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**ISSUE I**

May a judge or the judge's staff attend a holiday party given by a law firm some of whose members appear before the judge?

**ANSWER**

Yes, if certain conditions are met.

**ISSUE II**

May a judge or members of the judge's staff accept gifts of candy or food from attorneys?

**ANSWER**

Yes, if of a *de minimis* nature.

**ISSUE III**

May a judge and the judge's spouse or guest attend a bar association's dinner as guests of the association?

**ANSWER**

Yes, if certain conditions are met.

**FACTS**

During December a number of law firms and bar associations sponsor holiday parties. Members of the legal community, including judges and sometimes the judges' staff members, are invited. Members of the law firms sponsoring the parties and many of the attorney guests have appeared or are likely to appear before the judges.

In addition, some attorneys who appear before the judges bring gifts of food such as holiday cookies and candy to the judges and the judges' staffs.

Finally, a local bar association sponsors an annual judges' night in honor of the local judges and their spouses who attend as guests of the association. Others who attend pay an amount covering the cost of the event.

## **DISCUSSION**

The Committee concludes that the issues presented involve provisions of SCR 60.02, 60.03(1), 60.05(1)(a), and 60.05(4)(e)1, 3 & 10.

### ***A. SCR 60.02 and SCR 60.03(1)***

SCR 60.02 states in part:

A judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved . . . .

SCR 60.03 reads in part:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

(1) A judge . . . shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

These two sections of the Code set the standard for all that follows. A judge must be careful that the judge's behavior on or off the bench does not undermine public confidence in the impartiality and integrity of the judiciary. The public expects a high standard of conduct on the part of judges. This requires a judge when in doubt about attending an event or receiving a gift, however small, to ask the question, "How will this look in the eyes of the public?"

### ***B. SCR 60.05(1)***

SCR 60.05(1) states in part:

- (1) Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:
  - (a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.

The extra-judicial activities of a judge are governed by SCR 60.05 which lays out more specific rules and guidelines governing a judge's extra-judicial behavior than the general principles regarding integrity and impartiality enunciated in SCR 60.02 and 60.03. However, in doing so, the Code acknowledges the need for and importance of a judge's participation in the community where the judge lives and works. The Comment to SCR 60.05(1) states in part:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Other authorities have also discussed the need for judges to understand what is occurring in their communities.

Given the numerous dangers associated with judges' off-the-bench activities, it is tempting to conclude that judges ought only to judge, avoiding all nonjudicial activities other than those centered around home and family. Such a drastic measure would no doubt insulate most judges from charges of bias, self-interest, or distraction, but ultimately it would not be beneficial either to judges or to the public.

. . . .

Not only is it impossible to isolate a judge from opinion-shaping forces, it is undesirable to give the impression that this has been accomplished. Assuming that judges are not to be sealed hermetically in their homes after working hours, they will continue to form opinions as a consequence of exposure to friends, colleagues, and the media.

Similarly, judges' knowledge of the public is essential to the dispensation of justice. It is not enough to say that a judge is enriched by knowledge of the real world; rather, the nature of modern law absolutely requires that judges "live, breathe, think and partake of opinions in that world." . . .

JEFFREY M. SHAMAN ET AL., JUDICIAL CONDUCT AND ETHICS § 10.07 (2d ed. 1995) (footnotes eliminated) (quoting McKay, THE JUDICIARY AND NONJUDICIAL ACTIVITIES, 35 Law & Contemp. Probs. 9, 19 (1970)).

**C. SCR 60.05(4)(e)**

SCR 60.05(4)(e) in part reads:

- (e) A judge may not accept, . . . a gift, favor or loan from anyone except for the following:
  - 1. [A]n invitation to the judge and the judge's spouse or guest to attend a bar-related function . . . .  
.....
  - 3. Ordinary social hospitality.  
.....
  - 10. Any other gift, favor or loan, only if 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.

These subsections specify from whom and under what conditions a judge may accept invitations, hospitality and gifts.

**1. Issue I - Attendance at Law Firm Holiday Parties.**

It is customary for certain law firms to give holiday parties to which other members of the legal community including judges and sometimes judges' staff members are invited. Whether a judge or a member of the judge's staff may attend depends upon who is giving the party and who may be in attendance as well as the nature of the party. In so deciding, the judge will have to rely upon his or her knowledge of local custom and past events. It may be necessary to ask the host to identify those invited and the extent of the hospitality to be given.

