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JUDICIAL CONDUCT REPORTER

A publication of the American Judicature Society Center for Judicial Ethics
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Wedding Fees by Cynthia Gray

Solemnizing marriages is one of the traditional privileges of being a judge. Whether a judge may accept a gift or honorarium for performing a wedding ceremony has been the subject of ethics advisory opinions, discipline cases, and code provisions.

In South Carolina, for example, al-

though a judge may collect a fee if authorized by the relevant governing body, the judge must deposit the fee in the county fund and cannot retain any portion for the judge's personal use even if it is characterized as an honorarium or gift. The Advisory Committee on Standards of Judicial Conduct has issued several advisory opinions to

that effect, the Chief Justice has reiterated the directive in a 2003 memorandum to all judges, and the South Carolina Supreme Court has sanctioned two former judges for violating the rule. *See In the Matter of an Anonymous Former Probate Judge*, 594 S.E.2d 473

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The National Ad Hoc Advisory Committee on Judicial Campaign Conduct: Mission, Activities, and Prospects

by David B. Rottman

Judicial campaign conduct committees appear to be an idea whose time has come. In the wake of the U.S. Supreme Court's decision in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), states and localities are looking for non-regulatory approaches to promote appropriate conduct by judicial candidates. At the time of the *White* decision in June 2002, ten states had committees established. The post-*White* challenge is to take the key elements of the judicial campaign conduct committee approach and adapt it for the distinct legal and political environ-

ments found in the 39 states that elect some or all of their judges.

A judicial campaign conduct committee is a body specifically established to monitor and comment on judicial campaign conduct. Conduct committees educate candidates regarding appropriate campaign conduct, advise candidates on the appropriateness of specific advertisements, help opposing candidates reach agreement about campaign behavior, and, if necessary, make public statements criticizing inappropriate conduct by candidates.

Committees may be local or state-wide. Existing committees take several

forms. Official committees are sanctioned by the state's supreme court (for example, Louisiana and Mississippi) or a mandatory state bar association (for example, Michigan in the 1998 elections). Unofficial state-wide or local committees are run either by voluntary bar associations (for example, New York and Ohio) or by civic organizations (for example, voluntary monitoring groups established by the Ohio League of Women Voters).

The National Ad Hoc Advisory Committee on Judicial Campaign Con-

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Recent Judicial Ethics Advisory Opinions

✓ A judge may attend a conference concerning domestic violence unless the curriculum is primarily prosecutorial, but the judge's tuition and expenses may not be paid by a domestic violence project or through a Department of Justice grant. *Nebraska Opinion 04-1*.

✓ A judge should not attend a conference sponsored by the state department of transportation and highway patrol designed to help judges understand the challenges faced by law enforcement agents when they stop intoxicated drivers. *Kansas Opinion JE-121* (2004).

✓ A judge may not train law enforcement officers on how to prepare search warrants or attend a program at which officers discuss or demonstrate new devices, technologies, or police procedures. A judge may teach law enforcement officers on general legal topics as long as the judge is available to teach other groups and does not suggest how officers should apply the law, do their jobs, or succeed in the judge's court. A judge may teach prosecutors "the care and feeding of a superior court judge" but should not include information on how to gain an advantage in front of the judge and must be willing to provide the same information to any group. *Arizona Opinion 03-8*.

✓ A judge should not serve on judicial corrections boards for community-based correctional facilities and programs. *Ohio Opinion 03-9*.

✓ A judge may not serve on the governor's commission on corrections reform. *Massachusetts Opinion 03-16*.

✓ A judge may serve on a committee organizing a fund-raising ball to support state bar association pro-

grams if the judge's name will not appear on literature regarding the ball and the judge will not personally solicit funds. *Nebraska Advisory Opinion 03-5*.

✓ A judge may solicit funds on behalf of a law school alumni association from judges over whom the judge does not exercise supervisory or appellate authority, but the results of the solicitation may not be published if the purpose is to use the prestige of judicial office to encourage others to contribute. *Florida Opinion 03-15*.

