

Committee on Judicial Ethics
Teleconference
Thursday, October 21, 2021

Committee members present via teleconference: Judge James T. Graham (Chair), Judge Robert B. Shapiro, Judge Vernon D. Oliver, Judge Michael P. Kamp and Judge Karen Goodrow (alternate). Staff present: Attorney Adam P. Mauriello, Assistant Secretary. Also present was Attorney Cynthia A. Theran.

MINUTES

- I. Judge Graham called the meeting to order at 9:36 a.m. Although publicly noticed, no members of the public were present.
- II. The Committee approved the minutes of the January 21, 2021 regular meeting and, with Judges Oliver and Kamp abstaining, approved the minutes of the June 24 & 25, 2021 Special Meetings.
- III. The Committee discussed **Informal JE 2021-03** concerning the following issues: (1) May a Judicial Official accept a voucher from the Judicial Branch to attend the Connecticut Legal Conference (CLC), which is a multi-day legal and educational event sponsored by the Connecticut Bar Association (CBA), at no cost to the Judicial Official? and (2) If the answer to the first question is yes, is the Judicial Official required to report his or her receipt of the voucher under Rule 3.15 of the Code of Judicial Conduct?

Each year, the Judicial Branch acquires a fixed number of CLC vouchers from the CBA pursuant to a written Memorandum of Agreement under which the Branch authorizes the CBA to use copyrighted Practice Book and Code of Evidence material in the CBA's Casemaker library in exchange for a limited number of vouchers for judges and Judicial Branch employees to attend CBA events and programs. The MOA is an arm's-length, negotiated business agreement between the Judicial Branch and the CBA. The Committee's understanding is that the Judicial Branch offers the vouchers free of charge to judges and Judicial Branch employees in the course of their employment on a first come, first serve basis. The CBA plays no role in determining who receives or uses the vouchers, and CBA membership is not a prerequisite for a judge or employee to use a voucher. For the 2021 CLC, which took place in June of 2021, the value of the CLC voucher was \$129 for CBA members and \$400 for non-members.

Rule 1.2 states that a judge "should act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality,

temperament, or fitness to serve as a judge.” Rule 3.13 (a) states that a judge “shall not accept any gifts, loans, bequests, benefits, or other things of value, if the acceptance is prohibited by law or would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” Rule 3.13 (c) provides in relevant part that “[u]nless otherwise prohibited by law, or by subsection (a), a judge may accept the following items and must report such acceptance to the extent required by Rule 3.15: ... (2) invitations to the judge and the judge’s spouse, domestic partner, or guest to attend without charge: (A) an event associated with a bar related function or other activity relating to the law, the legal system, or the administration of justice....” Rule 3.15 (a) provides in relevant part that a judge “shall publicly report the amount or value of...(2) gifts and other things of value as permitted by Rule 3.13(c), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$250....”

This appears to be a question of first impression for the Committee. Although the Committee has considered similar issues in the context of invitations from the host of an event; see, e.g., JE 2012-34 (Judicial Official may attend a law school training program at a reduced rate or free of charge subject to several conditions, including that the Judicial Official report the gift under Rule 3.15); JE 2011-13 (Judicial Official may attend bar association annual meeting and dinner free of charge as a guest of the bar association, subject to similar conditions); JE 2013- 25 (same for Judicial Official’s attendance at CT Trial Lawyers Association annual meeting and dinner); it has not previously addressed the issue of whether attendance at such an event is permissible as a benefit provided to a judge by the Judicial Branch, or whether reporting is required in that circumstance. The Committee was unable to locate any relevant authority from other jurisdictions. The Code of Judicial Conduct does not provide a definition of “gift” or “thing of value” for purposes of Rules 3.13 and 3.15, but comment (1) to Rule 3.13 provides some guidance, as follows: “Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge’s decision in a case.” (Emphasis added). The emphasized language indicates that the concept of a gift under the Code is consistent with the common law definition, which focuses on whether there is consideration for a transfer of property. See *Wasniewski v. Quick and Reilly, Inc.*, 292 Conn. 98, 103-04 (2009); see also *Black’s Law Dictionary* (11th ed. 2019) (defining gift as “the voluntary transfer of property to another without compensation.”) Because the voucher would be furnished by the Judicial Branch to the Judicial Official in the course of his or her service as a judge, it appears that the Judicial Official’s continued service as a judge would constitute sufficient consideration such that the provision of the CLC voucher would not fall within the meaning of a “gift” or “thing of value” for purposes of the Code of Judicial Conduct. In the context of employment law, courts have held that benefits of employment, such as bonuses and other fringe benefits, are supported by the consideration of continued employment for the purpose

