

Committee on Codes of Conduct Advisory Opinion No. 67

Attendance at Independent Educational Seminars

The Committee often receives inquiries as to whether judges may attend seminars and similar educational programs organized, sponsored, or funded by entities other than the federal judiciary and have the expenses of attendance paid or reimbursed by such entities. As discussed below, judges may ordinarily accept such invitations to independent educational seminars, except when particular circumstances make it inadvisable.¹ However, judges must comply with the requirements of the Judicial Conference Policy on Judges' Attendance at Privately Funded Educational Programs (available at <http://www.uscourts.gov/RulesAndPolicies/PrivateSeminarDisclosure.aspx>) and the annual financial disclosure requirements for judges under the Ethics in Government Act, 5 U.S.C. app. §§ 101-111.

The education of judges in various academic and law-related disciplines serves the public interest. That a lecture or seminar may emphasize a particular viewpoint or school of thought does not necessarily preclude a judge from attending. Judges are continually exposed to competing views and arguments and are trained to consider and analyze them. Yet, notwithstanding the general principle that judges may attend independent seminars and accept the provision of or reimbursement for expenses, there are instances in which attendance at such seminars would be inconsistent with the Code of Conduct for United States Judges. It is consequently essential for judges to assess each invitation on a case-by-case basis.

Canon 4 of the Code of Conduct for United States Judges permits judges to engage in a wide range of outside activities, both law-related and non-law-related. Under Canon 4 and its Commentary, judges are encouraged to take part in law-related activities. The Commentary to Canon 4 observes, “[c]omplete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives.” Judges who engage in extrajudicial activities are expected to conform their conduct to the standards set forth in Canon 4, which advises judges to ensure that their activities “do not detract from the dignity of judicial office, interfere with the performance of the judge’s official duties, reflect adversely on the judge’s impartiality, [or] lead to frequent disqualification. . . .” Consistent with these standards, judges are permitted to speak, write, lecture, teach, and participate in other extrajudicial activities concerning legal and non-legal subjects.

Participation in outside activities must also be consistent with Canons 2A and 3C(1). Canon 2A applies to judges’ personal as well as professional conduct, and advises judges to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”; judges therefore should not attend seminars sponsored by organizations with which the judge may not properly be associated (such

as organizations referred to in Canon 2C). Canon 3C(1) advises judges to recuse from any proceedings in which their impartiality might reasonably be questioned. In determining whether to attend and accept benefits associated with a particular seminar, a judge should be guided by Canon 2 and should consider any consequent recusal obligation under Canon 3C(1). In doing so, judges should keep in mind their obligation to conduct themselves in a manner that minimizes the occasion for recusal.

Payment of tuition and expenses involved in attendance at an independent seminar constitutes a gift within the meaning of the Code of Conduct and ethics regulations. Canon 4D(4) permits a judge to accept a gift as permitted by the Judicial Conference Gift Regulations. Under section 5(a) of the Gift Regulations, judicial officers may accept gifts as long as they are not from someone seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person or whose interests may be substantially affected by the performance or nonperformance of official duties. Gifts offered by such interested persons may be accepted only in narrowly-defined circumstances. In particular, section 5(b)(3) of the Gift Regulations permits a judicial officer or employee to accept a gift consisting of “an invitation and travel expenses, including the cost of transportation, lodging, and meals for the judicial officer or employee and a family member to attend a bar-related function, an educational activity, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.” Judges who accept such benefits should be mindful of their financial disclosure obligations.

A variety of factors may affect the propriety of a judge’s attendance at an independent seminar. These include:

(1) the identity of the seminar sponsor, for example:

(a) whether the sponsor is an accredited institution of higher learning or a bar association, which are recognized and customary providers of educational programs; sponsorship by such a provider usually raises fewer concerns than sponsorship by other entities;

(b) whether the sponsor is a business corporation, law firm, attorney, other for-profit entity or a non-profit organization not described above; invitations by such a provider should be carefully examined by the invited judge;

(2) the nature and source of seminar funding, for example:

(a) whether there are numerous contributors to seminar funding, none of which contributes a substantial portion of the cost; when no single entity contributes more than a small proportion of a seminar’s cost, there is little reason for concern about the identity of individual contributors as the resulting benefits are too minor and attenuated to create ethical concerns;

- (b) whether an entity other than the sponsor is a source of substantial funding of the seminar; factors applicable to seminar sponsors also apply to such contributors;
 - (c) whether the seminar is funded by contributions earmarked for specific seminar programs, or by general contributions to the sponsoring entity; in the latter situation, the benefits being provided are attributable to the sponsor and not to underlying contributors;
- (3) whether a sponsor or a source of substantial funding of the seminar is currently involved as a party or attorney in litigation before the judge or is likely to be so involved;
- (4) the subject matter of the seminar, including:
- (a) whether the topics covered in the seminar are likely to be in some manner related to the subject matter of litigation before the judge in which the sponsor or source of substantial funding is involved as a party or attorney; for example, it would be improper for a judge to attend a seminar if the sponsor or source of substantial funding for the seminar is a litigant before the judge and the topics covered in the seminar are directly related to the subject matter of the litigation;
 - (b) whether contributors to seminar funding control the curriculum, faculty, or invitation list;
- (5) the nature of expenses paid or reimbursed:
- (a) whether the expenses are reasonable in amount;
 - (b) whether the seminar is primarily educational and not recreational in nature; and
- (6) whether the seminar provider makes public disclosure about the sources of seminar funding and curriculum; public disclosure by the seminar provider will ordinarily obviate the need for further inquiry.

Factors other than those set forth above may be relevant in particular cases. A judge's determination whether to attend the seminar should be made considering the totality of the circumstances. If, in light of all the relevant factors, the judge concludes that there is a reasonable question concerning the propriety of attendance, the judge should not attend the seminar.

If there is insufficient information for the judge to decide whether to attend, the judge should decline the invitation or take reasonable steps to obtain additional information. Information about the seminar sponsor, subject matter, and curriculum will

typically be apparent from the invitation and materials. Information about the nature and source of seminar funding may not be available unless it is requested from the sponsor.

If the necessary additional information is not available, whether through public disclosure, disclosure from the sponsor upon inquiry, or other sources, the judge should not attend the seminar. If the information obtained by the judge does not resolve the question concerning the propriety of attendance, the judge should not attend. To the extent the judge obtains additional information from the sponsor of the seminar, the judge should make clear that the information is not confidential and that the judge may make the information public.

Note for Advisory Opinion No. 67

¹ This opinion does not address reimbursement of expenses for judges' participation in seminars or other programs as speakers or panelists.

June 2009