ADVISORY COMMITTEE ON JUDICIAL CONDUCT

OF THE DISTRICT OF COLUMBIA COURTS

ADVISORY OPINION NO.4
(February 22, 1994)

CRITERIA GOVERNING A JUDGE'S ACCEPTANCE OF AN INVITATION TO ATTEND A BAR-RELATED FUNCTION SPONSORED BY A SPECIALTY BAR ASSOCIATION

Several judges of the Superior Court have requested a formal advisory opinion of criteria governing a judge's acceptance of an invitation to attend a bar-related function sponsored by a specialty bar association.[1] Our approach to the issue initially led us to catalogue the number and types of bar-related organizations operating within the District of Columbia which might sponsor purely social or educational programs for members of the bench and bar. That preliminary survey convinced us that the sheer number of such potential sponsoring organizations was so large, and the publicly declared organizational missions and memberships of such organizations were so diverse, that it would be futile to attempt to develop a blanket rule

[1] Specialty bar associations are associations of lawyers who, in the main, represent a particular class of clients (*e.g.*, plaintiffs or defendants) or engage a specialized practice *(e.g.*, communications) or reflect a particular group of lawyers *(e.g.*, legal services, women, racial minorities). We distinguish specialty bar associations from associations, such as the unified District of Columbia Bar or a profession-wide private bar association, whose members reflect all, or many different, segments of the bar and represent all sides of various issues confronting the profession.

with regard to judicial attendance at all specialty bar-related functions. In fact, it is not always clear whether the group can properly be characterized as a bar association or is, more broadly, simply an organization of lawyers for one or more purposes.

Accordingly, our opinion seeks to identify factors and circumstances which the judge should consider in determining whether his or her attendance at a function of a specialty bar association or other lawyers' organization might create in the public's mind a reasonably held perception that the judge is promoting the public policy goals or the regularly advanced litigative positions of the host organization. The individual judge, therefore, will have to exercise sound discretion by evaluating and applying these factors and making appropriate decisions on a case by case basis.

Our focus begins with the appearance of impropriety standard embodied in Canon 2 of the 1972 Code of Judicial Conduct (hereinafter 1972 Code) presently in effect in this jurisdiction. Section B of Canon 2 in relevant part states: "[a] judge should not lend the prestige of judicial office to advance the private interests of the judge or others; nor should the judge convey or permit others to convey the impression that they are in a special position

to influence the judge." Section A of Canon 2 mandates that "(a) judge should... act at all times in a manner that promotes confidence in the integrity and impartiality of the judiciary."

Likewise, Canon 2, Section B of the proposed ABA 1990 Model Code of Judicial Conduct (hereinafter 1990 Code) in relevant part states: "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge...." Section A of Canon 2 of the 1990 Code provides that "[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

While both the 1972 and 1990 Codes permit judges to accept an invitation to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice,[2] the controlling

[2] Canon 4 (A) of the 1972: Code states: "[a] judge may speak, write, lecture, teach and participate in other activities concerning the law, the lega1 system, and the administration of justice." Canon 4D (5) (A) of the 1990 Model Code in relevant part reads: "[a] judge shall not accept, and shall urge members of the judge's family residing in the judge's household, not to accept a gift, bequest, favor or loan from anyone ***except for:*** a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement *of* the law, the legal system or the administration

appearance-of-impropriety standard requires judges to be sensitive to issues as they relate to a judge's extra-judicial activities.[3] Specifically, Section 4 A (1) of the 1990 Code in relevant part states that "[a] judge shall conduct all of the judge's extra-judicial activities so they do not cast reasonable doubt on the judge's capacity to act impartially as a judge."

We now turn to an identification of some of the factors and circumstances which judges should consider to determine whether their attendance at a function of a specialty bar association or other lawyers' organization might create an appearance of partiality.[4]

First, a judge should not attend a function sponsored by a bar association or other lawyers' organization that is currently engaged as a body in litigation before the judge.

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of justice."

[3] *See* Federal Advisory Committee on Codes of [Judicial] Conduct, Revised Advisory Opinion No. 17 (while affirming the propriety of a judge's acceptance of an invitation to an annual bar association dinner, cautions that the "[a]ppearance of impropriety might arise...if the hospitality was extended by lawyer organizations identified with a particular viewpoint regularly advanced in litigation.")

[4] An appearance of impropriety may arise even though no actual impropriety or influence upon a judge may exist. This is so because an appearance of impropriety is determined from all the facts and circumstances, even those beyond the judge's control, and because the situation is viewed from the perspective of an objective observer. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 861 (1988).

Second, there is potential for an appearance of partiality when the sponsoring organization pays for the judge's attendance.

Third, the judge should consider the nature and format of the forum. If the purpose is educational and the judge pays to attend, there is less likely to be an appearance problem. If the sponsoring organization limits the audience to its membership and does not allow for the presentation of competing viewpoints, the judge's attendance poses an increased risk of apparent impropriety.

Fourth, the judge should consider the nature of the host organization. The further a specialty bar association or other lawyers' organization departs in its characteristics from those of the unified District of Columbia Bar, that is, the more oriented it is to particular issues or to the interests of a certain class of clients, the more the judge's attendance may objectively be perceived as an improper identification with those issues and interests. It goes without saying that, if there is a case of substantial importance before the court on which the judge sits, and the host organization has taken a public stance on issues to be litigated in that case, the judge should reflect very carefully before attending the activity.

Finally, consideration of whether the organization is private or governmental and, if private, whether for-profit or non-profit, should help guide the judge in determining whether to attend, keeping in mind that a non-profit, as well as for-profit, organization can be financed by special interests that may dictate the agenda.

We conclude that a judge may accept an invitation to attend functions sponsored by a specialty bar association or other lawyers' organization, provided the judge's attendance would not create in the public's mind a reasonably held perception that the judge is promoting the public policy goals or the regularly advanced litigative positions of the host organization.