Provisions of SCR 60.02, 60.03(1) and 60.05(1) require the judge to insure that his or

her presence at a law firm party would not affect the judge's appearance of impartiality. A judge's attending a law firm party while presiding over a matter involving the host law firm may give the impression that the judge is partial. Likewise a judge should not attend such a party if clients of the law firm were to be present. Not only might that give the impression to the client that the law firm has a special relationship with the judge, but there is also the possibility that the client might become a litigant before the judge. Once at the party, a judge has a continuing duty to assess the event with the view of leaving should the list of guests or nature of the entertainment present the danger of impugning the judge's impartiality.

SCR 60.05(4)(e)3. permits a judge to receive "ordinary social hospitality," which would include drinks and hors d'oeuvres that might be served at a party. A judge's socializing with other members of the bar under those circumstances is to be encouraged because of the benefits which come from the informal discussions which take place at social events. However, SCR 60.05(4)(e)10. which prohibits a judge from receiving a gift from a lawyer who might appear before the judge, requires the judge to not attend a social function given by a law firm where the hospitality exceeds ordinary social hospitality. For example, a sit-down dinner at a country club exceeds the ordinary social hospitality that may be extended to a judge.

## **2. Issue II - Acceptance of Gifts of Candy or Food From Attorneys.**

SCR 60.05(4)(e)10. prohibits a judge from receiving a gift or favor from a person who has come or is likely to come before the judge in litigation. The Comment to subsection 10 states in part:

Unless authorized by other provisions of sub. (4) (e), sub. (4)(e)10 prohibits judges from accepting gifts, favors or loans from lawyers or their firms if they have come or are likely to come before the judge; . . .

However, sub.(4)(e)3. permits the receipt of ordinary social hospitality. It is the Committee's conclusion that a judge or the judge's staff may receive small inexpensive gifts of candy or fruit, because they come within the ambit of "ordinary social hospitality" as long as it is of *de minimis* value.

### 3. Issue III - Attendance of Judge and Spouse or Guest at a Bar Dinner.

SCR 60.05(4)(e)1. allows a judge and spouse or guest to accept an invitation from a bar association to attend a dinner or other bar function as guests of the association. There are two limitations, however.

The first limitation is found in the Comment to sub. 1. of SCR 60.05(4)(e) which states that a judge may receive a gift (i.e. dinner) only if the organization is not an organization "whose members comprise or frequently represent the same side in litigation." Generally, bar associations are made up of lawyers who appear against each other. On the other hand, there are associations of lawyers who are so specialized that they always represent the same interests, such as plaintiffs' or insurance defense lawyers. However, a section of the bar such as family law, even though a specialized association, is made up of lawyers who appear against each other and therefore may have a judge and spouse or guest as a guest at a dinner.

The second limitation is the magnitude of the gift. The larger the gift, the greater the appearance of partiality. An example of an impermissible gift would be having the judge as a guest at a cruise meeting of the association.

### CONCLUSION

The Committee concludes that a judge may attend a holiday party given by a law firm, some of whose members appear before the judge, provided that the firm is not involved in a trial or one which is about to get underway before the judge; that no clients will be in attendance; and that the hospitality is limited to the drinks and hors d'oeuvres normally presented at such occasions.

The Committee further concludes that a judge or the judge's staff may receive gifts of food or candy from a law firm as a part of ordinary social hospitality if *de minimis* in nature.

Finally, the Committee concludes that a judge and a judge's spouse or guest may attend as guests a bar association dinner, provided the association is not one whose members usually represent the same side in litigation.<sup>1</sup>

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<sup>1</sup> This opinion is an interpretation of the Judicial Code of Ethics. Judges as state elected officials are also

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subject to the Code of Ethics for Public Officials and Employees. That Code, as interpreted by the Ethics Board, is more restrictive than the Judicial Code as to the issues addressed by this opinion. See Opinion 1998 Wis Eth Bd 15 which follows this opinion.

## APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 98-10R, issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 18th day of November, 1998. Opinion No. 98-10 has been revised to append Opinion 1998 Wis Eth Bd 15 which was issued by the Ethics Board in response to this Committee's request that the Board review Wis. Advisory Opinion 98-10 in light of Chapter 19, Wis. Stats. The Ethics Board opinion follows.

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Thomas H. Barland  
Chair

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**1998 Wis Eth Bd 15**  
MEALS, LODGING, TRAVEL AND ENTERTAINMENT

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Apart from the limited exceptions contained in §19.56(3), *Wisconsin Statutes*, the Ethics Board advises that a judge either not partake of free food and drink not available to the general public or pay the higher of the fair value of such food and drink or the ticket cost of the event.

Facts

¶1 This opinion is based upon these understandings:

- a. You are a judge and, hence, a state public official.
- b. You recently received Opinion 98-10 of the Judicial Conduct Advisory Committee, which addressed several issues under the Code of Judicial Conduct.

