



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

A state court judge is retiring after what seems like 105 years on the bench. A retirement party is scheduled to occur 3 days before the judge's retirement becomes effective. A group of lawyers on behalf of the local bar is collecting money to buy tickets for a European vacation to present to the judge at the retirement party. As far as the Model Rules are concerned, may we contribute?

A: I hope you are exaggerating (at least somewhat) the judge's tenure. The retirement gift seems like a nice thing to do to honor the court's public service, and you would also hate to have it get around that your firm was the cheap one that did not contribute. Whether you should participate, however, very much depends upon the facts. One important factor is whether, in the judge's final days on the bench, the judge is expected to rule on anything material that could benefit any of your clients; if not, that undercuts any notion that you are attempting to influence the judge. If so, that is reason for caution. See Or. Ethics Op. 2005-56 (2005)(fact specific inquiry; contribution to vacation fund of semi-retired judge permissible if no intent to influence).

Another factor may be the extent to which any perception or fact of "influence" is diluted by participation of a larger group or bar association, and the extent to which specific contributions are anonymous to the judge. See S.C. Ethics Op. 16-03 (2016)(gift from bar association permissible where likelihood of influence minimal and contributions anonymous). The overarching question is whether and to what extent this could be perceived as an effort to influence the judge (or perhaps her/his colleagues on the bench). The larger and more anonymous the contributing group, and the less material the individual contributions, the safer the outcome for your participation.

Some authorities read Rule 3.5(a) in conjunction with Model Judicial Code Rule 3.13(B) permitting judges only to accept "ordinary social hospitality" and "items with little intrinsic value." *E.g.*, In re Corboy, 528 N.E.2d 694 (Ill. 1988). The aggregate of this gift is above that standard, but you might consider the level of your contribution in relation to the total, along with the factual questions noted above. In addition, Rule 3.5 differs in various jurisdictions; some states have a more stringent version of the rule. See, *e.g.*, Kansas Rule of Professional Conduct 3.5(a)("A lawyer shall not give or lend anything of value to a judge...except as permitted by the...Code of Judicial Conduct. You should examine the authorities in your particular jurisdiction.

Alternatively, could you suggest to the group that they simply delay the party and gift until the judge has left the bench and the rule no longer applies?

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 132 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.