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Nexuses and tangents: The law, the legal system, or the administration of justice by Cynthia Gray

Many provisions in the code of judicial conduct refer to “the law, the legal system, or the administration of justice” to define aspects of a judge’s ethical obligations, often using the term to create an exception to a rule. Although the parameters of the phrase may seem self-evident, “involvement with the law in some vague way is not sufficient” or the exceptions would become the rules. *Ohio Advisory Opinion 2002-9*. “Facets of almost every social problem facing today’s society will play themselves out in the courts,” and efforts to solve those problems will “have an impact upon the courts.” *Massachusetts Advisory Opinion 1998-13*. Further, judicial involvement in matters with only a marginal relationship to the justice system may blur “the distinction between the branches of government” and “the public’s perception” of judicial independence. *Florida Advisory Opinion 2001-16*.

Government commissions

The phrase has been extensively interpreted in the context of government commissions where advisory committees have had to define “the law, the legal system, or the administration of justice” to determine which commissions are appropriate for judicial membership, particularly if a commission is created by the legislature or by the executive branch. Canon 4C(2) of the 1990 American Bar Association *Model Code of Judicial Conduct* provided:

A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters

other than the improvement of the law, the legal system or the administration of justice.

Rule 3.4 of the 2007 model code is similar: “A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.”

The advisory committee for federal judges has distinguished between commissions directed toward “improving the law, *qua* law, or improving the legal system or administration of justice” and those “merely utilizing the law or the legal system as a means to achieve an underlying social, political, or civic objective.” *U.S. Advisory Opinion 93* (2009). To determine whether judicial participation is permitted, the U.S. committee noted two factors. First, “if a judge’s participation is sought for some reason other than his or her judicial expertise, the activity is less likely to be a permissible activity.” Second, service on the commission is more likely to be appropriate if it “enhances the prestige, efficiency or function of the legal system itself” or “serves the interests generally of those who use the legal system, rather than the interests of any specific constituency.” The committee stressed that the question “should be answered by evaluating how closely related the substance of an activity is to the core mission of the courts of delivering unbiased, effective justice to all.”

The “clearest examples” of permissible activities, the federal committee explained, are “the administration of

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- A judge cannot refuse to perform same-sex marriages if the judge is willing to perform opposite-sex marriages but may choose to conduct marriages only for friends and relatives. *Arizona Opinion 2015-1*.

- A judge must carefully evaluate an ex parte petition for temporary guardianship to ensure that it contains sufficient facts and proof of attempted notice. *Indiana Opinion 1-2015*.

- A judge may send jurors a letter thanking them for their service but may not ask for feedback about their juror experience. *Washington Opinion 2015-1*.

- A judge whose first-degree relative has been arraigned on criminal charges is disqualified when a prosecutor who is personally involved in the case appears. *New York Opinion 2014-60*.

- A judge who, while presiding over a criminal case, learns that the judge who arraigned the defendant had also signed the underlying criminal complaint must report the arraigning judge to the State Commission on Judicial Conduct. *New York Opinion 2014-86*.

- A judge may not conduct a book drive or solicit publishers or book sellers to donate books for him to assign for reading as a condition of parole or probation. *New York Opinion 2014-127*.

- A judge may use court stationery in a pro se proceeding to expunge a frivolous multi-million dollar lien against her property filed by a litigant. *New York Opinion 2014-119*.

- A judge should not preside over domestic violence cases while his own domestic violence case is pending and, if convicted, during any sentence that may be imposed. *New York Opinion 2014-141*.

- A judicial official may not rate a lawyer's performance in a survey for a non-profit organization to use to evaluate its lawyer-employees. *Connecticut Informal Opinion 2014-20*.

- A judge may not serve as a reference for an individual who has recently appeared before her as a defendant/participant in a problem-solving court. *New York Opinion 2014-151*.

- A judge may not serve as a mentor to a teenager who recently appeared before him as the respondent in a person-in-need-of-supervision truancy proceeding. *New York Opinion 2014-181*.

- A judge may not give an educational presentation on successful ways to practice in Florida's court system to the summer law clerks of her former law firm. *Florida Opinion 2015-6*.

- A judge may write a letter to a federal executive branch employee expressing appreciation for the employee's professionalism. *New York Opinion 2014-73*.

- A judge should presume a gift of even nominal value offered by an attorney is likely to be improper and carefully consider whether a person aware of the gift might

entertain a reasonable perception of influence. *California Formal Opinion 2014-5*.

- A judicial official may not serve on the interview panel for the selection of a municipal corporation counsel. *Connecticut Emergency Staff Opinion 2014-23*.

- A supreme court justice may encourage lawyers to provide pro bono legal services in a letter on her stationery mailed by the unified state bar association. *ABA Formal Opinion 470 (2015)*.

- A judicial official may not attend or speak at a dinner honoring a recently retired politician that is co-sponsored by the honoree's political party. *Connecticut Informal Opinion 2015-2*.

- A judge may not provide a testimonial for his former campaign manager to use in advertisements. *New York Opinion 2014-85*.

- A judicial official may be a contestant on the TV reality show "The Amazing Race" but should advise the show that

her title may not be used for promotional or commercial purposes. *Connecticut Informal Opinion 2015-7*.

- A judge may suggest that her wedding guests consider contributing to a charity of the guests' choice in lieu of a wedding gift but should request that they not refer to her judicial title. *New York Opinion 2014-69*.

- A judge and his cousins may form a general partnership that will operate as an investment club solely investing their financial resources. *New York Opinion 2014-89*.

- A judge may grant permission to a local resident and business owner to use her land for a Christmas tree lighting. *New York Advisory Opinion 2014-149*.

- A judge may participate in a culturally mandated celebration and burial ceremony in honor of his deceased parent, in another country, in which family, friends, and other well-wishers will shower the judge and his siblings with money. *New York Opinion 2014-112*.

- A judicial official may not attempt to settle a case with a hospital on behalf of her adult child but may help the child hire an attorney. *Connecticut Emergency Staff Opinion 2015-9*.

- An advertisement about a senior judge's availability to provide ADR services may include accurate statements about his prior judicial service, but ads, business cards, and stationery used for ADR or advertising purposes may not use "judge" as a title, refer or allude to his current status as a senior judge, or include a photo of him in a robe. A senior judge on assignment should not solicit ADR business from attorneys with whom he comes in contact during the assignment and, if asked, should not discuss the potential ADR work until after the matter has been decided. *Minnesota Opinion 2015-1*. ★

The Center for Judicial Ethics has links to judicial ethics advisory committees at www.ncsc.org/cje.

