge may attend the function at a reduced rate so as to avoid making a monetary contribution to the MTLA.

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<sup>4</sup> The Florida Judicial Advisory Ethics Committee reached a similar result in Advisory Opinion No. 2000-20. At issue in that instance was whether a judge may accept an invitation to a luncheon sponsored by various law firms and groups of lawyers when the hosts of the event waived the attendance fee for judges. In analyzing a Florida Code of Judicial Conduct Canon that is very similar to Maine Code of Judicial Conduct Canon 4D(5), the Florida Advisory Committee determined that “no conceivable threat” to a judge’s impartiality could result from accepting the waived attendance fee.