

Assembly Bill No. 2116

Passed the Assembly August 9, 2010

Chief Clerk of the Assembly

Passed the Senate August 5, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2116, 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 those provisions applicable to subordinate judicial officers. The bill would require the court employing the subordinate judicial officer to exercise initial jurisdiction, and the Commission on Judicial Performance to exercise discretionary jurisdiction, to enforce those prohibitions.

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

SECTION 1. Section 170.9 of the Code of Civil Procedure is amended to read:

170.9. (a) A judge shall not accept gifts from a single source in a calendar year with a total value of more than two hundred fifty dollars (\$250). This section shall not be construed to authorize the receipt of gifts that would otherwise be prohibited by the California Code of Judicial Ethics adopted by the California Supreme Court or any other law.

(b) This section shall not prohibit or limit the following:

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

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

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

(c) For purposes of this section, “judge” includes all of the following:

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

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

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

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

(2) The travel is provided by a government, a governmental agency or authority, a foreign government, a foreign bar association, an international service organization, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, or a nonprofit charitable or religious organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

For purposes of this section, “foreign bar association” means an association of attorneys located outside the United States (A) that performs functions substantially equivalent to those performed by state or local bar associations in this state and (B) that permits membership by attorneys in that country representing various legal specialties and does not limit membership to attorneys generally representing one side or another in litigation. “International service organization” means a bona fide international service organization of which the judge is a member. A judge who accepts travel

payments from an international service organization pursuant to this subdivision shall not preside over or participate in decisions affecting that organization, its state or local chapters, or its local members.

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

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

(g) No judge shall accept any honorarium.

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

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

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

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

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

(l) “Gift” means a payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of

the public without regard to official status. A person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. However, the term “gift” does not include any of the following:

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

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

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

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

(5) Any devise or inheritance.

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

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

(m) The Commission on Judicial Performance shall enforce the prohibitions of this section with regard to judges of the superior courts and justices of the courts of appeal and the Supreme Court. With regard to subordinate judicial officers, consistent with Section 18.1 of Article VI the California Constitution, the court employing the subordinate judicial officer shall exercise initial jurisdiction to enforce the prohibitions of this section and the Commission on Judicial Performance shall exercise discretionary jurisdiction with respect to the enforcement of the prohibitions of this section.

Approved _____, 2010

Governor