Recent advisory opinions

Appearance of impropriety

The New Jersey Supreme Court held that two judges violated the code of judicial conduct by socializing in public with a defendant who was awaiting trial, but the Court did not impose a sanction. *In the Matter of Reddin, In the Matter of Keegan*, 111 A.3d 74 (New Jersey 2015).

Since 2000, a group of friends have gathered on Thursday evenings to dine at a restaurant and attend mass together afterward. The group included Judge Raymond Reddin, Judge Gerald Keegan, and Anthony Ardis, a former official with the sewerage commission. Judge Reddin and Ardis have been close friends for 50 years; Judge Keegan and Ardis have been friends since about 1985.

In 2011, Ardis was indicted on charges of official misconduct, conspiracy, and theft for allegedly having subordinates perform work on agency time and with agency equipment at the homes of a relative and friend. The judges knew that Ardis was under indictment but continued to meet with the group, including Ardis, on Thursday evenings.

On Thursday, September 13, 2012, a local Republican organization hosted a dinner upstairs at the restaurant where the judges' group was dining. One of the guests at that event (the grievant) spotted and recognized Judge Reddin and Ardis; the grievant later learned that another one of the diners was Judge Keegan. In an e-mail to the Lieutenant Governor, the grievant stated that "it seems inappropriate for a Superior Court Judge to be meeting with an individual under indictment and awaiting trial in the jurisdiction in which he is a sitting judge."

The matter was eventually referred to the Advisory Committee on Judicial Conduct. The judges voluntarily stopped dining with Ardis and the group as soon as they learned about the grievance from the Committee in the spring of 2013. Both judges fully cooperated with the investigation and admitted the essential facts but argued they had not violated the code of judicial conduct.

The Court noted that, for many years, the standard for appearance of impropriety in New Jersey had been whether there is "a fair possibility that some portion of the public might [be] concerned" about the conduct in question regardless "whether the concern was reasonable." The standard was announced in *In the Matter of Blackman*, 591 A.2d 1339 (New Jersey 1991), in which the Court publicly reprimanded a judge who had attended a widely publicized picnic hosted by a convicted felon, the judge's friend for 18 years, held two days before his sentence was to begin and attended by 150 to 200 people.

In *Reddin and Keegan*, the Court decided that standard was incorrect.

Ethical principles that are meant to guide judges cannot depend on unreasonable judgments reached by a few, even if such inferences are possible. And discipline should

not be imposed on the basis of questionable deductions that one or more members of the public draw. In any event, appropriate measures of conduct should provide clear guidance in advance.

Adding a requirement of objectivity, the Court held that the test for appearance of impropriety is: "Would an individual who observes the judge's personal conduct have a reasonable basis to doubt the judge's integrity and impartiality?" The Court stated:

That approach appropriately protects the reputation of the Judiciary and, by extension, the public. It still requires that judges tailor their personal behavior to avoid the appearance of impropriety. And when there is a reasonable basis to doubt a judge's behavior, the questioned conduct would be forbidden and could subject the jurist to discipline.

An objective standard is also fairer to judges. They can better anticipate the meaning of the more familiar test. As a result, judges will be in a better position

to conform their personal conduct to that measure.

In addition, a standard that focuses on reasonable concerns will help prevent frivolous complaints against judges and protect the integrity of the disciplinary process.

Applying that standard to the conduct of Judge Reddin and Judge Keegan, the Court concluded that "socializing in public with a defendant who awaited trial on criminal charges" could cause a reasonable observer to question their impartiality and weaken the public's confidence in the judicial system.

This matter did not arise out of a random encounter in a public place that led to a brief, courteous exchange. Such inadvertent contacts may, of course, take place in everyday life and would not create reasonable cause for concern. The case, instead, involved a lengthier dinner in public, planned in advance, with a defendant under indictment. Because such events raise questions about the integrity of judges and the Judiciary as a whole, they should not take place. . . .

We do not pass judgment on Ardis's character in this decision or on Respondents' continued friendship with him. Although judges must accept limits on their personal behavior, they are not required to shun dear, lifelong friends or family members who face criminal charges. But planned social interactions like the one in question here are best held in private without a group of onlookers. We appeal to judges' good common sense and encourage them not to socialize in public in such instances and thereby highlight for others a longstanding relationship that may raise reasonable concerns. In that way, judges can avoid conduct that may convey the wrong image of the Judiciary and invite criticism.

However, because the Court had modified the appearance of impropriety standard, it declined to impose any

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Recent cases

The First Amendment and solicitation of campaign contributions: *Williams-Yulee v. Florida Bar*

In a 5-4 vote, applying strict scrutiny, the U.S. Supreme Court rejected a First Amendment challenge to the prohibition on judicial candidates personally soliciting campaign contributions. *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656 (2015). The Court affirmed the judgment of the Florida Supreme Court publicly reprimanding a former judicial candidate for asking for contributions to her campaign in a letter she had mailed and posted on her campaign web-site.

Canon 7C(1) of the Florida code of judicial conduct provides:

A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds, or solicit attorneys for publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy.

The Court noted that most states with judicial elections (30 of the 39) have also adopted restrictions similar to Canon 7C(1), which is based on a provision in the model code of judicial conduct.

The Court emphasized:

Judges are not politicians, even when they come to the bench by way of the ballot. And a State's decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office. A State may assure its people that judges will apply the law without fear or favor—and without having personally asked anyone for money.

The Court concluded that “a State's interest in preserving public confidence in the integrity of its judiciary extends beyond its interest in preventing the appearance of corruption in legislative and executive elections” because “the role of judges differs from the role of politicians.”

Politicians are expected to be appropriately responsive to the preferences of their supporters. Indeed, such “responsiveness is key to the very concept of self-governance through elected officials.” The same is not true of judges. In deciding cases, a judge is not to follow the preferences of his supporters, or provide any special consideration to his campaign donors.

The Court found that the Florida Supreme Court adopted Canon 7C(1) “to promote the State's interests in ‘protecting the integrity of the judiciary’ and ‘maintaining the public's confidence in an impartial judiciary.’” The Court stated that “the way the Canon advances those interests is intuitive: Judges, charged with exercising strict neutrality and independence, cannot supplicate campaign donors without diminishing public confidence in judicial integrity.” The Court held that that interest was compelling.

