

SUPREME JUDICIAL COURT
BOSTON, MASSACHUSETTS 02108

MEMORANDUM

TO: All Massachusetts Judges

FROM: Supreme Judicial Court Justices

RE: Participation in Bar Association Events

DATE: July 31, 2014

On October 4, 2013, Chief Justice Paula Carey wrote a memorandum to all Trial Court Judges in which she emphasized the value of judicial participation in bar events, and noted that "[i]f an event is not a fundraiser, a judge's attendance and program participation in a state, county, or minority bar association is generally permissible." [copy attached] We are aware that Committee on Judicial Ethics Opinion No. 2014-1 (February 12, 2014) is causing concern among members of the bench and bar that judges' participation in any bar association event sponsored by law firms, lawyers, and/or legal vendors might violate the Code of Judicial Conduct, particularly if there is a risk that the revenue generated by the event may exceed the cost of the event.¹ We write today to express our continued view that the Code of Judicial Conduct encourages judges to participate in regularly-scheduled programs of a bar association

¹ Opinion 2014-1 concerns an event where a judge would be honored with an award. We do not address issues relating to awards or comparable honors in this memorandum.

and to speak about issues relating to the administration of justice at bar association events, so long as the program or event is not a fundraiser.²

Our Code states in the Commentary to Section 4C(3)(b) that “[a] fund raising event is one where the sponsors' aim is to raise money to support the organization's activities beyond the event itself.” We construe this to mean that raising money is the primary purpose or a chief aim of the event’s organizers. An event does not become a fundraiser simply because the revenue generated modestly exceeds the costs of the event; indeed, the organizers may not know whether an event will generate a surplus or run a deficit until the event is concluded. We also recognize that many bar events are sponsored or financially supported by one or more lawyers, law firms, or legal vendors that have substantial regular business before the courts, including the court on which a judge sits, and that bar association events are sometimes held in space provided by law firms. None of these factors in itself precludes a judge from attending, participating, or speaking about the administration of justice at such an event. While diverse and widespread sponsorship and financial support are desirable, we recognize the reality that some smaller bar associations may not be able to garner a large number of sponsors or financial supporters of an event. Similarly, although it is preferable for bar association events to be held at locations other than at law firms, we recognize that some smaller bar associations may not have the financial means to secure other space.

Judges are, of course, always required to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and the appropriateness of a judge's participation in any event will depend on the particular circumstances. Judges must avoid giving the

² Our Code of Judicial Conduct permits the "mere attendance" of judges at fundraising events, where attendance is otherwise consistent with the Code, but prohibits a judge from being a speaker or honoree at such events.

impression that the members of a bar association or the sponsors and financial supporters of an event are in a special position to influence the judge. These cautions apply with particular force when a judge is speaking or otherwise participating in events of a bar association whose members generally represent one constituency (e.g., prosecutors, defense counsel) or take positions on one side of disputed issues (e.g., plaintiffs' personal injury bar, insurance defense bar).

As you know, the Justices have appointed a Committee to study our entire Code of Judicial Conduct and to propose a revised Code. This Committee was created in part to respond to the American Bar Association's adoption of a new Model Code of Judicial Conduct in 2007. This Model Code encourages judges to engage in community outreach, including activities to promote public confidence in the administration of justice, professionalism within the bench and bar, and access to justice for all. We anticipate that when the Committee completes its important work, the revised Code will address these subjects in more detail.



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MEMORANDUM

TO: Trial Court Judges

FROM: Paula M. Carey, Chief Justice of the Trial Court

RE: Value of Bench-Bar Communication

DATE: October 4, 2013

At a recent "brown-bag" bench-bar lunch at the SJC, various bar leaders, including the Presidents of the Massachusetts Bar Association and Boston Bar Association, noted that fewer judges attend bar events now, compared to ten or fifteen years ago. They attributed the decline in attendance to concerns expressed by judges that attendance at bar events might violate the code of judicial ethics and put them at risk of sanction by the Judicial Conduct Commission.

While this has not been my experience, I thought it would be helpful for you to be aware of this perception. Additionally, I thought I would take this opportunity to share my view that judicial participation at bar events is important and valuable – both to the judiciary and the bar – and it can be accomplished without violating any canon of our judicial code or any state ethics obligation.

Bar events provide a meaningful and productive way for judges to inform attorneys about the challenges we face in our courts and the many ways we are working to meet those challenges. Information is communicated, ideas shared, and sometimes solutions to problems are identified or refined. These events provide the judiciary with an opportunity to invite cooperation and assistance on a range of issues. In addition, attorneys can candidly give us an appraisal of what is happening in the courts, helping us better sense how we are doing and what we might improve.

Of course, judicial participation in bar events is also important to bar members and associations. I am sure you remember your days as a practicing lawyer and how beneficial it was to hear from a judge about your area of practice or the administration of justice. Many bar members, especially newer ones, like the opportunity to meet informally with local judges to learn about the courts and to benefit from insights helpful to practitioners. When judges speak at these events, attendance increases, because so many lawyers want to hear what judges have to say about substantive law and the provision of justice.

The judicial canons encourage participation in bar activities, with reasonable boundaries stemming from the fundamental obligation of a judge to be impartial. If an event is not a fundraiser, a judge's attendance and program participatio at a state, county or minority bar association function is generally permissible. As noted in the Commentary to Canon 4, "a judge is in a unique position to contribute to the integrity of the legal profession and to the improvement of the law, the legal system, and the administration of justice ... To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law."

Some bar association events include incidental hospitality, such as a meal or waiver of admission fees. A judge may accept such hospitality provided the relevant disclosures are made. The Commonwealth's Conflict of Interest Law requires disclosure of incidental hospitality of \$50 or more. Details can be found at: <http://www.mass.gov/ethics/disclosure-forms/inst-5-083-event-judge-bar-assoc-new.pdf> In addition, the Code of Judicial Conduct requires reporting of hospitality that exceeds \$350.

So, whether through informal, "brown bag" bench-bar lunches, such as those at the SJC, or more formal speaking engagements at bar functions, or attendance at bar educational events, I urge you to find appropriate ways to interact with the bar in your area and promote a productive exchange of information and ideas. I assure you that you will find it a valuable use of your time.