

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT

ADMINISTRATIVE ORDER NO:
00-20

IN RE: ADMINISTRATIVE RULES - GIFT POLICY

Whereas, the Judges of the Eighteenth Judicial Circuit met at the Brevard and Seminole May Judges Meetings and discussed the Code of Judicial Conduct; and

Whereas, the Florida Supreme Court Judicial Ethics Advisory Committee has issued Opinion 2000-08 regarding judges and court employees accepting gifts from lawyers, vendors, and other third parties;

Now, therefore, it is Ordered that the Eighteenth Judicial Circuit shall adopt, ratify, and direct all employees to comply with Opinion 2000-08 of the Florida Supreme Court Judicial Ethics Advisory Committee.

Done and Ordered this 27th day of JULY, 2000.

J. PRESTON SILVERNAIL
J. PRESTON SILVERNAIL
CHIEF JUDGE

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Director of Court Services, Diane Clark, Brevard County Sheriffs Department

FLORIDA SUPREME COURT
JUDICIAL ETHICS ADVISORY COMMITTEE
Opinion Number: 2000-08
Date of Issue: March 1, 2000

JUDGES AND COURT EMPLOYEES ACCEPTING GIFTS FROM LAWYERS, VENDORS, AND OTHER THIRD PARTIES

ISSUE

May a judge and/or a court employee accept gifts, including money and redeemable gift certificates, from lawyers, vendors, or other third parties?

ANSWER: A judge may not accept gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge. Additionally a judge is prohibited from accepting gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge. While a judge is required to have staff, court officials, and others subject to the judge's direction and control observe the standards of fidelity and diligence that apply to the judge, the Code of Judicial Conduct does not *directly* preclude court employees from accepting money and redeemable gift certificates from lawyers, vendors, or other third parties. Nevertheless, a judge is ethically obligated to instruct court personnel to act in a manner consistent with the judge's ethical duties and obligations by directing them not to accept such donations.

FACTS

The inquiring judge describes what seems to be a frequent occurrence in some Florida jurisdictions. During the winter holiday season, attorneys, vendors, and others, offer gifts to judges, judicial assistants, bailiffs and other court employees. In the past, the gifts normally consisted of candy, fruit, nuts, stuffed animals and liquor. That tradition is no longer followed and gifts of money, and certificates redeemable for cash, goods, or services are presented to court personnel. The inquiring judge notes that the proliferation of "gift certificates has reached epidemic proportion[s]." The inquiring judge now seeks this committee's opinion whether it is ethical for judges, judicial assistants or other court employees to accept gifts of money or certificates redeemable for money, goods, or services from lawyers, vendors or other third parties.

DISCUSSION

The Code of Judicial Conduct only applies, in whole or in part, to judicial officers and quasi-judicial officers as set forth in the Application of the Code of Judicial Conduct. *See*, Application of the Code of Judicial Conduct. For those not listed in the Application of the Code of Judicial Conduct, including judicial assistants, bailiffs, and other court personnel, the Code does not *directly*, apply to them, though it may *indirectly* impact upon them and their duties. The Code of Judicial Conduct imposes ethical obligations and duties on judges regarding the conduct of others, including court officials and employees. *See*, Canon 3B(4) ("A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and *shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.*") [emphasis added]; Canon 3B(5) ("A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and *shall not permit staff, court officials, and others subject to the judge's direction and control to do so.*") [emphasis added]; Canon 3B(9) ("A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. *The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control.*") [emphasis added]; Canon 2B ("A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; *nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.*").

While the Code of Judicial Conduct does not apply *directly* to judicial assistants, bailiffs, or other court employees, a judge may be subject to discipline by failing to enforce and comply with its mandated directives. *See*, Preamble to the Code of Judicial Conduct ("The text of the Canons and the Sections, including the Definitions and Application Sections, is authoritative.... When the text uses 'shall' or 'shall not,' it is intended to impose binding obligations the violation of which, if proven, can result in disciplinary action.")

Canon 5 of the Code of Judicial Conduct provides, "A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict With Judicial Duties." Generally, a judge is not permitted to accept gifts. *See*, Canon 5D (5) ("A judge shall not accept, and shall urge members of the judge's family residing in the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for...."). However, the Code specifies certain exceptions to the general rule. *Id.* Most notably and germane to this inquiry is Canon 5D (5)(h),

which permits a judge to accept a gift, bequest, favor or loan so long as the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge. If the circumstances are such that a judge may ethically accept such a donation, the judge must report it pursuant to the terms and conditions of Canon 6 of the Code of Judicial Conduct, if the value of the donation exceeds \$100.00.

Assuming the donor of the described gift(s) is someone who is a party or other person who has come or is likely to come or whose interests have come or is likely to come before the judge (including those of attorneys), the judge is precluded from accepting the described gift. *See*, Commentary to Canon 5D(5)(h) ("Section 5D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.").

Canon 3C (2) provides, "A judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge...." This provision, however, does not *directly* preclude court employees from accepting the gifts referred to by the inquiring judge. Rather, it imposes the burden of compliance on the judge to assure that his or her staff performs their duties in a manner that is reflective of the diligence and fidelity of their judge. The acceptance of the delineated gifts by the court employees places the fidelity and the integrity of the court into serious question. This committee therefore recommends that the inquiring judge direct the applicable court employees not to accept the gifts.

This opinion interprets the Code of Judicial Conduct. Readers of it should not construe it as precluding the existence of other rules, regulations, laws or statutes, which might otherwise proscribe the acceptance of such gifts by court employees.

The Judicial Ethics Advisory Committee recognizes that it is extraordinarily difficult, and nearly impossible, for judges to maintain exhaustive oversight over court employees. Those employees are currently without a specific code of ethics apprising them of their respective and expected ethical conduct, duties, and obligations. We should fill this chasm to promote, foster, and insure the public's continued confidence in the integrity of the judicial process. In 1996, Federal Court authorities adopted the Code of Conduct for Judicial Employees. *Attached hereto*. That Code sets forth various canons that describe the ethical expectations and requirements for judicial employees in the federal court system. One member of this committee suggests using "the term 'non-judicial court employee' instead of 'judicial employee' since we are really talking about employees other than judges." This committee recommends that the Florida Supreme Court direct this committee or some other committee to commence drafting a similar code setting forth the ethical standards, duties, and obligations for judicial employees of the State of Florida

REFERENCES

Florida Code of Judicial Conduct: Canons 3B(3); 3B(4); 3B(5); 3C(2); 5D (5); 5D (5)(h) 6

Florida Judicial Ethics Advisory Committee Opinions:

The Judicial Ethics Advisory Committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate. Its opinions are advisory to the inquiring party, to the Judicial Qualifications Commission and to the judiciary at large. Conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on the part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions by the Committee. *Petition of the Committee on Standards of Conduct Governing Judges*, 698 So.2d 834 (Fla. 1997). However, in reviewing the recommendations of the Judicial Qualification Commission for discipline, the Florida Supreme Court will consider conduct in accordance with a Committee opinion as evidence of good faith. *Id.*

For further information, contact The Honorable C. McFerrin Smith, III, Chair, Judicial Ethics Advisory Committee, DeLand Jail Building, 130 West New York Avenue, DeLand, Florida, 32720.

Participating Members: Graham, Attorney at Law, and Judges C. Kahn, L. Kahn, Kotey, Levy, Rodriguez, Silverman, Smith, Swartz, and Thompson.

Copies furnished to:

Justice Peggy A. Quince

All Committee Members

All Members of the J.Q.C.

Office of the State Courts Administrator (Name of judge deleted from this copy)