Rejecting the candidate's argument that the canon was unconstitutionally underinclusive because it allows a judge's campaign committee to solicit money, the Court stated that the conclusion of Florida and other states that “solicitation by the candidate personally creates a categorically different and more severe risk of undermining public confidence than does solicitation by a campaign committee” was reasonable.

When the judicial candidate himself asks for money, the stakes are higher for all involved. The candidate has personally invested his time and effort in the fundraising appeal; he has placed his name and reputation behind the request. The solicited individual knows that, and also knows that the solicitor might be in a position to singlehandedly make decisions of great weight: The same person who signed the fundraising letter might one day sign the judgment. This dynamic inevitably creates pressure for the recipient to comply, and it does so in a way that solicitation by a third party does not. Just as inevitably, the personal involvement of the candidate in the solicitation creates the public appearance that the candidate will remember who says yes, and who says no.

The Court also rejected the argument that the canon was underinclusive because it permitted judicial candidates to know who supported their campaigns.

The candidate had also argued that the canon was not narrowly tailed because it applied not only to person-to-person solicitations, but to mass mailings. Declining “to wade into this swamp,” the Court stated the lines it was being asked “to draw are unworkable” and “the First Amendment requires that Canon 7C(1) be narrowly tailored, not that it be ‘perfectly tailored.’”

Finally, the Court also rejected the candidate's argument that “Florida can accomplish its compelling interest through the less restrictive means of recusal rules and campaign contribution limits.”

A rule requiring judges to recuse themselves from every case in which a lawyer or litigant made a campaign contribution would disable many jurisdictions. And a flood of post-election recusal motions could “erode public confidence in judicial impartiality” and thereby exacerbate the very appearance problem the State is trying to solve. . . . Moreover, the rule that Yulee envisions could create a perverse incentive for litigants to make campaign contributions to judges solely as a means to trigger their later recusal—a form of peremptory strike against a judge that would enable transparent forum shopping.

Noting that Florida already has campaign contribution limits that apply to judicial elections, the Court stated that the state may pursue its interest through more than one means. ★

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the business of the courts, the delivery of legal services, or the preparation of codifications of judicial decisions” Moreover, the committee stated, the permission applies to activities related not just to improvements in procedures or administration, but also to “substantive legal issues, where the purpose is to benefit the law and legal system itself rather than to benefit any particular cause or group”

A similar test adopted by other advisory committees analyzes whether the government commission has a direct and primary nexus to the law, the legal system, or the administration of justice, disapproving of participation if the connection is indirect or incidental. For example, the Minnesota committee stated that “a readily articulable connection between the work and activities of the committee and some identifiable improvement of the law, the legal system, or the administration of justice” was a prerequisite for judicial involvement. *Minnesota Advisory Opinion 2014-2*. Noting that a concern “with justice in a broader sense” is not enough, the Utah judicial ethics committee stated that, “if the nexus is less direct or is incidental or tangential, or if the permitted subjects are just one aspect of a much broader mission or focus, service by a judge is not permitted.” *Utah Informal Advisory Opinion 1998-11*. Similarly, the Indiana advisory committee defined a governmental commission concerned with the improvement of the law, the legal system, or the administration of justice as “one whose concern with the legal system is direct and exclusive,” not tangential or partial. *Indiana Advisory Opinion 2-2001*.

The Massachusetts judicial ethics committee stated that, to come within the exception allowing service on legal-system-related commissions, a governmental commission must have a “direct nexus” to how “the court system meets its statutory and constitutional responsibilities—in other words, how the courts go about their business.” *Massachusetts Advisory Opinion 1998-13*. For example, although noting that “law enforcement efforts do have an impact upon the courts,” the committee rejected an expansive reading of “the administration of justice” that would include law enforcement efforts and permit service on a commission focused “on how the police department goes about its business.”

See also *Connecticut Formal Advisory Opinion 2011-21* (“there must be a direct nexus between what a governmental commission does and how the courts go about their

business”); *Ohio Advisory Opinion 2002-9* (there should be “a direct concern with the improvement of the law, the legal system, and the administration of justice, not just a tangential relationship in which there is involvement with the law in some way”); *Vermont Advisory Opinion 2728-12* (2004) (“Vagueness in the phrase ‘improvement of law, the legal system, and the administration of justice’ is mitigated by emphasizing that the commission must be directly and primarily concerned with the law, the legal system, and its administration”). Compare *Colorado Advisory Opinion 2005-4* (“there must be close nexus between what the commission does and how courts go about the business of

meeting their statutory or constitutional duties”), with *Colorado Code of Judicial Conduct, Rule 3.4, Comment 3* (effective July 1, 2010) (“any judicial ethics advisory opinions issued before adoption of this Code requiring a narrow link or stringent nexus are no longer valid”).

Even if a commission is not primarily law-related, a judge may be allowed to participate in part

by limiting his or her involvement to only those matters dealing with the administration of justice or by sharing with the commission the judge’s expertise and knowledge on those issues. See, e.g., *South Carolina Advisory Opinion 8-1996* (a judge may serve on the court coordination subcommittee of the Children’s Justice Act Task Force); *Massachusetts Advisory Opinion 2008-7* (a judge may not serve on an executive branch council on substance abuse but may provide the council with insights on how its work may impact the courts).

Even if a commission concerns the law, the legal system, or the administration of justice, Comment 1 to Rule 3.4 cautions:

A judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge’s time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

Appearing and consulting with other branches

The phrase also appears in the rule regarding judges appearing at public hearings or consulting with the executive or legislative branches. Canon 4C(1) of the 1990 model

A similar test . . . analyzes whether the government commission has a direct and primary nexus to the law, the legal system, or the administration of justice

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code provided:

A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

Similarly, Rule 3.2 of the 2007 model code provides:

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except: (A) in connection with matters concerning the law, the legal system, or the administration of justice; (B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or (C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

Comment 1 explains that "judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials."

As examples of issues that clearly fall within the exception, the advisory committee for federal judges listed "matters relating to court personnel, budget, equipment, housing, and procedures," noting "these matters are all vital to the judiciary's housekeeping functions and the smooth operation of the dispensation of justice generally." *U.S. Advisory Opinion 50* (2009). "Less clear," the committee stated, "is the propriety of a judge appearing on behalf of, or against, particular proposed legislation that relates to subject matter other than the administration of justice."