Question

¶2 The Ethics Board understands your questions to be:

- 1. Consistent with laws administered by the Ethics Board, may a judge or judge's staff attend a holiday party given by a law firm some of whose members appear before the judge?
- 2. Consistent with laws administered by the Ethics Board, may a judge or members of the judge's staff accept gifts of candy or food from attorneys?
- 3. Consistent with laws administered by the Ethics Board, may a judge and the judge's spouse or guest attend a bar association's dinner as guests of the association?

Discussion

¶3 Judges are state public officials subject to the Code of Ethics for Public Officials and Employees, Chapter 19, subch. III, *Wisconsin Statutes*.<sup>1</sup> The provision of the Ethics Code most pertinent to the issues you have raised is §19.45(3m), *Wisconsin Statutes*. That section provides:

**19.45(3m)** No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56(3).

¶4 Section 19.56(3) contains a limited number of exceptions to the general prohibition on a public official's accepting food, meals, or beverages from others. These exceptions are:

the official receives the items in connection with presenting a talk;

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<sup>1</sup> Section 19.42(13)(c), *Wisconsin Statutes*, provides:

**19.42(13)** "State public office" means:

(c) All positions identified under s. 20.923(2), (4), (4g), (4m), (6)(f) to (h) and (8) to (10), except clerical positions.

Judges are identified in §20.923(2)(b), *Wisconsin Statutes*.

It is our understanding that members of judges' staff are either state unclassified employees or county employees. State unclassified employees are subject to Wis. Admin. Code Chapter ER-MRS 24,

administered by the Department of Employment Relations. A county employee may be subject to a county ethics code or to §19.59, *Wisconsin Statutes*, if the employee is appointed to serve for a specified term. *See* §19.42(7w)(c), *Wisconsin Statutes*.

the official can show by clear and convincing evidence that the items are offered for reasons unrelated to the official's holding public office;  
the official can show by clear and convincing evidence that the items are received on behalf of the state of Wisconsin and primarily for the state's benefit;  
the items are made available from, and reported by, a political committee under Chapter 11, *Wisconsin Statutes*; or  
the items are made available by the department of commerce or the department of tourism in connection with certain events sponsored by those agencies.<sup>2</sup>

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<sup>2</sup> Section 19.56(3), *Wisconsin Statutes*, provides:

**19.56(3)** Notwithstanding s. 19.45:

(a) A state public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic specified in sub. (1) if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

(b) A state public official may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in sub. (1).

(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

(d) A state public official may receive and retain from a political committee under ch. 11 transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of costs permitted and reported in accordance with ch. 11.

(e) A state public official who is an officer or employe of the department of commerce may solicit, receive and retain on behalf of the state anything of value for the purpose of any of the following:

1. The sponsorship by the department of commerce of a trip to a foreign country primarily to promote trade between that country and this state that the department of commerce can demonstrate through clear and convincing evidence is primarily for the benefit of this state.

2. Hosting individuals in order to promote business, economic development, tourism or conferences sponsored by multistate, national or international associations of governments or governmental officials.

(em) A state public official who is an officer or employe of the department of tourism may solicit, receive and retain on behalf of the state anything of value for the purpose of hosting individuals in order to promote tourism.

(f) A state public official may receive and retain from the department of commerce anything of value which the department of commerce is authorized to provide under par. (e) and may receive and retain from the department of tourism anything of value which the department of tourism is authorized to provide under

par. (em).

¶5 It is unlikely that any of these exceptions will apply in the circumstances you have outlined and that were addressed in Opinion 98-10. However, two exceptions are worthy of note. An official may accept food, meals, or beverages if the official can show by clear and convincing evidence that the items are either [1] offered for reasons unrelated to the official's holding or having held public office, or [2] received on behalf of the state of Wisconsin and primarily for the state's benefit. An example of the latter might be a judge's demonstration that the judge was attending an event at the direction of the chief judge of a judicial unit and that the costs would otherwise have been borne by the judiciary.

¶6 We also note that the Ethics Code encourages judges to meet with the public to talk about judicial processes and issues<sup>3</sup> and provides that a judge may receive reimbursement from the event's organizer for the presentation of a talk on these topics.<sup>4</sup>

#### Advice

¶7 Apart from the limited circumstances noted, the Ethics Board advises that a judge either not partake of free food and drink not available to the general public or pay the higher of the fair value of such food and drink or the ticket cost of the event.

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<sup>3</sup> Section 19.56(1), *Wisconsin Statutes*, provides:

**19.56(1)** Every state public official is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret legislative, administrative, executive, or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch.

<sup>4</sup> Section 19.56(3)(a), *Wisconsin Statutes*, provides:

**19.56(3)(a)** A state public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic specified in sub. (1) if the payment

or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.