



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

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CJEO Oral Advice Summary 2020-033

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PARTY REIMBURSEMENT OF JUDICIAL EXPENSES

I. Questions

A judge assigned to hear a Judicial Council Coordinated Proceeding (“JCCP” or “Coordinated Proceeding”) involving parties who are also parties to a Multidistrict Federal Court Litigation (“MDL” or “Consolidated Litigation”) being conducted in parallel on the east coast asks whether it would be permissible for the California judge to accept reimbursement from the parties or their counsel for travel, food and lodging in connection with the judge’s attendance at an out-of-county or out-of-state hearing in the Consolidated Litigation on issues relevant to the Coordinated Proceeding.

II. Conclusions

A judge presiding over a Coordinated Proceeding may not be reimbursed by the parties or their attorneys for travel, lodging, meals and like expenses incurred in connection with the matter because such a payment would be a prohibited gift from persons appearing before the judge. Instead, a judge seeking reimbursement for travel-related expenses incurred in connection with their official duties must request payment from the courts following the policies and procedures and using the reimbursement rates approved by the Judicial Council.

III. Discussion

Mass torts and other like matters that give rise to complaints throughout the state and across the nation can result in state and federal lawsuits with similar, sometimes overlapping claims. In those kinds of cases, an overarching purpose behind both California's JCCP and federal MDL procedures is to make case management of such complex litigation more efficient, economical and convenient for both the courts and the litigants. (Code Civ. Proc., § 404.1; 28 U.S.C. § 1407.) For that reason, Coordinated Proceedings and Consolidated Litigations involving the same factual or legal issues are often coordinated, with identical discovery and sometimes joint hearings on common motions or common status conferences. Many times a majority of the parties and their counsel can be located out of county or out of state. The parties might request that a California judge presiding over a Coordinated Proceeding attend or participate in a hearing in a parallel Consolidated Litigation held out of county or out of state.

In circumstances where it may be more efficient and economical for the judge to travel to perform his or her official functions in connection with litigation, the inquiring judge asks whether it would be permissible to accept reimbursement for his or her travel-related expenses from the parties or from their counsel. Those expenses could include but are not limited to travel, lodging and meals which the judge initially pays for out of his or her own pocket. This question is particularly relevant to the context of Coordinated Proceedings and Consolidated Litigations, because a purpose behind both the JCCP and MDL statutes is to reduce the burdens

on litigants, and judges are required to manage their cases with the convenience of the parties, witnesses and counsel in mind.¹

IV. Oral Advice Provided

A. Reimbursements by Parties or Their Counsel Are Impermissible Gifts

The ability of a judge to be reimbursed for travel or related expenses incurred in connection with the judge's official capacity is subject to the gift restrictions set forth in canon 4D(5)-(6) of the California Code of Judicial Ethics.² Those provisions of the canon limit or prohibit judges from accepting certain gifts, bequests, favors and loans. As used in the canons, the word "gift" is a defined term meaning in pertinent part "anything of value to the extent that consideration of equal or greater value is not received." (Terminology; CJEO Formal Opinion 2014-005 (2014), *Accepting Gifts of Little or Nominal Value Under the Ordinary Social Hospitality Exception*, California Supreme Court Committee on Judicial Ethics Opinions, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 6 [items of little or nominal value when offered for no consideration are gifts].) Here on the facts, the reimbursement of the judge's travel and related expenses falls within this definition. (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 9:71, p. 653 (Rothman) [payment by persons or organizations to a judge for travel is a gift or favor to the judge that is subject to the prohibitions and limitations on gifts].)

Under the code, all gifts are inherently prohibited. While some gifts are permitted under exceptions and exclusions, gifts from a party are prohibited under all circumstances. (Canon 4D(5) [under no circumstances shall a judge accept a gift if the donor is a party whose interests have come or are reasonably likely to come before the judge].) The prohibition on party gifts is

¹ There are other circumstances in which parties might want a judge to travel in their official capacity in connection with their work on a specific case and for that reason might offer to pay the judge's expenses for doing so. For example, the parties may wish the judge to view a particular location in person and agree amongst themselves to bear the costs of transportation incurred by the judge. In that circumstance, the same principles analyzed in this advice summary would apply to the reimbursement of the judge's expenses.