Advocacy for or against legislation aimed at vital political issues or policy may well raise questions of propriety despite the fact that the judge, too, is a citizen and may be affected by the legislation. Such legislation also may spawn litigation likely to come before the judge. Although [the] phrase "matters concerning the law" could be broadly construed to embrace nearly all legislation and executive decisions, the Committee advises that the reach of the canon is not that broad and, indeed, was intended to be comparatively narrow. . . .

Noting there will be subjects that fall "close to the line between the permissible and impermissible categories," the

opinion advised judges to use their "best judgment, having in mind the basic purpose and intent of the canon, and the likelihood that litigation relating to the subject matter will come before the judge."

Similarly, the California committee advised that "legislative appearances by a judge are generally permissible where the subject matter may reasonably be considered to merit the attention and comment of a judge as a judge." *California Advisory Opinion 2014-6*. The committee identified appearances addressing the legal process as "the clearest examples of permissible activities." With respect to substantive legal issues, the committee stated, a judge may "advocate only on

behalf of the legal system—focusing on court users, the courts, or the administration of justice," not any particular cause or group.

Therefore, the committee concluded, a judge's "comment and consultation should . . . be presented from a purely judicial perspective."

As guidance, when determining whether anticipated comment and consultation is

permissible, judges should ask themselves what they have experienced in their role as a judge that provides information to the decision makers about the legal matter on which they intend to speak. If there is a nexus between the judge's role as a judge and what is being said, the comment and consultation will fall within the canon 4C(1) exception and is permissible.

Speaking from a judicial perspective will provide that nexus and still allow the judge to draw from his or her entire experience with the law when commenting at public hearings or consulting with public officials.

The committee gave three examples.

For instance, a judge who was formerly an environmental attorney is not disqualified from expressing her views in support of a new [California Environmental Quality Act] settlement process merely because she was a former advocate in that arena; however, she must be careful to express herself solely from her viewpoint as a judge who (for example) is seeking to unburden the court's docket by resolving CEQA cases earlier in the judicial process. Or, a judge who was a former prosecutor but with no criminal judicial experience could express support for proposed legislation to reduce the number of preemptory challenges permitted in misdemeanor cases; his views might be informed by his experience as a prosecutor but should be expressed in terms of how the law would affect the legal system or

Therefore, the committee concluded, a judge's "comment and consultation should . . . be presented from a purely judicial perspective."

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the administration of justice (for example) by improving juror satisfaction, enhancing jury diversity, and saving court costs, while still providing the full panoply of due process. Regarding advocacy on a proposed constitutional amendment to replace the death penalty with life without parole, a judge could comment (for example) on the dysfunction of the present system from a judicial perspective, but judicial advocacy for or against the wisdom or morality of the death penalty as a policy matter would fall outside the scope of the exception.

Further, the California committee concluded that the rule has “an inherent limitation” that precludes “judges from telling the legislative or executive branches, in a public hearing or official context, the judiciary’s (or judge’s) views as to whether a law or proposed law is good or bad social or economic or scientific policy, which is akin to the prohibition on political activity.”

Limiting judicial comment to the judicial perspective promotes the public’s trust in impartiality by avoiding the use of judicial title to insert a judge’s views on economics, science, social policy, or morality into the official public discourse on legislation. It also avoids the judiciary’s encroachment into the political (policy making) domain of the other branches.

The committee also emphasized that other limitations may prohibit a judge from appearing at a public hearing or consulting with an official even on a matter that concerns the law, the legal system, or the administration of justice.

For example, an appearance at a public hearing of a legislative committee to advocate for longer sentences for certain drug offenders would appear to qualify as an appearance on a matter “concerning the law” within the meaning of the canon 4C(1) exception; however, advocacy for longer sentences for only a particular type of offender could undermine public confidence in the impartiality of the judge with respect to such cases Accordingly, such an appearance would not be permissible notwithstanding its apparent consistency with canon 4C(1) unless the judge’s presentation relates to the impact of such sentences on the courts or the

adjudicatory process. However, a judge may appear to advocate for improvements in the administration of justice that would seek to reduce recidivism based on the judge’s expertise. This could include (for example) information about collaborative court programs the judge had presided over or administered that employ alternative sentencing or probation periods for drug offenders. A judge could advocate for statewide use of alternative programs based on the judge’s experience without commenting on the outcome of cases involving particular offenders, and without implying that the judge will be ruling in a particular way in a class of cases.

Similarly, proposed death penalty and collective bargaining measures are all matters “concerning the law” within the meaning of canon 4C(1); however, judicial advocacy for specific legislation on these matters could contravene the canon 2A prohibition against making statements that commit a judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of duties.


The Utah committee extended its “direct and primary connection” test for participation on government commissions to appearances before the legislature. *Utah Informal Advisory Opinion 2001-1*. The committee noted that “the law, the legal system or the administration of justice” could be read to “permit judges to take positions on practically everything the Legislature does, because the Legislature’s activities also concern the law.” Refusing to construe the phrase so broadly, the committee advised that “the issues on which judges can speak, must have a connection to the regular judicial or administrative activities of a judge.”

The Maryland advisory committee adopted a very narrow interpretation of the phrase in this context, cautioning judges “to recognize that there are very few instances in which it is appropriate for a judge to appear before, or consult with, local governmental bodies, officials or agencies.” *Maryland Advisory Opinion Request 2015-17*. It explained:

It would be appropriate for a judge to testify or consult about matters concerning the relationship between his or her court and the local governing body. However, on broader matters, the particular expertise of the judge is likely not relevant. As Chief Justice William Rehnquist noted: “What is an appropriate sentence for a particular crime, and similar matters, are questions upon which a judge’s view should carry no more weight than the view of any other citizen.”

Further, if a judge expresses opinions on matters of policy (i.e. land use planning), it may lead listeners to the conclusion that a judge holding a strong enough opinion to attend a public meeting or meet with an official would rule consistently with that position and not on the merits of each case that came before the court.

