



**STATE OF VERMONT**  
**JUDICIAL ETHICS COMMITTEE**

Opinion No.: 29  
Date: August 26, 2024  
To: [name redacted in posted version pursuant to A.O. 35, ¶ 6]

The Committee has considered the matter you presented to it. The following is the opinion of the Committee and a response to your inquiry pursuant to Administrative Order No. 35.

**Question Presented**

May a judge who has presided over a treatment court, but is rotating out of the treatment court, receive and retain a physical memento of the judge's service and a restaurant gift certificate (in an amount less than \$250) that has been purchased by the treatment team members as well as attorneys who have in the past, and may in the future, appear in front of the judge?

**Short Answer**

The Vermont Code of Judicial Conduct permits a Vermont judge to accept gifts from attorneys or others who appear before the judge unless acceptance of the gift is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. A physical memento of service and a gift certificate, particularly one for less than the required reporting amount, given by a group of individuals seems unlikely to be perceived as undermining the impartiality and integrity of the judge or the judiciary.

**Relevant Canons of Judicial Conduct**

The relevant provisions of the Vermont Code of Judicial Conduct 2019 ("the Code" or "VCJC") include the following rules and guidance:

- Canon 1, Rule 1.2: A judge shall 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.

- Canon 2, Rule 2.4(C): A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.
  
- Canon 3, Rule 3.13: (A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.  
(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:
  - (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
  - (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;
  - (3) ordinary social hospitality;
  
- (C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:
  - (1) gifts incident to a public testimonial;
  - ... and
  - (3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.
  
- Canon 3, Rule 3.15(A): 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 \$250.00, . . . .

## Analysis

A Vermont judge is required "to 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." VCJC Rule 1.2. Specific to the pending question, "[a] judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Rule 3.13(A). However, Rule 3.13 also recognizes that some gifts can be accepted.

Rule 3.13 divides gifts into three categories: those that should never be accepted, those that may be accepted but must be publicly reported, and those that may be accepted

without further need to report them. In the third category, gifts a judge may accept without reporting, fall “items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards” and “ordinary social hospitality.” Rule 3.13(B)(1) & (3). A physical memento of a judge’s service in the treatment court would seem to fall in this category and thus could be accepted.

In the second category, gifts a judge may accept and report in accordance with Rule 3.15(A), fall “gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.” 3.13(C)(3). Public reporting of such gifts is required “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 \$250.00.” Rule 3.15(A)(2). In this case, the restaurant gift certificate is for less than \$250.

The comments to Rule 3.13 make clear that a gift is more or less restricted depending on the “magnitude of the risk” that the gift will be “viewed as intended to influence the judge’s decision in a case.” Rule 3.13, cmt. 1. Thus, when deciding whether to accept such a gift, the judge should remain mindful of the broader considerations of Rules 1.2 and 2.4. Would acceptance of the gift damage “public confidence in the independence, integrity, and impartiality of the judiciary?” Rule 1.2. Would it create an appearance of impropriety or “convey an impression” that someone is “in a position to influence the judge?” Rule 2.4.

To answer those questions, acceptance of gift certificates requires inquiry into the specific circumstances.<sup>1</sup> For instance, a judge was permitted to accept a gift certificate from a law student where the judge was a friend of the student’s family and had put the student in touch with the dean of the law school to which the student sought admission. *Re: Propriety of Circuit Court Judge Accepting A Gift Certificate From A Law Student*, 2006 WL 6850030, at \*1 (SC Adv. Comm. Std. Jud. Cond. Nov. 27, 2006). In that case, the committee determined that the gift was given in the course of “ordinary social hospitality” as a token of appreciation. *Id.* “[O]rdinary social hospitality consists of those routine amenities, favors, and courtesies which are normally exchanged between friends and acquaintances, and which would not create an appearance of impropriety to a reasonable, objective observer.” *In re Corboy*, 528 N.E.2d 694, 700 (Ill. 1988).

