



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

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CJEO Expedited Opinion¹ 2021-038

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ACCEPTANCE OF ATTORNEY SERVICES FROM A LAW FIRM

I. Question

May an appellate justice ethically accept the services of an attorney, who is an employee and incoming associate of a law firm, to work in the justice's chambers for a period of six to twelve months?

¹ The California Supreme Court Committee on Judicial Ethics Opinions (CJEO) issues **Expedited Opinions**, formerly known as **Oral Advice Summaries**, pursuant to California Rules of Court, rule 9.80(i)(1) [eff. Jan. 1, 2021]. Expedited Opinions are issued to requesting judicial officers following a discretionary decision by CJEO to address the ethical issues raised in an expedited process that does not include posting draft opinions for public comment, as required for CJEO Formal Opinions. CJEO Expedited Opinions are published in full, without identifying information regarding the requesting judicial officer, to provide information and analysis to the bench and public regarding judicial ethics.

II. Advice Provided

An appellate justice may not ethically accept the services of an attorney from a law firm because the attorney's services constitute a gift under the Code of Judicial Ethics² and the Code of Civil Procedure, which does not fall into any permissible exception to the general prohibition on gifts. In addition, accepting the attorney's services would impermissibly lend the prestige of judicial office to advance the interests of the law firm.

III. Discussion

A. The Attorney's Services Are an Impermissible Gift

The attorney's services constitute a gift from the law firm. The code defines a gift as "anything of value to the extent that consideration of equal or greater value is not received" and bans gifts, favors, and loans, unless an exception applies. (Terminology, Gift; canon 4D(5) [prohibiting gifts or favors from parties]; canon 4D(6) [prohibiting gifts, favors, or loans from anyone, unless excepted as specified]; Code Civ. Proc. § 170.9(1) [defining gift similarly to the code].) This committee has interpreted the code definition to mean that a gift is anything with market value. (CJEO Formal Opinion 2014-005 (2014), *Accepting Gifts of Little or Nominal Value Under the Ordinary Social Hospitality Exception*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 6 [an item has value if it could be exchanged for consideration on the open market].) The services of a licensed attorney clearly have a value on the open market as evidenced by the competitive salaries paid to incoming associates by many law firms.

There is no exception to the general prohibition on gifts that could be invoked here. Canon 4D(6), which enumerates the exceptions to the general prohibition on gifts, specifies that judicial officers cannot rely on an exception if the gift would either influence or "reasonably be perceived as intended to influence" the justice in his or her duties. Although there may be no actual influence, in this case an objective observer might reasonably believe that the presence of

² All further references to the code, terminology, and canons are to the California Code of Judicial Ethics unless otherwise indicated.

the law firm's attorney in the justice's chambers could place the law firm in a position to exert influence on the justice. Due to this potential appearance of influence, the gift may not be accepted even if the justice were to disqualify when the law firm appeared. (Canons 4D(6) & (6)(a).)

As the California Supreme Court states in *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th. 866, 879, gifts from lawyers to judges are “ “inherently wrong” ’ ” and have a “ “subtle, corruptive effect, no matter how much a particular judge may feel that he is above improper influence.” ’ ” For this reason, an offer of any gift from a lawyer or law firm is “*presumptively improper*.” (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 9:52, p. 641 (Rothman) [emphasis in original].) Embedding someone within the court who is closely associated with a law firm creates the overall impression that judicial independence may be eroded. Indeed, the attorney's services are a gift not only to the justice, but also to the court since the services are displacing the costs of salaried postgraduate clerkships or annual staff positions, which would normally be borne out of the court's budget. Because the attorney is affiliated with a law firm having business before the court generally, the attorney's presence casts a shadow of influence, which must be avoided. (Rothman, *supra*, § 9:56, p. 649 [although a court is not itself bound by the code, its judicial officers are, and as an institution of government, courts should not accept gifts that would undermine the court's integrity or impartiality].)

B. The Gift Impermissibly Lends Judicial Prestige to the Law Firm

Even if the gift was permissible under an exception, accepting the attorney's services would impermissibly lend the judiciary's prestige to benefit a private law firm. A fundamental principle of judicial ethics is that judicial officers must preserve the integrity of the court by avoiding impropriety and the appearance of impropriety in all activities. (Canons 1 & 2.) To this end, canon 2B(2) prohibits a judicial officer from “lend[ing] the prestige of judicial office . . . in any manner . . . to advance the pecuniary or personal interests of the judge or others.”

Allowing a law firm to place an incoming associate on a justice's staff, even temporarily, is likely to advance the interests of the law firm by enhancing its reputation. In addition, the law firm would have a favored position not enjoyed by its competitors and might be viewed as having the court's endorsement. (Canon 2B(2); CJEO Formal Opinion 2013-001 (2013), *Requesting Assistance From Attorneys*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 6 [judges must ensure that requests for assistance from lawyers do not convey the impression that law firms providing assistance are afforded special favor, or that law firms that do not provide assistance are at a disadvantage]; Rothman, *supra*, § 9:7, p. 591, citing Cal. Judges Assn., Judicial Ethics Update (Nov. 2012) p. 4 [a judge may not endorse an attorney's law practice].)³ Because the arrangement could lend judicial prestige to advance the interests of the law firm, the attorney's services may not be accepted regardless of the gift canons.

IV. Conclusion

An appellate justice may not ethically accept the services of an attorney from a law firm. Such an arrangement constitutes a gift that conveys a reasonable perception of influence, which precludes reliance on an exception to the ban on gifts. The attorney's services would also impermissibly lend the prestige of the judiciary to advance the interests of the law firm and therefore could not be accepted.



This expedited advice opinion is advisory only. (Cal. Rules of Court, rule 9.80(a), (e); Cal. Supreme Ct. Com. Jud. Ethics Opns. (CJEO), Internal Operating Rules & Proc. rule 1(a),

³ The attorney services offered by the law firm here are distinguishable from unpaid judicial externship programs where law students work for a judge or justice in exchange for course credit. Even if such programs arguably lend prestige to participating law schools, the educational purpose of the programs is an overriding factor. (Rothman, *supra*, § 10:18, p. 689 [there is no prohibition on use of judicial title to promote a permissible legal educational program because the importance of judges contributing to the law, legal system, and the administration of justice far outweighs any arguable use of prestige of office to advance pecuniary interests of others].)

(b.) It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rules 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)). The conclusions expressed in this opinion are those of the committee and do not necessarily reflect the views of the California Supreme Court or any other entity. (Cal. Rules of Court, rule 9.80(b); CJEO rule 1(a)).