

# JUDICIAL CONDUCT REPORTER

★★★★★ A PUBLICATION OF THE AMERICAN JUDICATURE SOCIETY CENTER FOR JUDICIAL ETHICS

VOLUME 36, NO. 2 • SUMMER 2014



## Participating in fund-raising events by Cynthia Gray

**A**s a corollary to the restrictions on judges' using the prestige of office to advance private interests and personally soliciting contributions to non-profit organizations, there are limits on a judge's participation in charitable fund-raising events. (An article on "defining 'charitable fund-raising event'" was in the spring 2014 issue of the *Judicial Conduct Reporter*.) Commentary to Canon 4C(3)(b)(i) of the 1990 *American Bar Association Model Code of Judicial Conduct* stated: "A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code." Rule 3.7(A)(4) of the 2007 model code allows a judge to appear or speak at, receive an award or other recognition at, be featured on the program of, and permit his or her title to be used in connection with a fund-raising event—but "only if the event concerns the law, the legal system, or the administration of justice."

For those events for which participation is limited, judicial ethics committees consistently advise that a judge may not act as the master of ceremonies or introduce dignitaries, honorees, speakers, talent, or other guests. See *Connecticut Informal Advisory Opinion 2013-29*; *Connecticut Informal Advisory Opinion 2010-1*; *Florida Advisory Opinion 2001-9*; *Illinois Advisory Opinion 1996-3*; *Massachusetts Advisory Opinion 1999-7*; *New Hampshire Advisory Opinion 2002-8*; *New York Advisory Opinion 1998-16*; *New York Advisory Opinion 1998-39*; *Oklahoma Advisory Opinion 1998-6*. Further, a judge may not:

- serve as an auctioneer (*Delaware Advisory Opinion 2007-1*; *Kansas Advisory Opinion JE-151* (2007); *South Carolina Advisory Opinion 22-2005*);
- be the subject of a roast (*Texas Advisory Opinion 198* (1996); *West Virginia Advisory Opinion* (July 26, 1988)) or

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## Discipline for charitable fund-raising by Cynthia Gray

**J**udges have been disciplined for improper fund-raising for charitable organizations, including personal solicitation of funds, inappropriate participation in fund-raising events, and using court resources for fund-raising.

For example, the New York State Commission on Judicial Conduct found that a judge who raised funds for an organization compounded her misconduct by "substantial activity in the courthouse," stating she "should have recognized that her highly visible participation in the fund-raising activities as well as her direct approaches to court employees and attorneys who appeared before her could have a considerable coercive effect." *In the Matter of McNulty*, Determination (New York State Commission on Judicial Conduct March 16, 2007) ([www.cjc.ny.gov/Determinations/all\\_decisions.htm](http://www.cjc.ny.gov/Determinations/all_decisions.htm)).

htm). The Commission noted that, if the judge "had any doubt whether she could engage in such activities, she could have requested a confidential opinion from the Advisory Committee."

The judge was involved with an organization that raised funds for non-profit organizations benefiting women and families. For several fund-raisers, she personally prepared and distributed flyers, for example, handing them out to court employees and mailing them to acquaintances and attorneys who had appeared before her. She also discussed the 2006 fund-raiser with attorneys in the courthouse hallway and posted a large version of the invitation on the

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- A law clerk should not appear before the judge for whom she clerked within a year after the end of the clerkship, and a longer period may be appropriate depending on their relationship. *D.C. Opinion 13* (2014).

- A judge who becomes aware that an attorney may have a conflict of interest in a case should raise the facts with both parties and give them an opportunity to take appropriate action. *West Virginia Opinion* (January 14, 2014).

- A legislative mandate that a judge should serve on a government committee is entitled to consideration and respect. *Minnesota Opinion 2014-2*.

- A court web-site should not be hosted on Facebook because the site will display third-party advertisements on the court's page. *New York Opinion 14-5*.

- A judge may produce a video about the history and current capabilities of his court and invite other judges to appear. *New York Opinion 13-158*.

- Judges may make presentations at a regional educational drug conference held by an association of drug court professionals even if some of the sponsors are private organizations with substantial business with the drug courts as long as the sponsors are numerous and diverse and the program contains a disclaimer that the judges do not endorse any products from exhibitors or sponsors and that views expressed at the conference do not necessarily reflect the judges' policies. *Massachusetts Opinion 2014-2*.