✓ A judge may not solicit attorneys to participate in specific pro bono programs or to accept particular cases but may generally appeal to attorneys to participate in pro bono efforts. A judge may participate in a seminar available at no cost for attorneys who undertake pro bono cases and may write articles encouraging pro bono work. A judge may publicly acknowledge attorneys' pro bono activity but may not send letters of congratulation directly to the attorneys or host a social event for them. *Alaska Opinion 04-1*.

✓ A judge is disqualified from cases involving an attorney who has announced the intention to run against the judge in the next election. A judge is not disqualified from cases involving the judge's defeated opponent in a previous election. *Arizona Opinion 04-2*.

✓ After a contested election, a judge is required to recuse from contested matters involving a former campaign manager for a year; whether a judge is required to recuse from contested matters involving former campaign opponents or supporters depends on fac-

tors such as the appearance to the public, attorneys, judges, and members of the legal system; the degree of involvement between the judge and campaign manager; the closeness of their financial, professional, personal, or other interests; and the administrative burden the recusal would impose. *Wisconsin Opinion 03-1*.

✓ A judge is not disqualified from cases involving the judge's former firm after two years if there are no continuing financial ties. *Florida Opinion 04-6*.

✓ A judge may not serve in a leadership position with the Boy Scouts but may act in a position that is not actively involved in formulating the organization's policies and disclose his involvement and disqualify where appropriate. *Washington Opinion 04-1*.

✓ A judge may accept a free golf membership from a close friend whose involvement in a case would cause the judge to recuse. *Florida Opinion 03-10*.

✓ A judge may referee soccer games for a non-profit organization and receive compensation. *Ohio Opinion 03-6*.

✓ A judge who receives a letter from the complaining witness in a criminal complaint stating that he or she has not heard anything about the case may inform the writer where to learn what has happened but should send a copy of both letters to the prosecutor and defense counsel. *Massachusetts Opinion 03-17*.

*The Center for Judicial Ethics website has links to judicial ethics advisory committees at www.ajs.org/ethics/eth_advis_comm_links.asp.

Cases Involving Family Members: Recent Decisions

The Louisiana Supreme Court found that a judge committed misconduct by appointing his father as counsel for indigent defendants and handling certain preliminary matters in many of those cases before recusing. *In re Davis*, 865 So. 2d 693 (Louisiana 2004). The judge had admitted most of the factual allegations but denied that his conduct violated the code of judicial conduct. The court suspended the judge without pay for 90 days.

Judge Davis was the only district judge sitting in the same district in which his father was the chief indigent defender. The judge appointed his father in 238 cases, then recused himself from each case because of the relationship. However, in many

cases, before recusing, the judge handled some preliminary matters, including setting bail, recalling warrants, deciding discovery motions, and arraigning defendants. In three cases, after recusing himself, the judge accepted guilty pleas and sentenced the defendants. The Judiciary Commission's charges noted that public funds were required to pay for the services of an ad hoc judge to sit in place of Judge Davis in the cases in which he had recused after appointing his father.

Agreeing with the Commission's conclusions, the court found that "Judge Davis's chosen method of appointing his father and then later recusing himself constituted a pattern or practice of legal error of failing to fol-

low and apply the law" that violated the prohibition on nepotism and allowed a family relationship to influence his judicial conduct or judgment. The Commission found "especially egregious" the judge's acceptance of guilty pleas, hearing motions, and modifying (or deciding not to modify) bail in cases in which his father was the lawyer.

The court also concluded that the judge, through his attorney, had misled the Commission in his written response to a previous investigation although the response was not a knowing falsehood. In 1998, an attorney on the judge's behalf told the Commission that the judge "does not

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Letters About Cases: Recent Decisions

Based on a stipulation and agreement, the Washington State Commission on Judicial Conduct publicly admonished a judge who in a letter to the attorneys in a case appeared to advocate for a party and in letters to the court of appeals defended two rulings he had made that had been reversed. *In re Sperline*, Stipulation, Agreement and Order of Admonishment (Washington State Commission on Judicial Conduct March 11, 2004) (www.cjc.state.wa.us).

