

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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 *applicable to subordinate judicial officers*.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. 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) A judge shall not accept gifts from a single source
4 in a calendar year with a total value of more than two hundred fifty
5 dollars (\$250). This section shall not be construed to authorize the
6 receipt of gifts that would otherwise be prohibited by the California
7 Code of Judicial Ethics adopted by the California Supreme Court
8 or any other law.

1 (b) This section shall not prohibit or limit the following:
2 (1) Payments, advances, or reimbursements for travel and related
3 lodging and subsistence permitted by subdivision (e).

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

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

11 ~~(e) For purposes of this section, "judge" means both of the~~
12 ~~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 *(c) For purposes of this section, "judge" includes all of the*
17 *following:*

- 18 *(1) Judges of the superior courts.*
- 19 *(2) Justices of the courts of appeal and the Supreme Court.*
- 20 *(3) Subordinate judicial officers, as defined in Section 71601*
21 *of the Government Code.*

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

26 (e) Payments, advances, or reimbursements, for travel, including
27 actual transportation and related lodging and subsistence that is
28 reasonably related to a judicial or governmental purpose, or to an
29 issue of state, national, or international public policy, is not
30 prohibited or limited by this section if any of the following apply:

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

37 (2) The travel is provided by a government, a governmental
38 agency or authority, a foreign government, a foreign bar
39 association, an international service organization, a bona fide public
40 or private educational institution, as defined in Section 203 of the

1 Revenue and Taxation Code, or a nonprofit charitable or religious
2 organization that is exempt from taxation under Section 501(c)(3)
3 of the Internal Revenue Code, or by a person domiciled outside
4 the United States who substantially satisfies the requirements for
5 tax exempt status under Section 501(c)(3) of the Internal Revenue
6 Code.

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

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

27 (f) Payments, advances, and reimbursements for travel not
28 described in subdivision (e) are subject to the limit in subdivision
29 (a).

30 (g) No judge shall accept any honorarium.

31 (h) “Honorarium” means a payment made in consideration for
32 any speech given, article published, or attendance at a public or
33 private conference, convention, meeting, social event, meal, or
34 like gathering.

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

1 For purposes of this section, “teaching” shall include
2 presentations to impart educational information to lawyers in events
3 qualifying for credit under mandatory continuing legal education,
4 to students in bona fide educational institutions, and to associations
5 or groups of judges.

6 (j) Subdivisions (a) and (e) shall apply to all payments, advances,
7 and reimbursements for travel and related lodging and subsistence.

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

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

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

26 (2) Gifts that are not used and, within 30 days after receipt, are
27 returned to the donor or delivered to a charitable organization
28 without being claimed as a charitable contribution 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. However, a gift from any of those
33 persons shall be considered a gift if the donor is acting as an agent
34 or intermediary for a person not covered by this paragraph.

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

38 (5) Any devise or inheritance.

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

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

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

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