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**E-70-1      It is unethical for an attorney to organize alone or with other individual attorneys or lay persons or groups, a testimonial dinner or event for a judge during his term of office. It is also unethical for an attorney to purchase tickets for, attend or contribute to such a testimonial, unless organized by the Bar Association**

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The committee has been asked whether in the future it will be ethical for an attorney to respond to a solicitation seeking funds for a testimonial dinner for a sitting judge other than upon his retirement.

The attorney requesting the opinion stated it was his view that: “these testimonial dinners are a rather vicious thing. . . . Many lawyers felt they had to contribute to stay in good graces and did so. A number of others did not because they felt there were serious ethical questions involved.”

There have been no opinions from the American Bar Association Committee of Professional Ethics touching on this question since the general adoption of the new Code of Professional Responsibility (effective in Wisconsin by Supreme Court order January 1, 1970). There are, however, several ethics opinions of the American Bar Association and the Association of the Bar of the City of New York which contain language helpful in resolving the problem.

The new Disciplinary Rule, DR 7-110(a) states:

“(A) A lawyer shall not give or lend anything of value to a judge. . . .” This rule has its roots in the former Canon 3 of the Canons of Professional Ethics, which said in part:

“3. Attempts to Exert Personal Influence on the Court. Marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal relations of the parties, subject both the judge and the lawyer to misconstructions of motive and should be avoided. . . .”

Canon 9 of the new Code of Professional Responsibility provides “A lawyer should avoid even the appearance of professional impropriety.” This reflects the holding of well-established case law to the effect that an attorney should not only avoid impropriety but should avoid even the appearance of impropriety.

Certainly the organization of a testimonial dinner by an *ad hoc* committee, with widespread solicitation of the Bar to buy tickets, gives rise to the possibility that those involved in organizing the affair are seeking to curry favor with the judge. This is especially true where there is no special occasion for the event, such as the judge’s retirement.

The solicited lawyer is indeed on the horns of a dilemma: A refusal to contribute may be held against him, yet a contribution is clearly a “gift” to the judge based on other than close personal relationships and prohibited by DR 7-110.

In Opinion Number 440, the Association of the Bar of the City of New York held that it is preferable that testimonial dinners given by members of the Bar to judges should be sponsored by an established Bar Association. The opinion added,

Moreover, the committee feels that the addressing of invitations to persons who are not personal friends of the sponsors, with the request that such persons subscribe to a dinner or other entertainment to be given to a judge, is improper. That practice may lead to serious abuse, either by way of coercing lawyer, who cannot afford such subscriptions to make them, or of placing the sponsors of the dinner in a position to curry favor with the judiciary.

In Informal Opinion Number 900, the American Bar Association Committee on Professional Ethics, held in a situation where a self-appointed committee of lawyers solicited funds for the painting of a portrait for a sitting judge, as follows:

We therefore conclude:

- (1) That it would be inappropriate for a group of lawyers, formed only for the purpose of soliciting funds for the painting of a portrait of a judge to be hung in his courtroom to raise funds for such purpose;
- (2) That it would be inappropriate for the judge to accept the portrait under such circumstances;
- (3) That the proposed project could with propriety be undertaken and carried out by a pre-existing legitimate legal organization or group, or by a committee sponsored by an established Bar Association.

This committee is compelled to conclude that testimonials for sitting judges can properly be organized only by a recognized Bar Association, and that it is unethical for individual lawyers to do so either in cooperation with other lawyers or friends of the judge. If a Bar Association arranges the testimonial, any gift or presentation should preferably be made without listing names and amounts from individual contributors. It is also unethical for a member of the Bar to contribute to or support an improperly sponsored testimonial.

The modus operandi involved in such “testimonial dinners” appears to borrow a page from partisan politics, where such fund-raising affairs are commonplace. This practice has no place in the professional aura of the bench and bar.

Because this question is one of first impression in Wisconsin, the committee agrees that its opinion shall apply prospectively only.