

Judicial Ethics Committee  
Advisory Opinion No. 97-1  
Issued: June 26, 1997

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**Issue:** Judge M's collegiate alma mater has advised him that he has been selected to receive an award and a monetary prize of \$5,000, to be presented to the judge as part of the school's commencement exercises. The legacy for the award and monetary prize provides that the college's trustees designate a recipient who has contributed substantially to the understanding and promotion of individual freedoms. In notifying the judge of the award, the college's president (writing on behalf of the award committee, which is comprised of members of the school's board of trustees) cited the judge's exemplary reputation and his professional activities prior to his appointment to the bench. The president also noted that the award committee found that during the judge's "distinguished career *as a lawyer and judge* ...[he] upheld and furthered the principles upon which" the prize is awarded. (Emphasis added.)

Does the Maine Code of Judicial Conduct permit the judge to accept the award and monetary prize? Can the judge properly receive the monetary prize and then contribute it in turn to a charitable organization?

**Discussion:** This inquiry implicates several provisions of the Code of Judicial Conduct and a section of the Maine criminal code.

Canon 4D(5)(a) provides that a "judge shall not accept...a gift, bequest, favor or loan from anyone *except for...a gift incident to a public testimonial....*" (Emphasis added.) The award at issue here is a public recognition for public service in the particular area of individual freedoms. Despite the absence of a specific definition of "public testimonial" in Part II of the Code, the nature of the award here is consistent with the plain meaning of that term, and thus the award itself is within the scope of

Canon 4D(5)(a). The \$5,000 monetary prize is a component of the award and is thus incident to the public testimonial. Accordingly, the members of the Committee unanimously agree that acceptance of both the award and the financial prize would not violate Canon 4D.

A majority of the Committee, however, has concluded that acceptance of this \$5,000 financial prize is precluded by the separate provisions of Canon 2A. The Advisory Committee's Note to Canon 4 makes clear:

Canon 4 governs all activities of judges conducted in other than a judicial capacity, including personal and private activity. ...Everything that a judge does is, of course, subject to the overriding provisions of Canon 2A that a judge "respect and comply with the law...and act at all times in a manner that promotes public confidence and impartiality of the judiciary."

Thus, judicial conduct may be permissible under some specific provisions of the Code but at the same time be impermissible under other provisions.

The award and monetary prize here would be given to the judge in part because of the high quality of the recipient's professional work *as a judge*. Clearly, the stated basis for the award goes beyond this and includes the work previously performed by the recipient as a practicing attorney. However, the award and monetary prize is a public recognition of the judge's accomplishments in both phases of his career. A majority of the Committee believes that the award of a significant monetary or material prize for the high and effective quality of the recipient's work as a judge does not promote public confidence in the integrity of the judiciary. In effect or appearance, the judge would receive financial gain because of his position as a judge and the high quality of service brought to bear to that office. When significant remuneration is involved, there could be the public perception of personal gain from public office (beyond the level of compensation established by the Legislature) or even, in more extreme circumstances, exploitation of that office for personal benefit. While recognizing the difficulty in drawing a quantitative threshold for determining how large the gift must be to result in a violation of Canon 2A, a majority of the Committee's members has concluded that the magnitude of the gift here, in combination with the donor's expressed purpose of

recognizing the judge's contributions as a judge, render acceptance of the monetary prize to be a violation of Canon 2A.

The prohibition under Canon 2A is not ameliorated if the judge were to accept the monetary prize and then contribute those proceeds to a charitable cause, rather retain the proceeds. While this act (if made public) might help to mitigate the public appearance of personal financial gain, the majority concludes that the acceptance of the funds, rather than the disposition of them, constitutes the canonical violation.

A minority of the Committee's members has concluded that the judge would not violate Canon 2A if he were to accept the monetary prize. As is noted above, all Committee members are satisfied that acceptance of the proceeds would not be in violation of the Canon that specifically addresses this circumstance. Because acceptance of such a gift is expressly allowed under Canon 2A, the minority has concluded that a judge's acceptance of this gift is not violative of other, more generalized standards of conduct. To the minority, it is significant that the purpose of the award and monetary prize is the recognition of the judge's work in promoting the universally laudable goal of individual freedom. Under those circumstances, even in light of the amount of the prize, the minority is satisfied that acceptance of the award and the proceeds would not compromise the perception of the integrity of the judiciary.

A discussion of this issue is not complete without reference to 17-A M.R.S.A. § 606, which makes it unlawful (indeed, a class E crime) for a "public servant" to accept or agree to accept

any pecuniary benefit from a person who he knows is or is likely to become subject to or interested in any matter or action pending before or contemplated by himself or the governmental body with which he is affiliated;....

*See also* Maine Code of Judicial Conduct Canon 4D(5)(h) (permitting a judge to accept any other gift if the donor is not a party or person who is or is likely to appear before the donee-judge, or whose interests are or are likely to be presented before the donee-judge). The charge of this Committee does not include interpretation of criminal laws, such as section

606. However, judges need to consider the administrative *and* statutory criteria affecting receipt of gifts before engaging in relevant forms of conduct.