

NEW YORK STATE BAR ASSOCIATION
Committee on Professional Ethics

Opinion 706 – 9/15/98 (19-98)

Topic: Entertainment of judges

Digest: Law firm may not host a holiday party exclusively for judges and their law clerks.

Code: DR 7-110A, DR 9-101(C), EC 9-1

QUESTION

May a lawyer ethically host a holiday party for all judges of the local court and their law clerks where the only other guests in attendance are attorneys in the lawyer's law firm?

OPINION

DR 7-110(A) provides that a lawyer “shall not give or lend anything of value to a judge, official, or employee of a tribunal except as permitted by Section C (4) of Canon 5 of the Code of Judicial Conduct.” See *also* EC 9-6 (“Every lawyer owes a solemn duty to uphold the integrity and honor of the profession . . . and to strive to avoid not only professional impropriety but also the appearance of impropriety”). DR 7-110(A) refers to a section of the former New York Code of Judicial Conduct, which permitted a judge or a member of his family to accept, *inter alia*, “ordinary social hospitality.”¹ [Former] Code of Judicial Conduct, Canon 5, Section C (4)(a, b). The New York Advisory Committee on Judicial Ethics has considered whether social gatherings involving attorneys and judges constituted “ordinary social hospitality” on several occasions, and has opined that certain gatherings — including having a meal with an attorney or attending an outing sponsored by the attorney — are permissible provided that there is

¹ The recently revised version of the Code of Judicial Conduct prohibits a judge from lending the “prestige of his office to advance the private interests of others,” and from allowing others to “convey the impression that they are in a special position to influence him.” Our conclusion in this Opinion would not be affected if DR 7-110(A) referred to the current text of the Code of Judicial Conduct.

no discussion of any of the attorney's matters then pending before the judge and the occasion does not otherwise create the appearance of impropriety. *See, e.g.*, N.Y. Adv. Comm. Jud. Eth. 95-99 (1995) (golf outing); N.Y. Adv. Comm. Jud. Eth. 92-22 (1992) (lunch); N.Y. Adv. Comm. Jud. Eth. 91-136 (1991) (law office opening); N.Y. Adv. Comm. Jud. Eth. 89-23 (1989) (attorney's 75th birthday party). The Advisory Committee has observed, however, that not every invitation falls within the scope of "ordinary social hospitality," and thus any affair that, for example, "is out of the ordinary in expense or lavishness" is not permissible. N.Y. Adv. Comm. Jud. Eth. 87-12 (1987) (ordinary holiday party is permissible).

We believe that a lawyer is ethically prohibited from holding a holiday party exclusively for the local judiciary and their law clerks. Where the lawyer's invitation to the judges is not incidental to an event that would in any event take place, but the party is instead targeted at the judiciary and the other participants are exclusively lawyers associated with the lawyer, the event has an appearance of impropriety. The public can reasonably infer that the social event has been held to curry favor for the firm's attorneys with the judiciary before whom the firm practices, to obtain inappropriate advantage in matters before the court. *See* Nassau County 83-1 (law firm function held solely for the benefit of court personnel violates the prohibition against offering a gift or gratuity to court personnel and creates the appearance of impropriety in suggesting a personal relationship between the firm and the Judiciary); *Cf.* DR 9-101(C) (lawyer shall not imply that the lawyer is able to influence improperly any tribunal).

CONCLUSION

Accordingly, hosting a holiday party exclusively for the local judiciary and their law clerks is impermissible under DR 7-110(A) and Canon 9.
