The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.
Under the CJA’s proposed new exception, a “nominal gift” could be accepted so long as (1) acceptance of the gift could not reasonably be perceived as intended to influence the judge in the performance of judicial duties (the objective test), and (2) the judge reasonably believes that the gift is not intended to influence the judge in the performance of judicial duties (the subjective test). The CJA’s proposal does not define the term “nominal.” Rather, the CJA recommended that “nominal” remain undefined, which would permit use of its “everyday meaning.”

Although “nominal” is not defined in the proposed canon or Advisory Committee Commentary, the first paragraph of the commentary would provide context by giving an example of a nominal gift that would be acceptable, i.e., an art project from a school class after a presentation by a judge. Such a gift is obviously not intended to influence the judge, but it likely would not be considered ordinary social hospitality under the CJEO opinion referenced above. Including this example in the commentary decreases the likelihood that a judge may misinterpret the exception to apply to gifts that would not be considered nominal.

The proposed commentary would include cautionary language in the second paragraph of the commentary as a way of alerting judges that they must view the code as a whole. Such language with cross-references to other canons is used throughout the code.

The committee notes that the objective test is used throughout the code. According to the California Judicial Conduct Handbook:

> Judicial conduct is reviewed by an objective, rather than a subjective, standard. The issue is not what the judge perceived his or her conduct to be, but rather how the conduct is perceived objectively. (Geiler v. Commission (1973) 10 Cal.3d 270, 277.) Canons 1 and 2 of the Code of Judicial Ethics, which speak of the need to uphold “high standards of conduct” and to avoid “the appearance of impropriety,” confirm the requirement of an objective standard.2

The only canon that contains a subjective test is canon 3E(3)(e), which provides that an appellate justice is disqualified if “the justice substantially doubts his or her capacity to be impartial.” This subjective language is modeled on the language of the disqualification provision for trial court judges in Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(ii) (a superior court judge is disqualified if “[t]he judge believes there is a substantial doubt as to his or her capacity to be impartial.”).

The proposed version of the new exception that uses subjective language in addition to objective language modifies the subjective test by requiring a judge’s belief that the gift is not intended to influence the judge to be reasonable.

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Canon 4D(6) would be amended to read as follows with either objective only language or objective and subjective language:

**OBJECTIVE LANGUAGE ONLY**

**CANON 4**

A JUDGE SHALL SO CONDUCT THE JUDGE’S QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. – C. ***

D. Financial Activities

(1) – (5) ***

(6) A judge shall not accept and shall discourage members of the judge’s family residing in the judge’s household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter set forth, provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties. Gifts that are permitted by Canons 4D(6)(a) through (i) may only be accepted if acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) a gift, bequest, favor, or loan from a person whose preexisting relationship with the judge would prevent the judge under Canon 3E from hearing a case involving that person;

**ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(a)**

Upon appointment or election as a judge or within a reasonable period of time thereafter, a judge may attend an event honoring the judge’s appointment or election as a judge provided that (1) the judge would otherwise be disqualified from hearing any matter involving the person or entity holding or funding the event, and (2) a reasonable person would not conclude that attendance at the event undermines the judge’s integrity, impartiality, or independence.

(b) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

**ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(b)**

A gift to a judge, or to a member of the judge’s family residing in the judge’s household, that is excessive in value raises questions about the judge’s impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 4D(6)(a).

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3 The strikethroughs and underlines in this paragraph reflect amendments recommended in Invitation to Comment SP18-06.
(c) commercial or financial opportunities and benefits, including special pricing and
discounts, and loans from lending institutions in their regular course of business, if the
same opportunities and benefits or loans are made available on the same terms to similarly
situated persons who are not judges;

(d) any gift incidental to a public testimonial, or educational or resource materials supplied
by publishers on a complimentary basis for official use, or an invitation to the judge and
the judge’s spouse or registered domestic partner or guest to attend a bar-related function
or an activity devoted to the improvement of the law, the legal system, or the
administration of justice;

(e) advances or reimbursement for the reasonable cost of travel, transportation, lodging,
and subsistence that is directly related to participation in any judicial, educational, civic,
or governmental program or bar-related function or activity devoted to the improvement
of the law, the legal system, or the administration of justice;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(e)
Acceptance of an invitation to a law-related function is governed by Canon 4D(6)(d);
acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by
Canon 4D(6)(g). See also Canon 4H(2) and accompanying Commentary.