On March 13, 2003, the court of appeals in an unpublished opinion reversed the judge's order suppressing evidence in a criminal case. While the matter was still pending in the court of appeals, the judge expressed his dissatisfaction with the appellate opinion in a letter to the attorneys, explained how the opinion failed to address the rationale supporting his order, and

suggested that counsel could decide whether the concerns he raised warranted a motion for reconsideration.

The stipulation stated that, although the judge only expressed a desire to have a legal issue addressed and not that it be resolved in any particular way, "to a reasonably prudent and disinterested person it appears as though Respondent was advocating on behalf of, or assisting, one party (the non-prevailing party) at the expense of the other party (the prevailing party). Such apparent advocacy creates a perception of partiality, bias or prejudice."

In two cases in 1999, the court of appeals, in unpublished opinions, reversed sentences imposed by the judge and remanded the cases to the judge. In letters written to the judges who participated in the appellate decision, the judge conveyed his disagree-

ment with the court's opinions. For example, in one letter, the judge objected to the appellate court's conclusion that he abused his discretion and specified why the sentence should be affirmed, stressing that he was "frustrated and disheartened at [the court's] approach to these cases," and asserting the appellate judges were "creating an atmosphere of terrorism for the trial judges in Division III."

In both cases, copies of the judge's letters were made part of the appellate record and filed in the trial court's case file. After receiving the judge's letters, the state asked that the cases be heard by a different judge on remand, and the court of appeals ordered the cases assigned to a judge other than Judge Sperline. When the judge wrote each of the letters, the appellate court

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The National Ad Hoc Advisory Committee (*continued from page 1*)

duct is a mechanism for encouraging the creation of new conduct committees or the rejuvenation of existing conduct committees. Sponsored by the National Center for State Courts with the cooperation of the American Bar Association and other prominent national organizations, the Ad Hoc Committee's membership includes many of the bar and civic leaders with the greatest experience in the factors that make a campaign conduct committee effective.

The Ad Hoc Committee's mission statement reads:

Judges play a unique and critical role in our democratic system of government. Mindful of the constitutionally-mandated right of litigants to an impartial judge, and recognizing the importance of maintaining public confidence in the integrity of judicial decision-making, the Ad Hoc National Advisory Committee was established to enhance the quality of judicial campaigns and candidate behavior by encouraging the establishment of and supporting the work of judicial campaign conduct committees. Such oversight committees resolve issues relating to claims of improper conduct during judicial campaigns. Conduct committees also participate in setting the tone of judicial elections in their jurisdiction.

In pursuing its mission, the Ad Hoc Committee engages in the following activities:

- Making groups such as state and local bar associations and civic organizations aware of the campaign conduct committee model,
- Offering advice on the organization, procedures, and operations of such committees,
- Establishing best practices for such committees,
- Serving as a clearinghouse for the exchange of information about conduct committees and their impact, and
- Collaborating with local and national organizations to analyze issues facing such committees.

The Ad Hoc Committee's response

to requests from individual candidates or their campaigns is limited to making referrals. The Ad Hoc Committee does not endorse the actions of any candidate or committee, nor does it offer legal advice.

Available resources

In addition to responding to requests for advice from those planning or operating a judicial campaign conduct committee, the Ad Hoc Committee has just published *Effective Judicial Campaign Conduct Committees: A How-To Handbook*. The *Handbook*'s contents cover the history and nature of campaign conduct committees, a step-by-step guide to forming a committee, developing a communications strategy, functions during election years, and maintaining continuing operations. An appendix gives users a basic grounding in the legal issues regarding judicial campaign speech.

The *Handbook* is available both as a hard copy and on the Ad Hoc Committee's web-site, which is www.judicialcampaignconduct.org. The web-site version is linked to archives of by-laws and other documentation prepared by existing campaign conduct committees. That information will be up-dated and expanded as new material becomes available. The Ad Hoc Committee's web-site includes additional material that it created as well as a wealth of documentation related to judicial elections generally and judicial campaign conduct committees specifically. Visitors can even view some of the negative television ads that were run in previous judicial elections.

