



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 3.5(f). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion No. 94-3
July, 1994

Topic: Relationship with public officials.

Digest: A law firm may entertain public officials who are officers of a client municipality at events such as a holiday party or a summer picnic. Invitations of such persons to sporting events on an individual basis are not improper per se, but are subject to reasonable limitations.

Ref: Illinois Rules of Professional Conduct, Rule 3.5(h)
Illinois Code of Judicial Conduct, Rules 62, 63 and 65.
ISBA Opinions on Professional Conduct, Nos. 86-18 and 86-19
In re D'Angelo, 126 Ill.2d 45, 533 N.E.2d 861 (1988).
In re Corboy, 124 Ill.2d 29, 528 N.E.2d 694 (1988).

Facts

A law firm represents a municipality as village counsel. The firm traditionally sponsors social events, such as holiday parties and summer picnics, for clients and friends of the firm. Individual firm lawyers also invite firm clients to sporting events on an individual basis at firm expense.

Questions

1. Is it proper for the firm to invite the elected and appointed officials of the client municipality to the firm-sponsored social events?
2. Is it proper for firm lawyers to invite the same elected or appointed officials to sporting events on an individual basis at firm expense?

Opinion

As indicated in the Committee's prior Opinions Nos. 86-18 and 86-19, the Illinois Rules of Professional Conduct and the Illinois Code of Judicial Conduct prevent Illinois lawyers from giving, and Illinois judges from receiving, gifts or anything of value other than ordinary social hospitality. Specifically, Rule 3.5(h) of the Illinois Rules of Professional Conduct provide: "A lawyer shall not give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans which a judge or a member of the judge's family may receive under Rule 65(C)(4) of the Code of Judicial Conduct. . . ." A judge may accept "ordinary social hospitality" from lawyers and others under Rule 65(C)(4)(b).

The Committee is not aware of any specific statute or rule that applies to public officials other than judges. However, the Supreme Court in *In re D'Angelo*, 126 Ill.2d 45, 533 N.E.2d 861 (1988), disbarred a lawyer for making gifts to both judges and non-judicial appointed officials. In that case: "Respondent, on behalf of judges and public officials, paid more than \$10,000 for over a decade's worth of [automobile] rental charges." The Court found that these payments could not be "ordinary social hospitality" within the meaning of Rule 65(C)(4)(b). The Court further stated that it would not condone or tolerate this type of activity in an apparent attempt to influence government decision-makers and that a lawyer's professional conduct must be above reproach. Given that the Supreme Court has applied the same standards as those stated in the Code of Judicial Conduct to non-judicial public officials, the Committee believes that prudent lawyers should consider the propriety of gifts or entertainment of public officials under the same general rules.

Under the facts presented, the Committee believes that invitations to social events such as holiday parties and summer picnics, provided such events are not extravagant and do not involve the awarding of expensive gifts, would reasonably constitute ordinary social hospitality and would not be improper.

Individual invitations to sporting events and other similar client entertainment activities raise more difficult issues. As noted above, the Committee is not aware of any general state statute or rule regarding gifts or entertainment applicable to non-judicial public officials. The so-called Corrupt Practices Act, 50 ILCS 105/3 [formerly Ill. Rev. Stat. ch. 102, ¶ 3], prohibits conflicts of interest in conducting public business. The Act does not appear, however, to apply to such matters as client entertainment. There may be local ordinances or rules that prohibit or regulate gifts to and entertainment of public officials in particular governmental units, and lawyers representing local government entities should determine the nature and scope of any such rules or ordinances.

In the absence of specific local ordinances or rules, the Committee perceives no per se prohibition of individual client entertainment of public officers such as invitations to sporting

events. Nevertheless, prudence requires that such entertainment be subject to reasonable limits. The Supreme Court in *In re D'Angelo*, citing *In re Corboy*, 124 Ill. 2d 29, 528 N.E.2d 694 (1988), considered four factors in determining whether the respondent's conduct was "ordinary social hospitality" under the applicable rule: (1) the value of the gift; (2) the relationship between the official and the donor; (3) the social practices and customs involved; and (4) the particular circumstances of the gifts and loans. 533 N.E.2d at 865. These factors suggest that individual client entertainment activities that constitute "ordinary business hospitality" in the community should not be found improper. Regardless of local custom, however, entertainment that is unduly extravagant or expensive (e.g. an entire season ticket or a "Super Bowl Weekend" excursion) would not be considered ordinary business hospitality in this context.

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