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

without exception and extends even to gifts of nominal value. (Canon 4D(6)(i).) As a result, any reimbursement of travel or travel-related expenses made by a party or parties to the judge would be prohibited. This is true whether the parties reimburse the judge directly or pay the judge's expenses indirectly through their attorneys. (Rules Prof. Conduct, rule 1.8.5 [attorneys may pay for a client's litigation-related expenses only "from funds collected or to be collected for the client as a result of the representation, with the consent of the client"]).

B. Judges Must Seek Reimbursement of Travel-Related Expenses from the Court

While the requesting judge's travel expenses may not be reimbursed by the parties or their attorneys, reimbursement may be possible through the judge's court following policies and procedures applicable to the judicial branch as a whole. Reimbursement of a judge's travel-related expenses is *not* prohibited if the travel is provided by "a government, a governmental agency or authority" under section 170.9, subdivision (e)(2) of the Code of Civil Procedure.

The Legislature specifically tasked the Judicial Council with developing and adopting "fiscally responsible travel reimbursement policies, procedures, and rates for the judicial branch that provide for appropriate accountability." (Gov. Code, § 68506.5.) As part of its mandate, the Judicial Council approves the recommendations of the Administrative Director of the Courts for policies and schedules for reimbursement of travel expenses and procedures for processing reimbursement requests. (Gov. Code, § 69505.) Once those policies, reimbursement rates and procedures are approved by the Judicial Council, trial courts are required to follow them. (*Ibid.* [approved policies and procedures "*shall* be followed by the trial courts" (italics added)]; Gov. Code, § 14 ["'Shall' is mandatory and 'may' is permissive."].)

Requiring judges to submit claims for reimbursement of travel-related expenses by means of court-managed and supervised policies and procedures helps to ensure that there is "appropriate accountability" for such payments. (Gov. Code, § 68506.5.) It also helps judges avoid numerous potential ethical minefields. For example, if a judge receives financial reimbursements in one case from litigants directly or through their attorneys, parties adverse to those same litigants or attorneys in future matters before that same judge may feel that there is some influence or bias based on the past reimbursements, particularly where it is unclear

whether the reimbursements were reasonable and necessary or seemed extravagant under the circumstances. (Fla. Jud. Ethics Advisory Com., Jud. Ethics Opn. No. 2006-22 (Aug. 29, 2006); Rothman, *supra*, § 9:71, p. 653 [“It is well known that travel by public officials, beyond that for government business that is paid for by the government, can provide the person or entity paying for the travel with an opportunity to secure special access to and influence with the officials receiving such benefit.”].) The judge also may need to disclose travel expense payments in future matters in which the paying party, attorney or law firm appears before the judge. (Canon 3E(2)(a) [a trial court judge shall disclose on the record information that is reasonably relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification]; Rothman, *supra*, § 9:59, p. 651 [any gift received from an attorney must be disclosed on the record for an appropriate period of time].) This is true regardless of whether the reimbursement is also reported on the judge’s statement of economic interest.

For all of these reasons, judges are advised to consider the policies and procedures approved by the Judicial Council pursuant to the Government Code as mandatory, and the sole means of seeking reimbursement of travel-related expenses incurred in connection with their official duties. *People v. Standish* (2006) 38 Cal. 4th 858, 870 (interpreting use of the word “shall” to denote a requirement where such meaning is consistent with purpose of the statute); accord Massachusetts Committee on Judicial Ethics, Opinion No. 2002-05 (under Massachusetts statute, payment by state is “exclusive mechanism” for reimbursing judicial travel expenses).



This oral advice summary 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), (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 summary 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)).