In February 2004, the Ad Hoc Committee convened a Workshop on Establishing and Operating Effective Judicial Campaign Conduct Committees. Teams from seven states attended to begin planning for a campaign conduct committee that will fit their

state's method of judicial selection, relevant laws, codes of judicial conduct, and distinctive practical considerations. Early indications suggest significant follow-up to the workshop. Consideration is being given to holding a second workshop in early 2005. (The workshop and other activities of the Ad Hoc Committee are funded, in part, by the Law and Society Program of the Open Society Institute.)

The Ad Hoc Committee anticipates a high volume of business in the years ahead. Judicial campaign conduct committees have a short but lively history. The first committees appeared in the mid-1970s, with a significant increase in their numbers only since the late 1990s. The pace of conduct committee formation has grown with the rise of problematic judicial election campaigns. Since 2000, new committees have been established in Georgia, Illinois, Mississippi, New York, and Ohio.

Important endorsements for the concept suggest that the momentum of committee establishment will continue to be brisk. The ABA House of Delegates endorsed conduct committees in 2002. Justice Anthony's Kennedy's concurring opinion in the *White* decision specifically urged:

The legal profession, the legal academy, the press, voluntary groups, political and civic leaders, and all interested citizens can use their own First Amendment freedoms to protest statements inconsistent with standards of judicial neutrality and judicial excellence. Indeed, if democracy is to fulfill its promise, they must do so.

For more information about the Ad Hoc Committee, access www.judicialcampaignconduct.org or contact David Rottman at drottman@ncsc.dni.us or 757-259-1856. 

David B. Rottman is a principal court research consultant for the National Center for State Courts.



The 19th National College on Judicial Conduct and Ethics

October 21-23, 2004 • Chicago

The Center for Judicial Ethics will hold its 19th National College on Judicial Conduct and Ethics on **October 21-23, 2004**, at the Embassy Suites Downtown Lakefront, 511 N. Columbus, Chicago, Illinois. Registration is \$250.

The National College provides a forum for commission members, staff, judges, judicial educators, and attorneys to learn about and discuss professional standards for judges and current issues in judicial discipline. The College will begin Thursday October 21 with registration and a reception. Friday through Saturday morning, there will be six sessions with several concurrent workshops offered

during each session. The topics for discussion are listed below.

The \$250 registration fee includes one set of conference resource materials, the reception (with cash bar), and Friday luncheon. The Embassy Suites Downtown Lakefront has reserved a block of rooms for College participants at \$169 a night (single occupancy), plus tax. Reservations must be made with the hotel by **September 18, 2004**. Hotel registration information is on page 8.

The Center will apply for certification for continuing legal education credit for the College.

Concurrent Workshop Topics

ABA Joint Commission to Evaluate the Model Code of Judicial Conduct

The Joint Commission has been conducting a comprehensive review of the model code of judicial conduct since its creation by the American Bar Association in 2003. In an interactive session, members of the Joint Commission will present the current draft of their revision of the model code and invite comments and questions from participants about the proposed revisions.

The Appearance of Impartiality and Community Activities

This session will discuss the possible questions about a judge's impartiality that can be raised by participation on government commissions and membership in organizations.

Facilitators: *Cynthia Gray*, Director, Center for Judicial Ethics, American Judicature Society; *David M. Rothman*, Retired judge, Los Angeles, California

Attending Seminars

Participants will debate the controversy surrounding judges attending seminars and having their expenses paid when the sponsor or content of the seminar may present the appearance of a conflict.

Facilitators: *Loretta C. Argrett*, Dispute Resolution Services, Washington, D.C.; *Judge Charles J. Kahn, Jr.*,

Florida 1st District Court of Appeal; *Judge David Waxse*, U.S. Magistrate Judge, Kansas

Developments Following Republican Party of Minnesota v. White

This session will review caselaw and code changes since the U.S. Supreme Court's decision in 2002 and consider its ramifications for regulating judicial campaign speech and maintaining public confidence in the judiciary.

