

JUDICIAL ETHICS COMMITTEE
Advisory Opinion 93-1
Issued May 24,1993

Re: Attendance at MCLU Scolnik Award Dinner

The following opinion is adopted as the formal response of a majority of the Judicial Ethics Committee present and voting on May 6, 1993.

Question: May a judge attend the annual Justice Louis Scolnik Award dinner sponsored by the Maine Civil Liberties Union?

Response: In general, attendance at such a dinner would not violate the Code of Judicial Conduct. However, the MCLU's current practice of allowing judges to attend the dinner at a lower rate than other persons creates a problem under Canon 5(C)(4).

The annual Justice Scolnik dinner is an occasion honoring a member of the legal community who the MCLU believes has shown a special commitment to the principles of civil liberties. The cost of a dinner reservation for all attendees except judges includes a contribution to the Maine Civil Liberties Union. The

MCLU's practice, however, is that judges may pay only the charge for the dinner and are not asked to pay the additional amount denominated as a contribution.

The first issue is whether any problem is created by a judge's attendance at the dinner. The most relevant provision in the existing Code of Judicial Conduct is Canon 5B, which provides that a judge may participate in civil and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties.¹ Canon 5B goes on to state that a judge may serve as an officer or director of an educational, religious, charitable, fraternal, or civil organization not conducted for the economic or political advantage of its members. In the latter role, a judge should not solicit funds and should not be a speaker or the guest of honor at an organization's fund raising events, Canon 5(B)(1), but the Code expressly provides that the judge may attend such events. Id.

In our opinion, attendance at a Scolnik dinner would not reflect adversely upon a judge's impartiality. A judge might attend such a

¹Also relevant is Canon 2A, which provides that a judge should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

dinner solely to pay respect to the guest of honor. Even if the judge's attendance were construed as supportive of the MCLU's general purpose to preserve and protect civil liberties, this does not suggest that the judge would agree with the specific position advanced by the MCLU in any given case. Since Canon 5(B)(1) specifically allows a judge to attend an organization's fund raising events, the fact that the dinner is partially used for fund raising does not alter the conclusion that attendance at such a dinner would not violate the existing Code.

A judge's attendance at a Scolnik dinner would also not violate the proposed amendments to the Code of Judicial Conduct that are currently being considered by the Supreme Judicial Court. In this instance the relevant provisions are proposed Canons 4(A)(1) and 4(C)(3), which embody the existing provisions of Canon 5B. In addition, proposed Canon 4(C)(3)(a) provides that a judge shall not serve as an "officer, director, trustee or non-legal advisor" of an organization that is likely to be engaged in proceedings that would come before the judge. While this proposed provision is not contained in the existing Code, it would, if adopted, only preclude a judge from serving as an officer or director of the MCLU and

would not preclude a judge from attending a dinner sponsored by the MCLU.

The above analysis assumes that there are no specific additional circumstances which might compromise the judge's impartiality or the appearance of impartiality. For instance, a different conclusion might be reached if it were apparent to the judge in advance that the speakers at the dinner would advocate positions relating to specific cases under circumstances where the judge's attendance might reasonably be interpreted as an endorsement of those positions. In such a case, attendance at the dinner might create an appearance of partiality in favor of the MCLU's positions that could violate Canons 2A and 5B. See Matter of Bonin, 378 N.E.2d 669, 682-84 (Mass. 1978).

The remaining issue is whether any problem is created by the MCLU's practice of permitting judges to attend the dinner at a lower cost than other persons. This practice is designed to allow judges to attend the dinner without contributing to the MCLU. This eliminates the possibility that a judge's contribution would be used to finance litigation which might come before the judge, which could reflect upon the judge's impartiality and create a

problem under Canon 3(C)(1) (disqualification required in any case where judge's impartiality might reasonably be questioned).

However, it is troubling that one result of this practice (however well-intended) is to provide judges with a benefit not available to others -- the ability to attend the dinner at a lower price. This appears to implicate Canon 5(C)(4), which provides as follows:

Neither a judge nor a spouse or dependent child of a judge 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; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a spouse or dependent child of a judge 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 spouse or dependent child of a judge 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, and the judge reports it as provided in Canon 8.

It is the Committee's opinion that the lower rate offered to judges (even though designed to avoid any potential appearance of partiality that might result from a judge's contribution to the MCLU) constitutes a "favor" within the meaning of Canon 5(C)(4). Moreover, none of the exceptions to that Canon appears to apply. Specifically, the dinner does not fit the definition of a "bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice" within the meaning of Canon 5(C)(4)(a) because it is primarily a social, not a legal event. In addition, the MCLU is plainly an organization whose interests are likely to come before the judge. See Canon 5(C)(4)(c).

Thus, the judge's ability to attend the dinner at a lower cost constitutes a technical violation of Canon 5(C)(4). This could be remedied by a change in the ticket price structure so as to offer all attendees the option to attend at cost and non-judges the additional option to make a contribution to the MCLU and thereby attend as a patron of the organization.

JUDICIAL ETHICS COMMITTEE MINORITY REPORT
Advisory Opinion 93-1
Issued: May 24, 1993

Re: Attendance at MCLU Scolnick Award Dinner

Judges should avoid any occasion that might give the appearance of impropriety. Under our system of government the court's reputation is too important to place at even the slightest risk. The fact that the question of the propriety of the attendance of judges at the MCLU Justice Scolnick Dinner comes up year after year is reason enough in and of itself, I think, to give one pause concerning its correctness. This repeated attention, in my view, should serve as fair warning that there is indeed an underlying uneasiness about such attendance. Nor does the current "no contribution" practice guarantee protection to the court from the possibility that the public might view the attendance of judges at said dinner as being some small evidence of partiality. The surest way to eliminate the chance of any such perception is not to go. For these reasons I think it would be better that judges do not attend this function.

Allan Woodcock, Jr.