(f) a gift, award, or benefit incident to the business, profession, or other separate activity
of a spouse or registered domestic partner or other member of the judge’s family residing
in the judge’s household, including gifts, awards, and benefits for the use of both the
spouse or registered domestic partner or other family member and the judge;

(g) ordinary social hospitality;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(g)
Although Canon 4D(6)(g) does not preclude ordinary social hospitality, a judge should
carefully weigh acceptance of such hospitality to avoid any appearance of impropriety or bias or
any appearance that the judge is misusing the prestige of judicial office. See Canons 2 and 2B. A
judge should also consider whether acceptance would affect the integrity, impartiality, or
independence of the judiciary. See Canon 2A.

(h) an invitation to the judge and the judge’s spouse, registered domestic partner, or guest
to attend an event sponsored by an educational, religious, charitable, service, or civic
organization with which the judge is associated or involved, if the same invitation is
offered to persons who are not judges and who are similarly engaged with the
organization.

(i) a nominal gift.

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(i)
An example of a nominal gift that would be acceptable under this canon is an art project
by an elementary school class after a presentation by the judge.
A judge should carefully weigh acceptance of any nominal gift to avoid any appearance of impropriety or bias or any appearance that the judge is misusing the prestige of judicial office. See Canons 2 and 2B. A judge should also consider whether acceptance would affect the integrity, impartiality, or independence of the judiciary. See Canon 2A.

(7) ***

E. – H. ***
A JUDGE SHALL SO CONDUCT THE JUDGE’S QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. – C. ***

D. Financial Activities

(1) – (5) ***

(6) A judge shall not accept and shall discourage members of the judge’s family residing in the judge’s household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter provided, that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties. Gifts that are permitted by Canons 4D(6)(a) through (h) may only be accepted if acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties:

A gift, bequest, favor, or loan from a person whose preexisting relationship with the judge would prevent the judge under Canon 3E from hearing a case involving that person;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(a)
Upon appointment or election as a judge or within a reasonable period of time thereafter, a judge may attend an event honoring the judge’s appointment or election as a judge provided that (1) the judge would otherwise be disqualified from hearing any matter involving the person or entity holding or funding the event, and (2) a reasonable person would not conclude that attendance at the event undermines the judge’s integrity, impartiality, or independence.

A gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(b)
A gift to a judge, or to a member of the judge’s family residing in the judge’s household, that is excessive in value raises questions about the judge’s impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 4D(6)(a).

(c) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the

4 The strikethroughs and underlines in this paragraph reflect amendments recommended in Invitation to Comment SP18-06.
same opportunities and benefits or loans are made available on the same terms to similarly
situated persons who are not judges;

(d) any gift incidental to a public testimonial, or educational or resource materials supplied
by publishers on a complimentary basis for official use, or an invitation to the judge and
the judge’s spouse or registered domestic partner or guest to attend a bar-related function
or an activity devoted to the improvement of the law, the legal system, or the
administration of justice;

(e) advances or reimbursement for the reasonable cost of travel, transportation, lodging,
and subsistence that is directly related to participation in any judicial, educational, civic,
or governmental program or bar-related function or activity devoted to the improvement
of the law, the legal system, or the administration of justice;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(e)
Acceptance of an invitation to a law-related function is governed by Canon 4D(6)(d);
acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by
Canon 4D(6)(g). See also Canon 4H(2) and accompanying Commentary.

(f) a gift, award, or benefit incident to the business, profession, or other separate activity
of a spouse or registered domestic partner or other member of the judge’s family residing
in the judge’s household, including gifts, awards, and benefits for the use of both the
spouse or registered domestic partner or other family member and the judge;

(g) ordinary social hospitality;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(g)
Although Canon 4D(6)(g) does not preclude ordinary social hospitality, a judge should
carefully weigh acceptance of such hospitality to avoid any appearance of impropriety or bias or
any appearance that the judge is misusing the prestige of judicial office. See Canons 2 and 2B. A judge should also consider whether acceptance would affect the integrity, impartiality, or
independence of the judiciary. See Canon 2A.

(h) an invitation to the judge and the judge’s spouse, registered domestic partner, or guest
to attend an event sponsored by an educational, religious, charitable, service, or civic
organization with which the judge is associated or involved, if the same invitation is
offered to persons who are not judges and who are similarly engaged with the
organization.

(i) a nominal gift, as long as acceptance would not reasonably be perceived by the judge,
and would not reasonably be perceived by the public, as intended to influence the judge in
the performance of judicial duties.

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(i)
An example of a nominal gift that would be acceptable under this canon is an art project
by an elementary school class after a presentation by the judge.
A judge should carefully weigh acceptance of any nominal gift to avoid any appearance of
impropriety or bias or any appearance that the judge is misusing the prestige of judicial office.
See Canons 2 and 2B. A judge should also consider whether acceptance would affect the
integrity, impartiality, or independence of the judiciary. See Canon 2A.

(7) ***

E. – H. ***