Facilitators: *Robert Tembeckjian*, Administrator and Counsel, New York State Commission on Judicial Conduct; *J. Mark White*, Arnold, Andrews & Dowd P.C.; Member, Alabama Judicial Inquiry Commission

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.

Facilitators: *Steven Scheckman*, Special Counsel, Louisiana Judiciary Commission; *Judge Martin J. Chiuminatto, Jr.*, Judge, County Court at Law for Kleberg County; Former Member, Texas State Commission on Judicial Conduct



COLLEGE REGISTRATION FORM

19th National College on Judicial Conduct and Ethics
October 21-23, 2004
Embassy Suites Downtown Lakefront

College registration
also available
on-line at
www.ajs.org/ethics

Name: _____

Title: _____

Address: _____

City _____ State _____ Zip _____

Organization you represent _____

Telephone _____ Fax _____

Email: _____

Check if you are a new member of a conduct commission.

Check if you are a public member of a conduct commission.

Check if you are a member of a judicial ethics advisory committee.

Registration fee is not refundable unless cancellation is received prior to **October 7, 2004**. Fee includes one set of conference resource materials, a certificate of attendance, the reception (cash bar), and one luncheon.

Registration Fee: \$250 per person \$_____

Please check the appropriate box(es)

I plan to attend the reception Thursday, Oct. 21

I will be bringing a guest to the reception

I plan to attend the luncheon Friday, Oct. 22

I will be bringing a guest to the luncheon Friday, Oct. 22

(Guest tickets \$20 each) \$_____

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The Opperman Center at Drake University
2700 University Avenue
Des Moines, IA 50311
(515) 271-2284, Fax (515) 279-3090

**Hotel registration form is on
page 8 and must be sent or faxed
to the hotel directly.**

Disciplinary Responsibilities

What action should a judge take if a court clerk reports that an attorney is harassing her? What are a judge's responsibilities when the judge suspects that a colleague is an alcoholic? This session will discuss when a judge is required to report a judge or attorney to disciplinary authorities and what appropriate action may be advisable in other circumstances. An effective response to substance abuse by judges and attorneys will also be considered.

Facilitators: *James C. Alexander*, Executive Director, Wisconsin Judicial Commission; *Robert Cummins*, Cummins & Cronin, LLC, Chicago, Illinois; *Judge Margaret Downie*, Superior Court, Phoenix, Member, Arizona Judicial Ethics Advisory Committee

Disqualification

Looking at case law and advisory opinions, this session will consider the standard requiring disqualification "when a judge's impartiality might reasonably be questioned,"

Facilitators: *Leslie W. Abramson*, Professor of Law, Louis D. Brandeis School of Law, University of Louisville; *Margaret Childers*, Executive Secretary, Alabama Judicial Inquiry Commission; *Judge Michael J. Malone*, Administrative Judge and District Court Judge, Lawrence, Kansas

Ethical Issues for Appellate Judges

This session will review the unique ethical issues inherent in being a member of a collegial, reviewing court.

Facilitators: *Judge Marc T. Amy*, Louisiana Court of Appeals 3rd Circuit; *Justice Gordon L. Doerfer*, Massachusetts Appeals Court; *Judge William W. Baker*, Washington Court of Appeals

Ethics for Court Staff

Recognizing that discourteous or unethical conduct by court staff can affect the public's confidence in the court, this session will cover the ethical responsibilities of court staff and judges' supervisory responsibilities. State codes of conduct for court staff will be reviewed.

Facilitators: *Judge Lorenzo Arredondo*, Lake County Circuit Court, Indiana; *Reiko Callner*, Investigative Officer, Washington State Commission on Judicial Conduct

Issues for New Members of Judicial Conduct Commissions

This session will give new members of judicial conduct organizations an opportunity to gain useful information that will help them develop confidence in carrying out their duties. Topics will include the role of judicial conduct commissions and balancing judicial accountability and independence.

