

# Supreme Court Advisory Committee on the Code of Judicial Ethics

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## INVITATION TO COMMENT

SP18-06

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**Title**

Proposed Amendments to Canon 4D(6) and 4D(7) of the Code of Judicial Ethics

**Action Requested**

Review and submit comments by May 31, 2018

**Proposed by**

Supreme Court Advisory Committee on the Code of Judicial Ethics  
Hon. Richard D. Fybel, Chair

**Proposed Effective Date**

August 1, 2018

**Date**

March 20, 2018

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### Summary

The Supreme Court Advisory Committee on the Code of Judicial Ethics proposes amendments to canon 4D. Canon 4D(6) states that a judge may accept a gift provided it falls within one of the eight enumerated exceptions to the prohibition against accepting gifts, and only if acceptance “would not reasonably be perceived as intended to influence the judge in the performance of judicial duties.” Similarly, canon 4D(7) states that a judge may accept scholarships, fellowships, rewards, and prizes “provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties.” These proposed amendments would clarify that, in addition to not creating a reasonable perception of influence, any gift (canon 4D(6)), scholarship, fellowship, reward, or prize (canon 4D(7)) may not actually influence the judge. They would also break the prefatory language of canon 4D(6) into two sentences to make its intent clearer. After receiving and reviewing comments on these proposals, the committee will make recommendations to the Supreme Court regarding the proposed amendments. The full text of the proposed amendments is attached.

### Discussion

The proposed amendments are intended to clarify, improve, and make conforming changes to the code.

*The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.*

## **1. Accepting Gifts That Actually Influence the Judge—Canon 4D(6)**

Canon 4D(6) states that “a judge shall not accept and shall discourage members of the judge’s family residing in the judge’s household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter set forth, provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties.” It then lists eight exceptions. The committee agreed that this prefatory language would be clearer if it were broken up into two sentences. This proposed amendment would not be a substantive change.

The canon provides that acceptance of a gift is permissible only if there would be no perception that the gift is intended to influence the judge. The committee also proposes adding language to make it clear that acceptance may neither create a reasonable perception of influence nor actually influence the judge.

## **2. Accepting Scholarships and Rewards—Canon 4D(7)**

Canon 4D(7) provides that a judge may accept scholarships and fellowships as well as rewards and prizes “provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties.” To conform this language to the proposed amendments to canon 4D(6) (see above), which contains the same language, the committee proposes amending the canon to clarify that acceptance may neither create a reasonable perception of influencing the judge nor actually influence the judge.

Canons 4D(6) and 4D(7) of the California Code of Judicial Ethics would be amended to read:

**CANON 4**

**A JUDGE SHALL SO CONDUCT THE JUDGE’S QUASI-JUDICIAL AND  
EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF  
CONFLICT WITH JUDICIAL OBLIGATIONS**

**A. – C. \* \* \***

**D. Financial Activities**

**(1) – (5) \* \* \***

(6) A judge shall not accept and shall discourage members of the judge’s family residing in the judge’s household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter set forth, ~~provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties:~~ Gifts that are permitted by Canons 4D(6)(a) through (i) may only be accepted if acceptance would neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties:

**(a) – (h) \* \* \***

(7) A judge may accept the following, provided that acceptance would ~~not~~ neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants;

(b) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges.

*ADVISORY COMMITTEE COMMENTARY: Canons 4D(6) and 4D(7)*

*The references to such scholarships, fellowships, rewards, and prizes were moved from Canon 4D(6) to Canon 4D(7) because they are not considered to be gifts under this code, and a judge may accept them.*

**E. – H. \* \* \***