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Cf., Florida Advisory Opinion 1998-13 (a judge may submit and discuss with the legislature proposed legislation to increase the maximum sentence in domestic violence cases); *Florida Advisory Opinion 1994-14* (a judge may address a legislative committee regarding pending legislation about how fault is apportioned in negligence suits when the judge is concerned that the current law inhibits settlements and increases litigation); *Massachusetts Advisory Opinion 2003-6* (when the governor has proposed that certain courts be closed to save costs, a judge may discuss the court's case load and budget with legislators and the governor's legal counsel); *Massachusetts Advisory Opinion 1997-4 and 1997-5* (before legislative committees, a judge may give a thoughtful statement in opposition to or support of capital punishment); *Missouri Advisory Opinion 158* (1991) (a judge may consult with and appear before the legislature on proposed legislation to create a new judicial circuit); *New York Advisory Opinion 1992-50* (a judge may comment to any appropriate body on whether the judge's court should have jurisdiction over proceedings concerning parental notification for minors seeking abortion); *New York Advisory Opinion 1999-37* (a judge may write to governmental agencies and officials about the civil service classification of probation officers); *New York Advisory Opinion 2002-10* (a judge may write to a legislator about proposed legislation on the peace officer status of a court officer); *New York Advisory Opinion 2007-124* (a judge may address the county legislature about the indigent defense services provided by the county public defender); *New York Advisory Opinion 2013-63* (a judge may meet privately with a state legislator to discuss pending legislation that proposes upgrades for certain courts); *Pennsylvania Informal Advisory Opinion 99-5-21* (a judge may testify at legislative hearings on childcare); *Pennsylvania Informal Advisory Opinion 3/3/04* (a judge may consult with members of the legislature to recommend funds for a model court program where one of the sites would be the judge's county); *West Virginia Advisory Opinion* (January 22, 2007) (a judge may inform the legislature of the importance of a center that provides a place for parents to have monitored visitation with their children).

Political activity

Canon 5C of the 1990 model code prohibited judges from engaging in political activity but created an exception "on

behalf of measures to improve the law, the legal system or the administration of justice." Canon 4 of the 2007 model code provides that a judge "shall not engage in political . . . activity that is inconsistent with the independence, integrity, or impartiality of the judiciary" but does not include an express exception for political activity related to the administration of justice. Although such activity may still be implicitly permitted as not "inconsistent with the independence, integrity, or impartiality of the judiciary," the absence of explicit permission may discourage judges from engaging in such activity and subject them to criticism if they do. (Several states that have otherwise

adopted much of the 2007 model code have retained the exception, including Arizona, Connecticut, Missouri, New Hampshire, New Mexico, Pennsylvania, and Wyoming.)

Interpreting the 1990 exception, advisory committees have allowed judges to publicly support or oppose ballot initiatives, bond questions, proposed legislation or constitutional amendments,

and funding plans on matters such as judicial compensation, court structure, court budgets, new courthouses, judicial selection, and sentencing. On behalf of or in opposition to such measures, a judge may, for example, write newspaper editorials; appear on radio and television talk shows; make presentations to civic, charitable, and professional organizations; take part in panel discussions with other officials at public meetings; meet with executive or legislative bodies or officials; and contribute personal funds to and participate in non-profit organizations involved in the effort. *Ohio Advisory Opinion 2002-3*.

Many of the issues approved by advisory committees directly affect the work of the courts; some seem more tangential. Examples of measures for which committees have approved judicial political activity:

- retirement benefits and the compensation of judges and court personnel (*Alabama Advisory Opinion 1991-436*);
- legislation creating a judicial compensation commission (*Texas Advisory Opinion 254* (1999));
- a referendum to stop salary increases for judges (*Washington Advisory Opinion 1991-20*);
- a constitutional amendment to create a family court (*Kentucky Advisory Opinion JE-97* (2002));
- a constitutional amendment to restructure limited jurisdiction courts (*Arkansas Advisory Opinion 2001-3*);

[T]he absence of express permission may discourage judges from engaging in [political] activity [on behalf of law-related measures] and subject them to criticism if they do.

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Nexuses and tangents: The law, the legal system, or the administration of justice

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- a constitutional amendment to require that all candidates for municipal judge be licensed to practice law (*New Mexico Advisory Opinion 2008-1*);
- a referendum to dissolve the village court (*New York Advisory Opinion 2009-50*);
- a constitutional convention to reform the New York judiciary (*New York Advisory Opinion 2009-244*);
- legislation affecting non-judicial court employees (*New York Advisory Opinion 1996-41*);
- merit selection and retention of trial court judges (*Florida Advisory Opinion 1999-24*);
- a ballot proposition on the method of selecting district judges (*Kansas Advisory Opinion JE-5 (1984)*);
- an amendment relating to the method of selecting judges (*Missouri Advisory Opinion 183 (2009)*);
- a constitutional amendment that would make judicial elections non-partisan and impose limits on judicial terms (*Arkansas Advisory Opinion 1994-4*);
- a constitutional amendment that would limit the terms of appellate judges (*Colorado Advisory Opinion 2006-7*);
- legislation that would extend the rights of defendants before the justice courts (*New York Advisory Opinion 2010-147*);
- a constitutional amendment regarding drug treatment in lieu of incarceration (*Ohio Advisory Opinion 2002-3*);
- a ballot issue on whether to build a new courthouse and jail (*Arkansas Advisory Opinion 1994-1*);
- a bond to fund an up-grade to the local court facility (*New York Advisory Opinion 2014-135*);
- a bond resolution to fund a new court facility (*New York Advisory Opinion 2007-109*);
- a ballot measure for additional taxes to replace a juvenile court facility and fund court operations (*Washington Advisory Opinion 2010-2*);
- a ballot issue on whether to construct a new county jail (*Oklahoma Advisory Opinion 2002-4*);
- a new judicial center and the sales tax needed to fund it (*South Carolina Advisory Opinion 17-2008*);
- a ballot issue on whether to build a criminal justice center (*Texas Advisory Opinion 163 (1993)*);
- a ballot issue on funding seismic retrofitting of a courthouse (*Washington Advisory Opinion 2000-3*);
- the impact on the court of ballot measures increasing or reducing taxes (*Washington Advisory Opinion 2004-4*);

[A] judge should be knowledgeable about the organization receiving the grant and the project to be funded before deciding to write a letter of support.

- increased funding for mental health and substance abuse treatment (*Florida Advisory Opinion 1999-21*);
- funding of a Department of Health and Human Services program the court uses to facilitate custody and visitation arrangements and to avoid abuse and neglect proceedings (*Nevada Advisory Opinion JE2011-3*);
- transit changes that will affect the ability of indigent court users to comply with court-ordered training, treatment, and probation (*New York Advisory Opinion 2014-139*); and
- a bill designed to improve prisoner healthcare and to increase state accountability for such care (*New York Advisory Opinion 2009-166*).