Facilitators: *Victoria Henley*, Director-Chief Counsel, California Commission on Judicial Performance; *Judge William W. Teahan, Jr.*, Administrative Judge and District Court Justice, Vice Chair, Massachusetts Commission on Judicial Conduct

Judicial Ethics and Problem-Solving Courts

Over the past decade, hundreds of special courts have been established to try a different approach to problems such as drug addiction, domestic violence, child neglect, and quality-of-life crimes. This workshop will consider the ethical issues raised for judges when they preside in these courts where the judge's role differs significantly from the judge's role in traditional courts.

Facilitators: *Marla N. Greenstein*, Executive Director, Alaska Commission on Judicial Conduct; *Judge Eileen Koretz*, Midtown Community Court, New York, New York

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 commission deliberations, commissioner training and qualifications, and the perception of the commission by the public and judges.

Facilitators: *Robert Davidson*, Former Member, Louisiana Judiciary Commission; *Robert J. Guttentag*, Chair, Massachusetts Commission on Judicial Conduct; *Margarett E. Steele*, Alternate Member, Mississippi Commission on Judicial Performance

Writing Judicial Discipline Decisions

A judicial conduct commission writes for a number of readers when it issues a decision. The session will explore how to make decisions clear and readable by telling a story, explaining legal concepts, and containing legal justification for the result.

Facilitator: *Helen A. Anderson*, Senior Lecturer, University of Washington School of Law



HOTEL REGISTRATION FORM

19th National College on Judicial Conduct and Ethics
October 21-23, 2004 — Group Code: AJS

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Sharing hotel room with _____

Check-in 4:00 p.m.

Type of Room Required

(single rate) 1 person \$169 + 14.9% tax

(double rate) 2 persons \$189 + 14.9% tax

(triple rate) 3 persons \$209 + 14.9% tax

(quad rate) 4 persons \$229 + 14.9% tax

Please check if you request a non-smoking room.

Please check if you require special facilities in accordance with the Americans with Disabilities Act.

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Day _____

Departure

Month _____

Day _____

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Space is limited. Please make reservation as soon as possible. **After September 18, 2004**, reservations will be accepted on a space available basis only.

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Cases Involving Family Members: Recent Decisions *(continued from page 3)*

hear any cases involving his father, directly or indirectly" and that the Indigent Defender Board had hired an additional lawyer "who handles cases before Judge Davis." The Commission had closed that file with a letter of counseling to the judge before receiving another complaint in 2001.

One justice dissented, arguing that a 90-day suspension trivialized the judge's conduct, particularly his lie to the Commission, and that he should be removed from office.

Remaining as judge of record

The Arizona Commission on Judicial Conduct publicly reprimanded a judge for allowing herself to be assigned to cases involving members of her family. *Reprimand of Bethel* (Arizona

Commission on Judicial Conduct April 8, 2004) (www.supreme.state.az.us/ethics/Press_Releases/press.htm).

The Commission noted that the allegations could have led to formal charges but explained that the judge fully cooperated with the Commission and agreed to accept a public reprimand in lieu of formal proceedings. The Commission also noted that reprimands are normally confidential but disclosure is authorized if necessary to protect individuals, the public, or the administration of justice. The Commission stated that making this reprimand public "should help resolve any concerns held by members of the local community."

The Commission stated that the

judge was "operating under the mistaken belief that she could remain as the judge of record in cases involving family as long as she did not hear the cases. As a result, her name appeared on the files of cases assigned to mediation or in the process of settlement." In one case, the judge had signed a default judgment for her husband. The Commission stated that the code requires judges to disqualify themselves "in all cases involving close relatives, even in situations where a judge's role may be essentially ministerial. The commission is concerned that if judges were allowed to sit on such cases, then litigants could reasonably conclude that family members might have an unfair advantage during settlement negotiations or in other judicial proceedings."



Letters About Cases: Recent Decisions *(continued from page 3)*

had not issued its mandate terminating review of the cases and each appellate opinion was still subject to a motion for reconsideration.

