

ASSEMBLY BILL

No. 2116

Introduced by Assembly Member Evans

February 18, 2010

An act to amend Section 170.9 of the Code of Civil Procedure, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

AB 2116, as introduced, Evans. Judges: gifts and honoraria.

Existing law limits the monetary value of gifts that may be accepted by judges and prohibits judges from accepting any honorarium. The Commission on Judicial Performance is required to enforce these prohibitions.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 170.9 of the Code of Civil Procedure is
- 2 amended to read:
- 3 170.9. (a) ~~No~~A judge shall *not* accept gifts from ~~any~~ a single
- 4 source in ~~any~~ a calendar year with a total value of more than two
- 5 hundred fifty dollars (\$250). This section shall not be construed
- 6 to authorize the receipt of gifts that would otherwise be prohibited
- 7 by the California Code of Judicial Ethics adopted by the California
- 8 Supreme Court or any other ~~provision of law~~.
- 9 (b) This section shall not prohibit or limit the following:

1 (1) Payments, advances, or reimbursements for travel and related
2 lodging and subsistence permitted by subdivision (e).

3 (2) Wedding gifts and gifts exchanged between individuals on
4 birthdays, holidays, and other similar occasions, ~~provided that if~~
5 the gifts exchanged are not substantially disproportionate in value.

6 (3) A gift, bequest, favor, or loan from ~~any~~ a person whose
7 preexisting relationship with a judge would prevent the judge from
8 hearing a case involving that person, under the Code of Judicial
9 Ethics adopted by the California Supreme Court.

10 (c) For purposes of this section, “judge” means ~~judges of the~~
11 ~~superior courts, and justices of the courts of appeal or the Supreme~~
12 ~~Court.~~ *both of the following:*

- 13 (1) *A judge of a superior court.*
- 14 (2) *A justice of a court of appeal or the California Supreme*
15 *Court.*

16 (d) The gift limitation amounts in this section shall be adjusted
17 biennially by the Commission on Judicial Performance to reflect
18 changes in the Consumer Price Index, rounded to the nearest ten
19 dollars (\$10).

20 (e) Payments, advances, or reimbursements, for travel, including
21 actual transportation and related lodging and subsistence ~~which~~
22 *that* is reasonably related to a judicial or governmental purpose,
23 or to an issue of state, national, or international public policy, is
24 not prohibited or limited by this section if any of the following
25 apply:

26 (1) The travel is in connection with a speech, practice
27 demonstration, or group or panel discussion given or participated
28 in by the judge, the lodging and subsistence expenses are limited
29 to the day immediately preceding, the day of, and the day
30 immediately following the speech, demonstration, or discussion,
31 and the travel is within the United States.

32 (2) The travel is provided by a government, a governmental
33 agency or authority, a foreign government, a foreign bar
34 association, an international service organization, a bona fide public
35 or private educational institution, as defined in Section 203 of the
36 Revenue and Taxation Code, or a nonprofit charitable or religious
37 organization ~~which~~ *that* is exempt from taxation under Section
38 501(c)(3) of the Internal Revenue Code, or by a person domiciled
39 outside the United States who substantially satisfies the

1 requirements for tax exempt status under Section 501(c)(3) of the
2 Internal Revenue Code.

3 For purposes of this section, “foreign bar association” means an
4 association of attorneys located outside the United States (A) that
5 performs functions substantially equivalent to those performed by
6 state or local bar associations in this state and (B) that permits
7 membership by attorneys in that country representing various legal
8 specialties and does not limit membership to attorneys generally
9 representing one side or another in litigation. “International service
10 organization” means a bona fide international service organization
11 of which the judge is a member. A judge who accepts travel
12 payments from an international service organization pursuant to
13 this subdivision shall not preside over or participate in decisions
14 affecting that organization, its state or local chapters, or its local
15 members.

16 (3) The travel is provided by a state or local bar association or
17 judges professional association in connection with testimony before
18 a governmental body or attendance at any professional function
19 hosted by the bar association or judges professional association,
20 the lodging and subsistence expenses are limited to the day
21 immediately preceding, the day of, and the day immediately
22 following the professional function.

23 (f) Payments, advances, and reimbursements for travel not
24 described in subdivision (e) are subject to the limit in subdivision
25 (a).

26 (g) No judge shall accept any honorarium.

27 (h) “Honorarium” means ~~any~~ a payment made in consideration
28 for any speech given, article published, or attendance at ~~any~~ a
29 public or private conference, convention, meeting, social event,
30 meal, or like gathering.

31 (i) “Honorarium” does not include earned income for personal
32 services ~~which~~ that are customarily provided in connection with
33 the practice of a bona fide business, trade, or profession, such as
34 teaching or writing for a publisher, and does not include fees or
35 other things of value received pursuant to Section 94.5 of the Penal
36 Code for performance of a marriage.

37 For purposes of this section, “teaching” shall include
38 presentations to impart educational information to lawyers in events
39 qualifying for credit under ~~Mandatory Continuing Legal Education~~

1 *mandatory continuing legal education*, to students in bona fide
 2 educational institutions, and to associations or groups of judges.

3 (j) ~~Subdivision~~ *Subdivisions* (a) and (e) shall apply to all
 4 payments, advances, *and* reimbursements for travel and related
 5 lodging and subsistence.

6 (k) This section does not apply to any honorarium that is not
 7 used and, within 30 days after receipt, is either returned to the
 8 donor or delivered to the Controller for deposit in the General Fund
 9 without being claimed as a deduction from income for tax purposes.

10 (l) “Gift” means ~~any~~ a payment to the extent that consideration
 11 of equal or greater value is not received and includes a rebate or
 12 discount in the price of anything of value unless the rebate or
 13 discount is made in the regular course of business to members of
 14 the public without regard to official status. ~~Any~~ A person, other
 15 than a defendant in a criminal action, who claims that a payment
 16 is not a gift by reason of receipt of consideration has the burden
 17 of proving that the consideration received is of equal or greater
 18 value. However, the term “gift” does not include *any of the*
 19 *following*:

20 (1) Informational material such as books, reports, pamphlets,
 21 calendars, periodicals, cassettes and discs, or free or reduced-price
 22 admission, tuition, or registration, for informational conferences
 23 or seminars. No payment for travel or reimbursement for any
 24 expenses shall be deemed “informational material.”

25 (2) Gifts ~~which~~ *that* are not used and ~~which~~, within 30 days
 26 after receipt, are returned to the donor or delivered to a charitable
 27 organization without being claimed as a charitable contribution
 28 for tax purposes.

29 (3) Gifts from a judge’s spouse, child, parent, grandparent,
 30 grandchild, brother, sister, parent-in-law, brother-in-law,
 31 sister-in-law, nephew, niece, aunt, uncle, or first cousin or the
 32 spouse of any such person; ~~provided that~~. *However*, a gift from
 33 any ~~such person~~ *of those persons* shall be considered a gift if the
 34 donor is acting as an agent or intermediary for ~~any~~ a person not
 35 covered by this paragraph.

36 (4) Campaign contributions required to be reported under
 37 Chapter 4 (commencing with Section 84100) of Title 9 of the
 38 Government Code.

39 (5) Any devise or inheritance.

1 (6) Personalized plaques and trophies with an individual value
2 of less than two hundred fifty dollars (\$250).

3 (7) Admission to events hosted by state or local bar associations
4 or judges' professional associations, and provision of related food
5 and beverages at ~~such~~ *those* events, when attendance does not
6 require ~~travel~~ "*travel*," as described in paragraph (3) of
7 subdivision (e).

8 (m) The Commission on Judicial Performance shall enforce the
9 prohibitions of this section.