

Digest of Ethics Advisory
Panel Opinion #91-41, Request #160a.
Issued July 18, 1991

An attorney seeks Panel advice concerning the ethical propriety of sending flowers to a judge who is hospitalized. The attorney states that he/she has appeared before this judge on innumerable occasions and expects to appear before the judge in the future.

Because this inquiry addresses the propriety of the proposed conduct of a member of the Bar in dealing with a member of the judiciary, the Panel's response requires consideration of both the Rhode Island Rules of Professional Conduct and the Rhode Island Canons of Judicial Ethics.

The applicable sections of the Rhode Island Rules of Professional Conduct are Rule 3.5(a) and Rule 8.4(f).

Rule 3.5(a) provides in pertinent part:

"A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law."

Rule 8.4(f) states:

"It is professional misconduct for a lawyer to:

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law."

Canon 21 of the Rhode Island Canons of Judicial Ethics provides in pertinent part:

"(a) Neither a judge nor a member of the judge's family residing in the judge's household should accept a gift, favor or loan from litigants, or from lawyers or from others whose interests are likely to be submitted to the judge for judgment."

The Panel cites with approval a decision of the Illinois Supreme Court, although decided under the Code of Professional Responsibility, which provides a workable standard of assessing the propriety of conferring kindnesses upon members of the judiciary. (See IN Re: Corboy, Tuite et al., 528 NE.2d 694 (1988)). The Illinois Supreme Court held that it is not improper for an attorney to treat members of the judiciary with "ordinary social hospitality." The court stated:

"We believe that ordinary social hospitality consists of those routine amenities, favors, and courtesies which are normally exchanged between friends and acquaintances, and which would not create an appearance of impropriety to a reasonable, objective observer. The test is objective, rather than subjective, and the touchstone is a careful consideration of social custom. . . . [T]he following factors should be taken into account:

- (1) the monetary value of the gift,
- (2) the relationship, if any, between the judge and the donor lawyer,
- (3) the social practices and customs associated with gifts and loans, and
- (4) the particular circumstances surrounding the gifts and loans."

The Panel is of the opinion that the act of sending flowers to a judge under these circumstances is a normal courtesy involving an object of minimal or no monetary value which would not create an appearance of impropriety to a reasonable, objective observer.