However, judicial ethics committees have advised that a judge may not publicly support bond measures to, for example, fund schools. *Florida Advisory Opinion 2002-14*; *Washington Advisory Opinion 1995-3*; *West Virginia Advisory Opinion (August 25, 1998)*. See also *New Mexico Advisory Opinion 2005-2* (a judge may not

publicly support bond issues to fund libraries); *New York Advisory Opinion 2014-123* (a judge may not publicly advocate for a constitutional amendment regarding legislative redistricting); *Wyoming Advisory Opinion 2011-1* (a judge may not make it publicly known that she believes that the maximum incarceration for a fourth or subsequent DUI should be increased).

Letters of support

Under Canon 4C(3)(b) of the 1990 model code, a judge could “make recommendations to public and private fund granting organizations on projects and programs concerning the law, the legal system or the administration of justice.” In contrast, Rule 3.7(A)(5) of the 2007 model code provides that a judge may make recommendations to “a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice.” Thus, under the 2007 model code, the phrase “the law, the legal system, or the administration of justice” modifies “fund-granting organization,” not the proposed project, as under the 1990 model code, or even the organization seeking the grant.

The Florida advisory committee has issued several opinions interpreting the 1990 version. In *Florida Advisory*

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Opinion 2011-6, the committee stated that a judge could write a grant recommendation on behalf of a childcare program run by the YWCA for parents or guardians to use while they attend court. Although the YWCA is not a law-related organization, the committee advised, a judge may write letters of support not only for “organizations solely devoted to the law, the legal system, or the administration of justice, but also to any project or program concerning the law, the legal system, or the administration of justice.” The committee found that the supervised childcare program aided the court system and, therefore, the judge could make the recommendation.

In *Florida Advisory Opinion 2012-35*, the committee stated that a judge, as chair of the county juvenile justice council and local children’s services council, may write a letter on judicial letterhead in support of a school board’s federal grant application for a delinquency prevention program but only if the funds would be used solely for that program or other projects that concern the law, the legal system, or the administration of justice. The committee stated that the judge should also determine if the grant programs will cast doubt on the judge’s impartiality and, if she writes the letter, should disclose the letter in cases that involve issues or persons associated with programs funded by the grant. *Cf.*, *Florida Advisory Opinion 2002-9* (a judge may not write a letter in support of a non-profit organization that provides court advocates for victims of domestic violence because, although the organization is law-related, a letter of support might cast a reasonable doubt on the judge’s capacity to act impartially).

Several advisory opinions interpreting the 1990 model provision emphasize that a judge should be knowledgeable about the organization receiving the grant and the project to be funded before deciding to write a letter of support. In *Arizona Advisory Opinion 1997-1*, the judicial ethics committee noted that “judges and court administrators are often asked to write letters of endorsement for nonprofit organizations, such as the National Center for State Courts . . . , as part of a grant application process for projects that will involve the courts and affect the administration of justice.” Before writing such a letter, the committee stated, the judge must be “knowledgeable about the organization, its purposes and the use to which any funding would be made” and should be “convinced that the project is, in fact,

court-related and that it does advance the administration of justice.”

In *Connecticut Informal Advisory Opinion 2013-24*, the Connecticut committee advised that a judicial official may sign a letter of support for a legal aid organization seeking a technology grant from a charitable organization related to a committee of the judicial public service and trustee commission chaired by the judge. The advisory committee found that the legal aid organization and the program to be funded by the grant were both concerned with the law, the legal system, or the administration of justice. The committee emphasized that, before writing the letter, the judicial officer must be knowledgeable about the legal aid organization and how the funding would be used and must be convinced that the project would advance the administration of justice.

See Alabama Advisory Opinion 12-912 (a judge may write a letter to a public or private fund-granting entity to recommend the child-visitation services provided by a local, non-profit family center to the court); *New Mexico Advisory Opinion 2013-4* (as co-chair of a state bar committee, a judge may write a letter in support of a grant application filed by a legal aid organization); *New York Advisory Opinion 2012-109* (a judge may write a letter in support of a municipality’s application for a grant to improve the facility that houses the court and the court clerk’s office); *Pennsylvania Informal Advisory Opinion 4/14a/2011* (a judge may write a letter to a funding source in support of a CASA program); *Pennsylvania Informal Advisory Opinion 12/12/03* (a judge may write a recommendation in support of a grant for a substance abuse treatment program for jail inmates); *Washington Advisory Opinion 2003-3* (a judicial officer may use his judicial title when writing letters of support for a teen traffic school); *Washington Advisory Opinion 2001-9* (a judge may write a letter supporting the renovation or replacement of a tribal detention facility if the letter is confined to matters about which the judge has personal knowledge); *Washington Advisory Opinion 1992-9* (a judge may write a letter urging the continuation of a community college legal secretary program).

The extensive analysis of the phrase “the law, the legal system, or the administrative of justice” in many of the opinions regarding government commissions is absent

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24th National College on Judicial Conduct and Ethics

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Nexuses and tangents: The law, the legal system, or the administration of justice

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from some opinions regarding letters of support, and some of the examples indicate a broader interpretation of the phrase in the latter context.

Fund-raising events

In a new exception created in the 2007 model code, Rule 3.7(A)(4) provides that a judge may appear, speak, or receive an award at, be featured on the program of, and permit his or her title to be used in connection with a fund-raising event for a non-profit organization “only if the event concerns the law, the legal system, or the administration of justice.”

The Florida version of the rule provides that “the law, the legal system, or the administration of justice” applies to both the organization sponsoring the fund-raising event and the purpose for which the funds are being raised. *Florida Advisory Opinion 2014-7*. The Florida committee found that both criteria were met when the proceeds from a cocktail party and fashion show presented by the Association of Women Lawyers would benefit a free childcare facility inside the courthouse and help fund financial assistance for deserving law students and advised, therefore, that a judge could participate as a model at the event. The committee noted that “the Association is an organization devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice.” The committee also found that the childcare program improves the administration of justice by “providing a safe and convenient childcare service” that helps parents and guardians “honor their required court appearances,” thus, “decreasing continuances due to childcare issues” and “making the courts more accessible to parents who would not otherwise be able to attend required court proceedings.”

