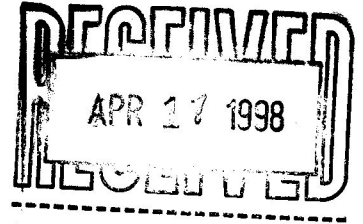


JUDICIAL ETHICS COMMITTEE  
Advisory Opinion No. 98-1  
April 15 1998



Issue:

Whether Maine Trial Judges Association may accept a \$1,000 donation or honorarium for continuing judicial education from Maine Trial Lawyers Association.

Facts:

The Maine Trial Lawyers Association holds trial advocacy seminars for its members, and several Superior Court judges served as judges at mock trials held as part of those seminars. In recognition of the services of these judges, the Maine Trial Lawyers Association has offered a donation or honorarium of \$1,000 to the Maine Trial Judges Association. The Maine Trial Judges Association has indicated that, if it accepts the money, it would intend to use that money for continuing legal education.

The Maine Trial Judges Association is not an official entity of the Judicial Department but is an association open to all appointed state court judges. It is our understanding that all or almost all appointed state trial court judges are members of the association.<sup>1</sup>

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<sup>1</sup>Because the members of this committee who are District Court and Superior Court judges are members of the Maine Trial Judges Association, they have recused themselves from participation in the drafting of this opinion.

The issue of whether there is any impropriety in acceptance of a \$1,000 honorarium by the Trial Judges Association<sup>2</sup> implicates Canons 4D(5) and 4H of the Code of Judicial Conduct. Also relevant are the general principles set forth in Canons 2A and 4A.

Canon 4D(5) applies to gifts, and the original letter from the Trial Lawyers Association refers to the proposed \$1,000 payment as a donation to the Trial Judges Association. Canon 4D(5) contains certain specific provisions not applicable here but generally permits gifts “provided that 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.” Canon 4D(5)(h).

Assuming that the money in question is more properly characterized as an honorarium, the applicable provision of the Code is Canon 4H, which provides that “a judge may receive . . . honoraria . . . attributable to the extra-judicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge’s performance of judicial duties or otherwise give the appearance of impropriety.” That Canon further provides that honoraria “shall not exceed a reasonable amount nor shall they exceed what a person who is not a judge would receive as a result of the same activity.” Canon 4H(1).

Whether the payment in question is characterized as either a gift or an honorarium, a threshold question is whether these Canons are in fact applicable,

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<sup>2</sup>The committee sees no impropriety in the participation by judges in the trial advocacy seminars themselves. Such activity would appear to fall within the express authorization contained in Canon 4B for judicial participation in activities concerning the law, the legal system, and the administration of justice.

given that the payment is being made to the Trial Judges Association rather than to an individual judge. In our view, although we recognize that this is a close question, a gift or honorarium made to the Trial Judges Association should be considered the equivalent of a gift or honorarium made to a group of judges, and Canons 4D(5) and 4H are therefore applicable. Even though no individual judge benefits directly, all the judges who are members of the Judges' association can be seen as benefiting from the gift or honorarium.

That leaves the question of whether the gift or honorarium is permitted by Canons 4D(5) and 4H. We believe it is not. We reach this conclusion extremely reluctantly because we know that funding for judicial education is scarce and because we believe that the payment in question is being offered by the Trial Lawyers Association for entirely proper and even laudable reasons. Nevertheless, under Canon 4D(5), we believe that the Trial Lawyers Association is a party "whose interests . . . are likely to come before the judge," thus precluding the acceptance of any gifts from the Association. In this connection, we are aware that the members of the Maine Trial Lawyers Association include both plaintiffs' lawyers and defense lawyers and that the Trial Lawyers Association in Maine is far less identified with a particular point of view than similar trial lawyers' associations across the country. Nevertheless, one of the Association's stated purposes, set forth in its membership application, is to oppose so-called "tort reform" measures. Moreover, the Trial Lawyers Association occasionally appears as an amicus in lawsuits, as it did in arguing in *Irish v. Gimbel*, 691 A.2d 664 (Me. 1997), that the Medical Malpractice

Screening Panel statute was unconstitutional.

Given that the Trial Lawyers Association has a significant interest in many issues that arise in litigation and that, upon occasion, it advocates specific points of view, we believe that it is a party “whose interests are likely to come before the judges” within the meaning of Canon 4D(5). As a result, we reluctantly conclude that gifts from the Trial Lawyers Association are not permitted under that section.

If the payment in question is characterized as an honorarium, the first question is whether the source of the payment in question gives “the appearance of influencing the judge’s performance of judicial duties or otherwise give[s] the appearance of impropriety.” We would not say that such an appearance would be true as a general rule. In Maine, as noted above, the Trial Judges Association includes both plaintiffs’ lawyers and defense lawyers. Judges will not always know whether lawyers before them are members of the Trial Lawyers Association, and in many cases, any positions taken by the Trial Lawyers Association will not be relevant to issues in this case. However, there could be an appearance problem in a case raising a specific issue as to which the Trial Lawyers Association has advocated a position.<sup>3</sup>

Moreover, characterizing the payment as an honorarium also creates a problem under the provision of the Code requiring that honoraria “not exceed a reasonable amount nor shall they exceed what a person who is not a judge would receive as a result of the same activity.” The \$1,000 payment offered here appears to

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<sup>3</sup>If there is a problem, it is not one that can be solved by recusal because the problem would be common to all judges in the Trial Judges Association.

be larger than a standard honorarium that might be offered for participation in several days of seminars. It bears emphasis that the motivation of the Trial Lawyers Association cannot be faulted in this connection; the Association is offering a payment larger than a normal honorarium because it is seeking to further the entirely commendable purpose of continuing legal education. Nevertheless, the payment in question cannot be found to be an honorarium permissible under Canon 4H(1).

In sum, while acknowledging this to be a close question and while also acknowledging that the proposed offer stems from entirely laudable motives, we conclude that acceptance of the donation would not be consistent with the Code of Judicial Conduct under Canons 4D(5) and 4H.<sup>4</sup>

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<sup>4</sup>Two factors separate the issue presented in this opinion from the question of whether the Judicial Department could accept money for judicial education from the Maine Bar Foundation (*see* Opinion 92-3). The first is that the funds in that case were going to the Judicial Department as a governmental entity, not to a private association of judges. The second, and perhaps more important, is that the Trial Lawyers Association (unlike the Bar Foundation) is not strictly a neutral body concerned with the administration of justice but is to some extent an advocacy group espousing a particular point of view. While donations from the Maine Trial Lawyers Association, because it includes both plaintiffs' lawyers and defense lawyers, might pose significantly fewer appearance problems than donations from other advocacy groups, we believe that the Code proscribes donations from any advocacy groups whose interests are likely to come before the judiciary.