of enforcing an employee's right to benefits promised by an employer. See, e.g., *Borden v. Skinner Chuck Company*, 21 Conn. Supp. 184, 190 (1958) (observing that "a 'bonus' is regarded as "not a gift or gratuity, but a sum paid for services, or upon a consideration in addition to or in excess of that which would ordinarily be given"); *Sparveri v. Town of Rocky Hill*, 656 F.Supp.2d 297, 310 (D. Conn. 2009). The Office of State Ethics' (formerly known as the State Ethics Commission) interpretation of the gift restrictions in the Code of Ethics for Public Officials, General Statutes § 1-79 et seq., is consistent with the foregoing.¹ For example, in Advisory Opinion No. 1998-5, the OSE determined that a benefits such as attendance at conventions, outings, dinners etc. provided to an employee in the course of his or her employment are not "gifts" under the Code of Ethics because employment provided full consideration for the benefit. See also Advisory Opinion No. 1998-7. Although the Code of Ethics for Public Officials does not apply to judges, the 1 The Code of Ethics for Public Officials defines "gift" as "anything of value, which is directly or personally received, unless consideration of equal or greater value is given in return." General Statutes § 1-79(5). OSE's opinions militate against a conclusion that the Judicial Official's receipt of a CLC voucher from the Judicial Branch is a "gift" or "thing of value" under the Code of Judicial Conduct.² Accordingly, it appears that the CLC voucher would be more appropriately characterized as a fringe benefit of employment rather than a gift. The Internal Revenue Service has defined "fringe benefit" as "a form of pay for the performance of services" and, indeed, has promulgated special rules for determining whether employer-provided training and educational programs (deemed "working condition benefits") are taxable to an employee. See IRS Publication 15-B (2021), *Employer's Tax Guide to Fringe Benefits*; see also *Black's Law Dictionary* (11th ed. 2019) (defining "fringe benefit" as "[a] benefit [other than direct salary or compensation] received by an employee from an employer, such as insurance, a company car, or a tuition allowance). Moreover, any potential for the appearance of impropriety under Rule 1.2 is ameliorated by the fact that the Judicial Branch acquires the CLC vouchers pursuant to a business agreement negotiated at arm's length with the CBA. Conclusion: Based upon the foregoing, including that the CLC voucher appears to be a fringe benefit of the judge's office rather than a gift or "thing of value" and that the Judicial Branch acquires the vouchers from the CBA pursuant to an arms-length business agreement, the Committee unanimously concluded that the Judicial Official (1) may accept and use the voucher and (2) is not required to report the voucher pursuant to Rule 3.15. The Judicial Official's attendance of the CLC is subject to the following general conditions drawn from the above-referenced opinions of the Committee: (1) The Judicial Official's attendance at the CLC does not

¹ The Code of Ethics for Public Officials defines "gift" as "anything of value, which is directly or personally received, unless consideration of equal or greater value is given in return." General Statutes § 1-79(5).

² See General Statutes § 1-79(11) and 1-79(13) (excluding "a judge of any court either elected or appointed" from the definitions of "Public Official" and "State Employee," respectively, for purposes of the Code of Ethics for Public Officials).

interfere with the proper performance of judicial duties; and (2) The Judicial Official does not discuss during the CLC any matter pending or impending in any court.

IV. New Business: None.

V. The meeting adjourned at 9:45 a.m.