

You have indicated that an attorney who regularly practices with the Circuit Court Clerk wishes to make contributions to the Clerk's re-election campaign.

You have asked the Committee to opine whether, under the facts of the inquiry, such a campaign contribution to a public official, by a lawyer or law firm who regularly deals with the official, would constitute a per se violation of improperly influencing that public official if there exist no underlying circumstances suggesting that the lawyer may improperly influence that public official.

The appropriate and controlling disciplinary rule relative to your inquiry is DR:7-109(A), which mandates, in pertinent part, that a lawyer shall not give anything of value to a judge, official, or employee of a tribunal under circumstances which might give the appearance that the gift or loan is made to influence official action. Further guidance is available in Ethical Consideration 7-31, which speaks to the impairment of the impartiality of a legal system's public servant by the receipt of gifts or loans, and further exhorts that "[a] lawyer ... is never justified in making a gift or a loan to a judge, hearing officer, or an official or employee of a tribunal under circumstances which might give the appearance that the gift or loan is made to influence official action". (emphasis added)

The Committee has previously opined that it is improper for an attorney to make a gift to a public official for the past or future performance of any public act or duty. (See LE Op. 279) Conversely, LE Op. 893 found that it was not per se improper for employees of a law firm to give edible Christmas gifts valued at less than ten dollars to employees of a Circuit Court Clerk's office since a normal holiday gift of that amount, to be divided among several employees, would not amount to a gift of such value as might give the appearance that it was made to influence official action. Recently, the Committee has opined that, while it is not per se improper for law firms to set up political action committees (PACs) for the purpose of contributing to election campaigns of members of Congress, the question of whether the establishment of such PACs by lawyers or law firms is done for the purpose of suggesting to clients the lawyer's intent to exert improper influence on the recipient of such contributions requires a factual determination beyond the purview of the Committee. (See LE Op. 1360)

The Committee is of the opinion that, while campaign contributions made by attorneys to court officials before whom they practice are not per se improper, it is preferable for such contributions to be made to the official's campaign committee rather than directly to the candidate. (See ABA Formal Op. No. 226 (July 12, 1941).) The Committee is of the further opinion that specific factual circumstances may render such contributions improper should they create an appearance that they have been made for the purpose of influencing official action. (See, e.g., *In re Ellis*, 20 N.E.2d 96 (Ill. 1939)) (attorney suspended for two years for having made contributions to campaign funds, out of fees received from a specific client, in exchange for favorable rulings on client's tax matters).

Committee Opinion
October 3, 1991