

What Gifts May Judges' Family Members Accept?

In An Ethics Guide for Judges and Their Families, author Cynthia Gray explains the ethical restraints under which judges operate. This article should be compared to your jurisdiction's Code of Judicial Conduct, probably online. The following excerpts from An Ethics Guide for Judges and Their Families based on the 1990 "ABA Model Code of Judicial Conduct" apply to some requirements found in an ABA Canon.

The code notes that "a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intending to influence the judge." Commentary to Canon 4D(5)(a). The code acknowledges, however, that a judge cannot "reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household." The code requires a judge to: inform family members residing in the judge's household of the constraints upon the judge's receipt of gifts, and discourage those family members from violating them.

Discouraged gifts

Under Canon 4D(5), a judge must urge family members residing in the judge's household not to accept any gift, bequest, favor, or loan from a party, attorney, or other person:

- who has come or is likely to come before the judge, or
- whose interests have come or are likely to come before the judge.

Permitted gifts

Canon 4D(5) permits a judge and, therefore, members of the judge's family to accept from anyone who has not come or is not likely to come before the judge:

- An invitation to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice.
- A gift incident to a public testimonial.
- Books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use.
- A gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.
- Ordinary social hospitality, which has been defined as that type of social event or other gift that "is so common among people in the judge's community that no reasonable person would believe that (1) the donor was intending to or would obtain any advantage or (2) the donee would believe that the donor intended to obtain any advantage" (California Advisory Opinion 43 (1994)).
- A gift from a relative or friend for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship.
- A gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would require the judge's disqualification.
- 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 related to judges.

- A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

Code Variations by October 2008

The **California** code provides: “Under no circumstance shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge.” Commentary states that application of that provision “requires recognition that a judge cannot reasonably be expected to anticipate all persons or interests that may come before the court.” The California code notes in commentary that: “In addition to the prohibitions set forth in Canon 4D(b) regarding gifts, other laws may be applicable to judges, including for example, Code of Civil Procedure section 170.0 and the Fair Political Practices Act . . .” and “[j]udges should be aware of the statutory limitations on accepting gifts, including honoraria.” The California code adds that a judge may accept “advances or reimbursement for the reasonable cost of travel, transportation, lodging, and subsistence which is directly related to participation in any judicial, educational, civic, or governmental program, bar related function or activity, devoted to the improvement of the law, the legal system, or the administration of justice.”

The **Delaware and U.S. codes** also limit gifts from a donor who has sought and is seeking to do business with the court or other entity served by the judge. The commentary to the Delaware and U.S. codes also adds: Reimbursement or direct payment of travel expenses may be a gift and, if so, its acceptance is governed by Canon 5C(4) and (5). A judge or employee may receive as a gift travel expense reimbursement including the cost of transportation, lodging, and meals, for the judge and a relative incident to the judge’s attendance at a bar-related function or at an activity devoted to the improvement of the law, the legal system, or the administration of justice.

Kentucky adds to the model code’s list of permitted gifts “customary expressions of sympathy.”

The **Louisiana** code states: “A judge, a judge’s spouse, or a member of the judge’s immediate family residing in the judge’s household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge’s official conduct.”

The **North Dakota** code allows a judge to accept testimonials “only if the donor organization is a professional legal organization interested in the promotion of justice.”

The **Wisconsin** code defines gift as “the payment or receipt of anything of value without valuable consideration.” The Wisconsin code expressly permits a judge to accept: Anything of value if the activity or occasion for which it is given is unrelated to the judge’s use of the state’s time, facilities, services or supplies not generally available to all citizens of this state and the judge can show by clear and convincing evidence that it was unrelated to and did not arise from the judge’s holding or having held a public office.

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*For a complete article and commentary on other canons, **[An Ethics Guide for Judges and Their Families](#)** by Cynthia Gray is available free online through the National Center for State Courts at (<http://www.ncsc.org/Topics/Judicial-Officers/Ethics/Center-for-Judicial-Ethics/CJE-Publications.aspx>)*

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