

Rudolph

- [\[1\]Special](#)

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Saturday, December 19th, 2015

All of you have heard the song "Rudolph the Red-Nosed Reindeer" and are familiar with its main character, Rudolph. Rudolph was created in 1939 by Robert May, an employee of Montgomery Ward. Although sources vary as to whether May created the story of Rudolph to promote sales at the Christmas season, or to give as a gift to his young daughter to bring her comfort, May was doing his best to keep his job and comfort his child because Ms. May was dying of cancer.

May was picked on and bullied as a child, and the story of Rudolph was based on those personal experiences. Rudolph was Santa's ninth reindeer, mocked by the other reindeer because of his shiny red nose. Like May, Rudolph was mocked and bullied, but in the end, Rudolph became the hero when he was chosen to lead Santa's sleigh on a foggy Christmas Eve.

Johnny Marks, Robert May's brother-in-law, actually wrote the song "Rudolph the Red-Nosed Reindeer." My friend Carol Erickson remembers Johnny Marks, who served as a captain in the Army during World War II. Carol's dad served in the same unit as Johnny. After the war, Carol remembered Johnny coming to her house wearing a red suit and driving a new red Cadillac. Johnny tried to pitch the song to many popular singers, including Dinah Shore, Perry Como, Bing Crosby, and Frank Sinatra, but none were interested. At the urging of his wife, my hero and family friend Gene Autry recorded the song in 1949. It was an immediate hit and became one of the top songs in music history, selling millions of copies.

"Rudolph the Red-Nosed Reindeer" has become a piece of modern folklore and a metaphor for overcoming obstacles, embracing our differences, and recognizing everyone's unique potential. As you review the lives of your clients in an ethical manner, you may find a little or a lot of Rudolph in them. Your client may have come from a broken and dysfunctional home, or perhaps struggles with learning disabilities or mental issues. It is important to get your client's full life history. The recommendation is that you go back three generations in your client's life. No matter how bad and bleak the case looks, there may, and probably will, be some social redeeming qualities.

It is our job to zealously defend our clients in an ethical manner. If your client is a veteran, get all of his records, whether good or bad. Also get a copy of the school and medical records. Do not forget to have your client stop all social media, especially Facebook. Serious prosecutors will be checking to see what a defendant has posted. If your client is in jail, warn him to be aware letters can be read and may be used against him and to beware of phone calls from jail. Be mindful of conversations in the hallways at the courthouse. It has happened that bystanders including law enforcement have testified about what they heard.

Once your investigation is complete, you may find your "Rudolph" has a history that will help him guide the sleigh to a positive outcome, or produce mitigation of the punishment. Even the worst among us has done something right in life. The research done on the ancestors of your client may help explain and/or excuse his behavior. As my psychiatrist friend Geoff Grubb believes, only a very small percentage of humans are "Born to Be Wild." The remaining commit crimes because of many factors: poverty, inferiority complex, peer pressure, opportunity, desperation, drugs, depression, mental disorders, overpopulation, politics, racism, TV

violence, and regionalism.

Like Rudolph, your client's life may be changed forever if given the chance. If your 'Rudolph' has alcohol or drug problems, enroll them in AA or NA. Encourage them to get a job, go to school and church, and any other positive thing that will help get them back on the right track. Always remember: Santa Claus and the Grievance Committee are watching you.

Rudolph

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In Texas, Santa has a longhorn named Rudolph that he uses to pull his sleigh. This sketch is courtesy of Sam Pelton.

Acceptance of Holiday Gifts by Judge and Staff

Opinion No. 194 (1996)

Question: Is it a violation of Canon 4(d)(4) of the Texas Code of Judicial Conduct for a judge, court coordinator, court reporter (and clerks and bailiffs) to:

1. accept holiday or seasonal gifts (assuming such to be commensurate with the occasion); or
2. attend holiday or seasonal law firm parties?

Answer 1: Yes. A judge may only accept a gift from a friend for a special occasion and then only if the gift is fairly commensurate with the occasion and the relationship. Canon 4D(4)(b). A Judge may accept any other gift only if the donor is not a party or person whose interests have come or are likely to come before the judge. Canon 4D(4)(c). Opinion No. 44. Texas Judicial Ethics Opinions Page 115 of 170.

The Committee concludes that a holiday or seasonal gift from a lawyer or law firm where a lawyer is not a friend is prohibited. Where a friendship exists, the gift must be commensurate with the occasion and the judge must be mindful of Canon.

2A and should act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge should not convey or permit others to convey the impression that they are in a special position to influence the judge. Canon 2B. Opinion No. 39.

Answer 2: No. A judge may attend holiday or seasonal law firm parties if the party is open to people other than judges and court personnel. Rule 4D(4)(b) and Opinion No. 39 permits a judge to accept ordinary social hospitality. The judge should act in a manner that promotes public confidence in the integrity and impartiality of the judiciary and should not convey or permit others to convey the impression that they are in a special position to influence the judge. Canon 2(A) and (B).

The answers above apply equally to the judge's staff, court officials, and others subject to the judge's direction and control. Canon 3C(2) provides a judge should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge. See Canon 3B(2) Code of Judicial Conduct, September 1, 1974, through December 31, 1993, and Opinions 110, 112, and 140 applying Code to court personnel.

Here is the main code provision that would apply to gifts:

Canon 4D:

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;

(d) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

Ancillary to that would be the requirement to report certain gifts (depending on the value) in annual personal financial statements. That reporting requirement is for those officeholders who file reports with the Texas Ethics Commission or with the local county clerk per the Election Code. It is also generally covered under Canon 4I:

I. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.

Finally, as you know, some gifts are illegal and could result in criminal charges under Chapter 36 of the Penal Code.

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