There have not been many advisory opinions analyzing whether a particular non-profit organization or fund-raising event concerns “the law, the legal system, or the administration of justice.” Many of the recent opinions on participation in fund-raising events focus on the caveat in comment 2 to Rule 3.7(A) that “even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge’s participation in or association with the organization, would conflict with the judge’s obligation to refrain from activities that reflect adversely upon a judge’s independence, integrity, and impartiality.” See, e.g., *Connecticut Informal Advisory Opinion 2013-35* (a judicial official may not be honored or speak at a fund-raising event co-hosted by a section of the Connecticut Bar Association and a national, non-profit, law-related organization whose mission is to achieve full recognition of the civil rights of a particular class of citizens through litigation, education, and public policy work). ★

Other code provisions

Rule 3.1, comment 1

Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects.

Rule 3.1(E)

[W]hen engaging in extrajudicial activities, a judge shall not . . . make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.7(A)(3)

Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to . . . soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice.

Rule 3.13(C)(2)(a)

Unless otherwise prohibited by law or by paragraph (A), a judge may accept . . . and must report such acceptance to the extent required by Rule 3.15 . . . invitations to the judge and the judge’s spouse, domestic partner, or guest to attend without charge . . . an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice.

sanction. It stressed that “the circumstances presented would result in the imposition of discipline, going forward, under the new standard.” The Court suggested that “to err on the side of caution, judges may also seek advance guidance from the Advisory Committee for Extrajudicial Activities if they have questions.”

Judicial candor

Approving a stipulation, findings of fact, and recommended discipline, the Florida Supreme Court publicly reprimanded a judge for giving incomplete and inaccurate answers in interviews with a judicial nominating commission. *Inquiry Concerning Recksiedler* (Florida Supreme Court April 9, 2015) (http://www.floridasupremecourt.org/pub_info/summaries/briefs/15/15-311/Filed_04-09-2015_Opinion.pdf).

During an interview in 2013, the 5th District Court of Appeal Judicial Nominating Commission had questioned the judge regarding her driving record.

On March 17, 2014, while driving to another interview with the commission, the judge was stopped by the highway patrol and issued a citation for speeding. The traffic stop caused her to be late for the interview. In her opening statement, the judge told the nominating commission that she “takes its concerns about her driving seriously.” At no point during or after her interview did the judge inform the commission that she had received a speeding ticket that morning.

On September 18, the judge had a third interview with the nominating commission. During this interview, a commissioner asked, “Judge, you came before us in March earlier this year and you addressed some of the commission’s concerns regarding your driving record and I was wondering how that was going. Have you had any stops this year?” The judge answered “no.” During the Judicial Qualifications Commission investigation, the judge explained that she had misunderstood the question and thought it was about stops since her March 17 appearance because she knew that the nominating commission already had background information about her traffic record, including her March 17 stop.

Noting “candor as a judge is clearly critical,” the Court stated “that the incompleteness and inaccuracy of the responses constitutes a lack of candor amounting to an ethical violation where, as here, the statements are misleading” and that her “conduct demonstrated a lack of candor not befitting the high standards of ethical conduct that we expect of all judges in this state.”

Religious practices

Based on a stipulation and agreement, the Washington State Commission on Judicial Conduct publicly reprimanded a judge for telling a defendant his fedora would be removed if he did not provide support for his statement that wearing it was part of his Jewish faith. *In re Ladenburg*, Stipulation, agreement, and reprimand (February 2015) (http://www.cjc.state.wa.us/Case%20Material/2015/7599_Ladenburg_Stip_Final.pdf).

In 2006, the Commission had, based on a stipulation and agreement, admonished the same judge for requiring a woman, who was attending court in support of a relative, to remove the head scarf she wore for religious reasons or leave his courtroom. *In the Matter of Ladenburg*, Stipulation, agreement, and order (August 4, 2006) (www.cjc.state.wa.us).

In March 2014, a criminal defendant appeared in court wearing a fedora as part of his Jewish faith, he explained to the judge. The judge told the defendant to bring to the

next hearing “some information that supports your religious beliefs and you’re more than welcome to keep your fedora on in court. But if you fail to bring that information to me then I will have it removed.”

At the subsequent hearing, the defendant wore his fedora, and his attorney told the judge that she had instructed him not to bring any information about his religious practices because the judge’s request violated his free exercise of religion. The judge then required the attorney to file a memorandum of law on the issue, indicating that he was not familiar with the wearing of a fedora as opposed to other head-covering and that “if I determine that’s not a valid religious belief I could require you to remove the hat.”

At a third hearing, upon receipt of the memorandum, which cited the prior admonishment and explained why the judge’s request violated the First Amendment, the judge expressed disappointment that the attorney had not addressed the issue of a fedora as a religious head-covering. The case was dismissed on the prosecutor’s motion for unrelated reasons. ★

[H]er “conduct demonstrated a lack of candor not befitting the high standards of ethical conduct that we expect of all judges in this state.”

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24th National College on Judicial Conduct and Ethics

October 28–30, 2015 • EMBASSY SUITES by HILTON Chicago–Downtown/Lakefront

The 24th National College on Judicial Conduct and Ethics will provide a forum for judicial conduct commission members and staff, judges, judicial ethics advisory committees, and others to discuss professional standards for judges and current issues in judicial discipline.

The College will begin Wednesday October 28 with registration starting at 2:00 and a reception from 5:30 to 7:00. On Thursday, there will be a plenary session, followed by five 90-minute break-out sessions through Friday noon.

The topics for discussion are described below.

The registration fee is \$375 through August 31, 2015, but \$400 beginning September 1. The registration is not refundable unless cancellation is received in writing prior to October 14, 2015.

On-line College registration is available at www.ncsc.org/cje.

Room reservations must be made directly with the hotel.

Hotel Information

National College room rates at the **EMBASSY SUITES by HILTON Chicago-Downtown/Lakefront** (+16.4% occupancy tax) are: Single rate \$219, Double rate \$219, Triple rate \$239, Quad rate \$259. Rates include complimentary guestroom internet access, cooked-to-order breakfast, and nightly manager's reception for attendees staying at the hotel. **Reservation cut-off is October 5, 2015, or when the College block is filled.** Upon availability, rooms may

be reserved at the College rates for three days prior and/or three after the meeting event dates. To obtain the College rates, you must use/reference the group code "NCJ" when you make reservations at 800-HILTONS [800-445-8667] or click the hotel link on the College page at www.ncsc.org/cje. The EMBASSY SUITES by HILTON Chicago-Downtown/Lakefront is located at 511 North Columbus Drive, Chicago, IL.