The stipulation concluded that the manner in which the judge defended his sentencing decisions and criticized the appellate judges for their contrary opinions in the two 1999

matters also compromised the judge's impartiality or appearance of impartiality. The stipulation concluded that the judge's strong reaction to the appellate court's opinions, and his insistence that his rulings were correct even though reversed, evidenced a personal involvement in those cases."

The stipulation also found that the judge's conduct constituted improper public comment on pending cases, noting that while the judge's comments were not as broadly disseminated as if, for example, they were made in the media for public consumption, his comments were made to other judges and attorneys, were preserved as part of the public records, and were substantive and on the merits, and, therefore, might reasonably be expected to affect the outcome or impair the fairness of those proceedings.



Judicial Conduct Reporter Spring 2004

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eth_conduct-orgs.asp](http://www.ajs.org/ethics/eth_conduct-orgs.asp)**

Wedding Fees (*continued from page 1*)

(South Carolina 2004) (public reprimand pursuant to agreement for discipline by consent); *In the Matter of Brown*, 511 S.E.2d 351 (1998) (holding former probate judge in contempt for willfully violating order instructing him to refrain from retaining for personal use compensation for performing marriage ceremonies). The Chief Justice's memo explained that neither the governing body of a county nor a local act of the legislature can authorize a judge to personally retain compensation for performing marriages contrary to the code of judicial conduct.

The rationale for the rule is that the personal retention of payment for performing marriages is an exploitation of judicial office for the judge's own personal gain. Even if payments are gratuitously given, the judge's personal retention of the payments is improper because it is a gift from a person who appeared before the judge in an official capacity and gives "rise to a strong appearance of impropriety." *In the Matter of an Anonymous Former Probate Judge*, 594 S.E.2d 473 (South Carolina 2004). In South Carolina, the prohibition applies regardless of when, where, or under what circumstances the marriage ceremony is performed.

Similarly, the Illinois judicial ethics committee has advised that a judge may not accept a fee, gift, gratuity, or compensation of any kind for solemnizing a marriage even if the ceremony will be held outside normal working hours and at a location other than the courthouse. *Illinois Advisory Opinion 95-14*. The committee rea-

sioned that by accepting such a gift, a judge would be improperly receiving compensation for services in addition to the judge's salary but not provided by law, which is prohibited by court rule. Further, the committee concluded that the gift was prohibited by the code of judicial conduct because the interests of the donor come before the judge in the context of the mar-

riage for performing a wedding ceremony during court hours." See also *Arizona Advisory Opinion 88-6* (fees for wedding ceremonies performed by a judge during regular court hours on court premises do not belong to the judge). Similarly, the Washington code allows a judge to "accept compensation and reimbursement of expenses for the solemnization of marriages, performed outside of regular court hours." See also *Washington Advisory Opinion 90-5* (a judge should not accept fees for performing a marriage ceremony during court hours but may accept a reasonable fee if a marriage is performed outside regular court hours). The New Mexico code provides: "No judge may ask for any remuneration for performing a marriage ceremony, but may receive an unsolicited gratuity for performing a marriage outside normal business hours."

The Utah code of judicial conduct states that "a judge should not receive compensation for performing a marriage ceremony at the court during regular hours," but that a judge "may receive compensation for performing a marriage ceremony during non-court hours." The Utah judicial ethics committee explained that the reason for the distinction "is to prohibit judges from receiving private compensation for the performance of an official duty during the period when judges are doing the public's business," while "compensation is permitted after court hours because judges are no longer on 'company time.'" *Utah Informal Advisory Opinion 98-8*. Thus, the committee stated, a judge

Whether a judge may accept a gift or honorarium for performing a wedding ceremony has been the subject of ethics advisory opinions, discipline cases, and code provisions.

riage and the "gift" is given in return for an act performed by the judge in an official capacity. See also *West Virginia Advisory Opinion* (March 29, 1991) (a judge may not accept money as a gratuity from a couple whom the judge unites in marriage pursuant to statutory authority).

