

# JUDICIAL INQUIRY COMMISSION

DATE ISSUED: AUGUST 23, 2002

ADVISORY OPINION 02-803

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## ACCEPTANCE OF GIFTS ; DISQUALIFICATION WHERE A LITIGANT IS THE JUDGE'S FINANCIAL INVESTMENT ADVISOR

### ISSUES

I. May a circuit judge accept complimentary tickets to college football games or other events from attorneys who reside in counties outside the judge's circuit but who represent litigants in the judge's circuit on occasion?

**Answer:** Not if the attorney then has a pending case before the judge; if the attorney does not have a pending case before the judge, the totality of the circumstances should be examined to determine whether there is an expectation of judicial favor or an appearance of impropriety.

II. What if the attorney began providing the tickets several years before the judge took office, and the attorney has no pending cases in the judge's circuit and does not foresee having any such cases? **Answer:** The canons do not prohibit the judge from accepting tickets under these circumstances.

III. Is a judge disqualified to hear a domestic case where one of the parties is the judge's financial investment advisor? **Answer:** Yes, so long as the party continues to be the judge's principal financial investment advisor.

### FACTS

A circuit judge is offered complimentary tickets to college football games and other events from time to time from attorneys who reside in counties outside the judge's circuit but who represent litigants in the judge's circuit on occasion. There is no actual

expectation of benefit for providing these tickets.

One attorney began providing such tickets to the judge while the judge was in private practice and did so for several years before the judge took office. That attorney has no pending cases in the judge's circuit and does not foresee having any cases in the judge's circuit in the future.

The judge has been assigned to hear a domestic relations case in which one of the litigants is the sole operator of an investment firm's office where the judge has investments and retirement accounts. The litigant is the only broker/advisor in the local office and the only individual with whom the judge deals concerning such investments.

### DISCUSSION

The Commission addressed the acceptance of gifts in some detail in Advisory Opinion 00-748.

Canon 5C(4) addresses the acceptance of gifts: "Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone if it reflects expectation of judicial favor." Canon 2 requires judges to avoid both impropriety and the appearance of impropriety in all their activities.

The Commission has previously decided that the Alabama Canons of Judicial Ethics permit a judge to accept a gift from an attorney who practices before the judge where the

gift neither reflects expectation of judicial favor nor otherwise creates the appearance of impropriety. The Commission noted in this regard that judges and their families may accept “ordinary social hospitality.” The Commission held that, in deciding whether or not to accept a gift, a judge should consider the nature of the gift as well as the circumstances under which and the time when the gift is being given. Advisory Opinions 94-514 and 94-518.

In Advisory Opinion 94-514, the Commission indicated that one circumstance that might very well make acceptance of a gift inappropriate would be that the attorney had a case pending before the judge at the time the gift was offered. As an example, the Commission stated that a gift of a smoked turkey at Christmas may not violate any canon, but a gift of the same turkey on another date by an attorney with a case pending before the judge may very well have the appearance of an attempted bribe or an attempt to curry the judge’s favor.

In Advisory Opinion 94-518, the Commission concluded that a judge could not accept a donation or loan of computer equipment to the individual judge from a litigant or attorney presently appearing in the judge’s court as this would create an appearance of impropriety, causing disqualification of the judge. In *Adams v. Commission on Judicial Performance*, 882 P.2d 358, 379 (Cal.

1994), the California Supreme Court stated that “a judge’s . . . knowing acceptance of favors or benefits having a substantial monetary value from a litigant or attorney whose case presently is pending before the court is inherently corruptive, suggesting improper use of the prestige of office.”

A judge should carefully scrutinize any gift from a litigant or an attorney with a case presently pending in the judge’s court, and should always consider whether the value or nature of an offered gift will create an appearance of impropriety or reflect adversely upon the integrity of the judiciary.

In general, judges should be wary of gifts and should exercise prudence when determining whether a gift is acceptable. There may be gifts of such magnitude or nature that acceptance by a judge would diminish the integrity of the judiciary. Any gift which has the appearance of currying influence with a judge or which casts doubt upon a judge’s integrity under Canon 1 or a judge’s independence under Canon 2 is inappropriate for a judge to accept.

Ohio Board of Commissioners on Grievances and Discipline, Opinion 98-10.

Advisory Opinion 00-748.

The Commission is of the opinion that a judge should not accept a gift of a ticket to a college football game from an attorney who presently has a case pending before the judge. The Commission believes that when an attorney currently has a case pending before the judge, the gift of such a ticket creates an appearance of impropriety, whether or not the attorney actually has an expectation of judicial favor in return for the gift.

If a judge is offered a complimentary ticket to a college football game from an attorney who does not currently have a case pending before the judge, the propriety of accepting will turn on an evaluation of all of the attendant circumstances. Factors the judge should consider include how frequently the attorney has cases before the judge, the monetary value involved, and whether the judge has been singled out as a recipient due to his judicial position.

The Commission conducted a similar analysis in Advisory Opinion 00-748 and concluded that there was no expectation of judicial favor or appearance of impropriety in a district judge accepting an invitation from a bank to attend an annual outing to a dinner and college basketball game to which dozens of public officials, church and community leaders, and friends of the bank also were invited where the bank had no pending cases in the judge's court and was not a frequent litigator in the judge's court.

The Commission finds no expectation of judicial favor and no appearance of impropriety where the attorney offering the tickets has no pending cases in the judge's circuit, does not foresee having any such cases, and has been giving tickets to the judge for years, since before he became a judge.

Disqualification issues such as that presented by the inquiring judge's third question are governed by Canon 3C. Canon 3C(1) provides generally that a judge should disqualify himself in any proceeding in which his "impartiality might reasonably be questioned." Several specific instances in which disqualification is required are listed in subsections of the canon. The first subsection includes cases in which the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts. Canon 3C(1)(a). The Commission assumes the inquiring judge has no bias or prejudice concerning a party in the subject case, nor any personal knowledge of disputed evidentiary facts.

Since none of the other subsections of Canon 3C(1) potentially apply, the question is whether the judge's impartiality could reasonably be questioned under the stated facts. The test under Canon 3C(1) is: "Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?" *In re Sheffield*, 465 So.2d 350, 356 (Ala. 1984). The question under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

The Commission has not previously considered a situation in which a party is a financial advisor to a judge to the degree indicated. In Advisory Opinion 76-3, the judge and a party were in an investment club together. In Advisory Opinion 95-557, the judge's spouse occasionally obtained

investments from an entity affiliated with a party, in her capacity as trustee of a trust.

The relationship the judge describes appears to be one of considerable trust, not unlike that with an attorney or a physician. It is the opinion of the Commission that a person might reasonably question the impartiality of a judge to hear a domestic case in which one of the litigants is the sole operator of an investment firm's office where the judge has investments and retirement accounts, and is the only individual with whom the judge deals concerning those investments. Thus, the Commission concludes that the judge is disqualified to hear the case.

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: [jic@alalinc.net](mailto:jic@alalinc.net).

#### REFERENCES

*Adams v. Commission on Judicial Performance*, 882 P.2d 358 (Cal. 1994).

Advisory Opinions 76-3, 94-514, 94-518, 95-557, and 00-748.

Alabama Canons of Judicial Ethics, Canons 2, 3C(1), 3C(1)(a), and 5C(4).

*Ex parte Duncan*, 638 So.2d 1332 (Ala. 1994).

*In re Sheffield*, 465 So.2d 350 (Ala. 1984).

Ohio Board of Commissioners on Grievances and Discipline, Opinion 98-10.

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