Sessions

Compare and Contrast: Judicial Discipline Systems

No two state judicial discipline systems are alike, differing by constitution, statute, rule, policy, and practice, but each system has the same goal — effectively and fairly preserving the integrity of and public confidence in the judicial system. To help states learn from each other, this session will compare the variations on issues such as structure (for example, separating the investigative and adjudicative functions), the role of the supreme court, sanctions, forms, and confidentiality.

Moderators: **Victoria B. Henley**, Director-Chief Counsel, California Commission on Judicial Performance • **Michael Schneider**, Executive Director and General Counsel, Florida Commission on Judicial Qualifications • **Cynthia Gray**, Director, National Center for State Courts Center for Judicial Ethics

The 2007 Model Code of Judicial Conduct: Eight Years Later

This session will review the adoption status of the 2007 American Bar Association Model Code of Judicial Conduct including additions, omissions, and revisions states have made to the model as they adopted it. Participants will also consider any questions that have arisen in interpreting the

model and any gaps that have been discovered in applying the model.

Moderators: **James J. Alfini**, Professor of Law and Dean Emeritus, South Texas College of Law • **Justice Daniel J. Crothers**, North Dakota Supreme Court; Chair, American Bar Association Center for Professional Responsibility Policy Implementation Committee

The Constitutionality of Restrictions on Judges' Political Conduct

The U.S. Supreme Court 2002 decision in *Republican Party of Minnesota v. White* spawned numerous challenges to restrictions on the campaign and political conduct of judges and judicial candidates. In April, the Court weighed in again, upholding the prohibition on personal solicitation of campaign contributions in *Williams-Yulee v. Florida Bar*. This session will review the post-*White* case-law in light of *Williams-Yulee* and discuss the future of the canons.

Moderators: **Leslie W. Abramson**, Professor of Law, D. Louis Brandeis School of Law, University of Louisville • **Matthew Menendez**, Counsel, Brennan Center for Justice Democracy Program, New York University School of Law

“Do you know who I am?” The Prestige of Judicial Office

From letters of recommendation, to traffic stops, to personal disputes, to helping out family and friends — judges are often tempted to mention their title and position. This session will discuss the proper uses and inappropriate abuses of judicial prestige.

Moderators: **Raymond J. McKoski**, Retired Judge, 19th Judicial Circuit Court; Member, Illinois Judicial Ethics Committee • **Robert H. Tembeckjian**, Administrator and Counsel, New York State Commission on Judicial Conduct

Ex Parte Communications

The prohibition on judges’ initiating, permitting, and considering ex parte communications is one of the core principles of due process as well as the code of judicial conduct and a frequent basis for complaints and discipline. This session will examine current and recurring issues such as independent investigations, what to do after an inadvertent ex parte communication, and communications “authorized by law.”

Moderators: **Judge Wanda G. Bryant**, North Carolina Court of Appeals; Chair, Judicial Standards Commission • **Judge Edward C. Moss**, 17th Judicial District, Brighton, Colorado

Problem-solving Courts and Judicial Ethics

Hundreds of special courts have been established to try a different approach to problems such as drug addiction, domestic violence, and mental illness. This session will consider the ethical issues raised for judges who preside in these courts where their role differs significantly from the judge’s role in traditional courts. Among the topics to be covered: ex parte communications, demeanor, fund-raising, and disqualification. In addition, participants will discuss what happens when a problem-solving judge becomes a judicial discipline problem.

Moderators: **Judge Julie J. Bernard**, First Justice, Brockton District Court; Member, Massachusetts Commission on Judicial Conduct • **Judge Nanci J. Grant**, Chief Judge, 6th Circuit Court; Member, Michigan Judicial Tenure Commission • **Judge Leroy D. Kirby**, Adams County Court Judge; Member, Colorado Commission on Judicial Discipline

Robe-itis: Causes and Cures

Court observers have postulated that some judges seem to come down with “black robe disease” or “robe-itis,” in which

the power of the office makes them more arrogant and less congenial. Considering psychological and social science perspectives as well as judicial experience, this session will examine the possible explanations for the phenomena and the measures conduct commissions and others can take to prevent and remedy it.

Moderators: **Jeremy Fogel**, Director, Federal Judicial Center • **Gerald T. Kaplan**, M.A., L.P., Executive Director of Alpha Human Services and Alpha Service Industries; Member, Minnesota Board on Judicial Standards • **Judge Joyce Williams Warren**, 6th Judicial District, Little Rock; Member, Arkansas Commission on Judicial Discipline and Disability

Determining the Appropriate Sanction

Examining recent judicial discipline cases, this session will review the criteria for imposing sanctions and discuss issues such as the relevance of a judge’s failure to express remorse and when removal is appropriate. Participants will “vote” on what sanctions they would have imposed in actual judicial discipline cases.

Moderators: **Steven Scheckman**, Schiff, Scheckman & White LLP • **Judge John P. Erlick**, King County Superior Court; Member, Washington State Commission on Judicial Conduct

The Role of Public Members

Participants will share their experiences as public members of judicial conduct commissions and discuss what impact their perspective has on deliberations, training, and the perception of the commissions by the public and judges.

Moderators: **Joyce Jennings**, Member, Kentucky Judicial Conduct Commission • **Carol LeBlanc**, Member, Louisiana Judiciary Commission • **Lois Richins**, Member, Utah Judicial Conduct Commission

Introduction to the Canons for New Members of Judicial Conduct Commissions

This session will give new members of judicial conduct commissions an overview of the ethical standards they will be enforcing and focus on those provisions that result in the most judicial discipline cases.

Moderators: **Judge Randall L. Cole**, Presiding Circuit Judge for the 9th Judicial Circuit; Member, Alabama Judicial Inquiry Commission • **Adrienne Meiring**, Counsel, Indiana Commission on Judicial Qualifications

On-line College registration is available at ncsc.org/cje



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I plan to attend the reception Wednesday, Oct. 28

I will be bringing a guest to the reception

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I will be bringing a guest to the lunch Thursday, Oct. 29

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If you have questions about College registration,
contact akim@ncsc.org