Other states, however, distinguish between marriages that take place during regular court hours and those that take place outside of court hours, prohibiting honorariums for the former but allowing them for the latter. The Arizona code of judicial conduct, for example, allows a judge to "charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court" while prohibiting a judge from charging or accepting "a fee, honorarium, gratuity or contribution

cannot accept compensation for a marriage performed on a weekday between 8:00 a.m. and 5:00 p.m. (including the noon hour) no matter where the ceremony is performed.

Moreover, in New York, pursuant to a statute, a judge who solemnizes a marriage outside the courthouse during non-court hours may accept an unsolicited gift of up to \$75. The New York judicial ethics committee, however, has advised that the statute does not authorize a judge to solicit a gift or charge a fee at any time or to accept an unsolicited gift for a wedding performed during normal court hours at the courthouse. *New York Advisory Opinion* 89-25.

Even without a specific code or statutory provision, the Florida advisory committee has adopted the same distinction. The committee stated that although a judge may accept compensation for performing a marriage in a home or park in the evening or on a weekend, a judge may not "accept compensation for performing marriages during normal working hours at the courthouse because the judge would then be using the facilities and authority provided him by his office for private gain." *Florida Advisory Opinion* 83-15.

In several states, a judge may receive a fee for performing a marriage regardless when or where the ceremony takes place. The Alabama advisory committee has allowed a judge to both collect the statutory fee permitted for any person authorized to perform the rite of matrimony (*Alabama Advisory Opinion* 83-187) and to accept an offered honorarium above the required fee (*Alabama Advisory Opinion* 78-38). Similarly, the Texas judicial ethics committee has advised that a judge may receive a fee for performing a marriage ceremony during

regular office hours or for weddings after hours, away from the courthouse as long as the fees are reasonable. *Texas Advisory Opinion* 236 (1998).

If a judge decides to decline an honorarium, the judge may not direct or suggest that instead the wedding party make a donation to a charity. By designating a charity as recipient of a gift from a third party, the judge is "in essence soliciting funds" in violation of the code of judicial conduct even if the judge did not request the contribution because the donation would take

riages should not interfere with judicial duties); *Washington Advisory Opinion* 90-5 (marriages may be conducted during regular court hours as long as they do not conflict with the performance of judicial duties); *Texas Advisory Opinion* 236 (1998).

Several authorities address the use of court personnel and other court resources in arranging marriage ceremonies. The Utah judicial ethics committee has stated that a judge or other court personnel may perform administrative duties incident to a marriage for which the judge does not charge a fee during court hours, and costs of postage and envelopes need not be borne by the judge. *Utah Informal Advisory Opinion* 98-8. Going further, the Washington advisory committee

has stated that a judge who receives an honorarium for performing a wedding outside of court hours but in court facilities is not required by the code to pay for the use of court facilities and may use court staff to schedule the wedding as long as the arrangements do not unduly interfere with the staff's ability to perform their official duties. *Washington Advisory Opinion* 93-30. See also *Texas Advisory Opinion* 236 (1998) (clerks may assist a judge in weddings performed at the judge's office during business hours, but a judge must take care that use of public resources is reasonable in relation to the discretionary function being carried out).

A judge should not allow officiating at a wedding to interfere with court business.

place only as a result of the judge's power to solemnize weddings. *New York Advisory Opinion* 88-168. The rule applies even if the judge designates the bar association volunteer legal services program or other charitable organization devoted to the law, the legal system, and the administration of justice as the recipient or even if the judge does not designate the charity but only suggests that the wedding party make a donation to their favorite charity without identifying it to the judge. *Washington Advisory Opinion* 97-3.

Moreover, a judge should not allow officiating at a wedding to interfere with court business. For example, the Utah committee cautioned that a judge should not interrupt a trial or hearing to officiate at a wedding. *Utah Informal Advisory Opinion* 98-8. The Arizona code of judicial conduct provides that "a judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony." See also *Florida Advisory Opinion* 83-15 (performing mar-

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