

FORMAL OPINION NO 2005-56

Impartiality: Gifts to Judges

Facts:

Several Lawyers wish to contribute to a “vacation fund” to be given to a semi-retired judge who is still sitting part-time on a pro tem basis.

Question:

May Lawyers either solicit funds for or contribute to such a “vacation fund”?

Conclusion:

Yes, qualified.

Discussion:

Oregon RPC 3.5(a) provides:

A lawyer shall not seek to influence a judge, juror, prospective juror or other official by means prohibited by law.

Oregon RPC 8.4(a)(6) makes it misconduct for a lawyer to knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Oregon Judicial Rule (JR) 3-103 provides:

A judge shall not directly or indirectly accept gifts, bequests, favors or loans from anyone, except that a judge may accept:

....

(B) ordinary social hospitality; gifts, bequests, favors or loans from relatives; gifts from friends for wedding, birthday or other personal occasions; loans from lending institutions in the regular course of business on terms generally available to persons who are not judges; or scholarships, fellowships or grants awarded on terms applied to other applicants;

(C) 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 the judge.

Interpreting the JRs is the exclusive province of the Oregon Supreme Court and we offer no opinion on whether funding a judge's vacation is *ordinary social hospitality* within the meaning of JR 3-103. There is undoubtedly a point at which the value or nature of a gift falls outside a reasonable definition of *ordinary social hospitality*. As noted in the Comment to Canon 4D(5)(d) of the ABA Model Code of Judicial Conduct, which contains the same prohibition as JR 3-103:

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required.

If the lawyers are not seeking to influence the judge by creating the "vacation fund" and do not know that the judge's acceptance of the gift would violate the JRs, then soliciting and donating the funds does not violate Oregon RPC 3.5(a) or Oregon RPC 8.4(a)(5). What the lawyers intend, of course, is a question of fact in every case. Lawyers should be mindful as well of the prohibitions against bribery. See, for example, ORS 162.015(1), which provides:

A person commits the crime of bribe giving if the person offers, confers or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision or exercise of discretion in an official capacity.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 15.2-3 (Oregon Rules of Professional Conduct applicable to judges) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 113 (2000) (supplemented periodically); and ABA Model RPC 3.5(a).