In another situation, a judge was permitted to accept a gift from a local bar association, where the judge had served in a satellite courthouse and would soon be reassigned to the main courthouse. *May A Judge Who Has Been Assigned To A Satellite Courthouse In the Judge’s County For A Number of Years, and Is Due To Be Reassigned To the Main Courthouse, Accept A Gift From the Bar Association In Appreciation of Years*, Opinion Number: 2001-10, 2001 WL 36383791 (FL Jud. Eth. Adv. Comm. May 21, 2001). It appeared to be central to that opinion that the gift was from the organization, and not from individual lawyers. Certainly, in assessing the magnitude of the risk of an

---

<sup>1</sup> Most of the opinions discussing these rules relate to gifts incident to public testimonials and invitations to bar-related functions or other legal association events outside of the judge’s work in the judiciary.

appearance of impropriety, anonymity of donors or a gift given by a group of people would seem to reduce the possibility of improper influence.

In contrast, earlier versions of the Code, and provisions still effective in some states, generally forbade acceptance of gifts from attorneys who may appear before the judge. One committee determined that a judge should not accept items such as sporting event tickets, movie passes, and gift certificates from lawyers or law firms for use as “incentive gifts” to participants in a drug court program. *May a Judge who Presides Over Drug Court Solicit or Receive “Incentive Gifts” from Lawyers or Law Firms for Use as Rewards to Drug Court Program Defendants/Participants?*, Opinion Number: 2007-05, 2007 WL 7388883 (FL Jud. Eth. Adv. Comm. March 20, 2007). In that case, the committee noted that the applicable rules did not distinguish between gifts for personal or other use, and the decision appeared to rely largely on the Florida rule that flatly forbade judges from accepting gifts from “lawyers or their firms if they have come or are likely to come before the judge.” *Id.*; see *In re Luzzo*, 756 So. 2d 76, 78 (Fla. 2000). In an earlier advisory opinion, the same committee, however, determined that there was “no ethical problem” in a retiring judge accepting \$500 in gift certificates in honor of the judge’s retirement from anonymous donors and a local lawyers’ association, where the judge did not know the names of the individual donors and would report the gift. *Accepting Gift Certificates In Recognition of Retirement*, Opinion 94-12, 1994 WL 16822202 (FL Jud. Eth. Adv. Comm. March 24, 1994).

Rule 3.13(C)(3) expressly allows a judge to accept gifts from attorneys who appear before them, provided that the gifts pass the test under Rule 3.13(A) and that the judge complies with the reporting requirements of Rule 3.15. The reporting requirement helps ensure impartiality if the lawyer giving the gift later appears before the judge, as the gift is public and opposing litigants can consider whether to seek disqualification. See Garwin, McDermott, and Rendleman, *Annotated Model Code of Judicial Conduct* (3d) at 466. If the value of the gifts falls under the \$250 reporting threshold, as they appear to do here, the minimal value indicates the gifts are unlikely to be perceived as undermining the impartiality and integrity of the judge or the judiciary. If the value of the gifts turns out to exceed \$250, then reporting in accordance with Rule 3.15 will give future parties the opportunity to consider whether to seek disqualification.

Similarly, the fact that these gifts are being given by the treatment team, not solely by a small number of attorneys, lessens the concern of improper influence or partiality. Because the Vermont rule expressly allows judges to accept gifts from lawyers who have appeared or may appear before them, the distinction between gifts from groups and gifts from individual lawyers may not change the outcome here, but a gift from a group certainly reduces the risk of an appearance of a lack of integrity or impartiality in future proceedings.

### *Conclusion*

Rule 3.13(C) permits a Vermont judge to accept gifts from attorneys or others who appear before the judge unless acceptance of the gift is prohibited by law or would appear

to a reasonable person to undermine the judge's independence, integrity, or impartiality. A physical memento of service and a restaurant gift certificate (particularly one that is in an amount less than the required reporting amount) given by a group of individuals seems unlikely to be perceived as undermining the impartiality and integrity of the judge or the judiciary. While the judge should remain aware of the concerns inherent in accepting gifts, the Committee's opinion is that the Code of Judicial Conduct would permit the judge to accept both the memento and the gift certificate under the circumstances.

Eileen M. Blackwood

Eileen M. Blackwood, Esq., Chair

Signed by:

Thomas Zonay, Chief Superior Judge

758D3ABBEE6410

Honorable Thomas A. Zonay

Signed by:

James Mahoney

Honorable James R. Dean Mahoney

Signed by:

Brian Valentine

Honorable Brian Valentine

Signed by:

Ian Carleton

Ian Carleton, Esq.