- A judge may not participate in and critique a mock settlement conference that is part of a law firm's associate training program. *New York Opinion 13-187*.

- At a training program for prosecutors and law enforcement personnel, a judge may not lecture on litigation strategy but may lecture on appellate law and practice in general without commenting on pending or impending cases. *New York Opinion 14-31*.

- A judges' association may not publicly support repeal of a gun control law but may support the repeal or amendment of provisions that affect the administration of justice. Individual judges may, in their capacity as private citizens, publicly support the repeal or amendment of provisions that directly affect their personal interests, subject to certain limitations. *New York Joint Opinion 13-189/14-02*.

- A new judge may continue to receive health insurance benefits from her former employer to cover the gap in coverage before her new health benefits commence. *New York Opinion 13-181*.

- A judge may serve as the executor of his parent's estate and give uncompensated legal advice to his parent, but may not serve as the attorney for the estate. *New York Opinion 14-3*.

- A judge may post a bond for her brother when he becomes the administratrix of the estate of their grandmother. *West Virginia Opinion* (April 3, 2014).

- A judge may accompany his sister, a pro se litigant, to

court in another state as long as he does not act as an attorney, have any ex parte contact with the presiding judge, or invoke his judicial office for his sister's benefit. *New York Opinion 14-38*.

- A judicial official may lend her name to an annual writing competition sponsored by an ethnic bar association but should inform the bar association that her name cannot be used to solicit funding for the competition. *Connecticut Informal Opinion 2014-10*.

- A judge may serve on the special and planned gifts committee of a community college foundation. *New York Opinion 14-15*.

- A judge may dine with the public defender, assistant district attorney, various defense attorneys, and certain court personnel three to six times a year to celebrate birthdays even if the other participants purchase the celebrant's meal. *New York Opinion 14-25*.

- A judge may be a member of a voluntary bar association that promotes the bar and the legal profession in general and is not essentially a law-related special interest group that pertains to the representation of a particular group of clients, such as criminal defendants, personal injury plaintiffs, criminal prosecution, or insurance defense. A judge may be a member of a gender, ethnic, or cultural bar association that does not practice unlawful discrimination. *North Carolina Opinion 2014-1*.

- Because it is a federal crime, a judge's private recreational or medical use of marijuana violates the code of judicial conduct even if it does not violate state law. *Colorado Opinion 2014-1*.

- A judicial official may accept two box seat tickets to see "Cirque de Soleil" from a bank to thank him for being a new customer if he confirms that free tickets are offered to all new customers under the same terms. *Connecticut Emergency Staff Opinion 2014-6*.

- A judicial official may participate in an adult co-ed summer soccer league organized by an attorney. *Connecticut Informal Opinion 2014-7*.

- A judge may speak during a memorial service for a close personal friend who was a political party leader even if the decedent's county committee and party club will sponsor the service. *New York Opinion 13-115*.

- A judicial candidate may use an e-mail signature block on her personal e-mail that requests non-financial support from voters and provides links to her campaign committee's social media page and web-site. A judicial candidate may personally request that voters "like" a social media site maintained by her campaign committee. A judicial candidate who is a sitting judge should not include a campaign message in the signature block for her judicial e-mail. *New York Opinion 13-126*. ★

***The Center for Judicial Ethics has links to the websites of judicial ethics committees at [www.ajs.org/judicial-ethics/](http://www.ajs.org/judicial-ethics/).***

## Recent advisory opinions

## Failure to follow the law

Adopting the findings of fact and conclusions of law of the Judicial Tenure Commission, the Michigan Supreme Court suspended a judge for 60 days without pay for misconduct in eight criminal cases. *In re Morrow* (Michigan Supreme Court June 23, 2014) (<http://tinyurl.com/pqqgssl>).

For example, the judge closed the courtroom to the public and the victim's family during a post-conviction hearing without specifically stating the reasons or entering a written order as required by a court rule. In another case, following a defendant's guilty plea, the judge dismissed the case sua sponte on the grounds that a previous dismissal order was with prejudice. When the prosecutor informed him that the prior dismissal had been without prejudice, the judge stated that the prior dismissal had been "conditional with prejudice."

In a driving while intoxicated case, the judge failed to sentence a defendant to the mandatory minimum prescribed by statute even though the prosecutor brought the statute to his attention. The judge also refused a prosecutor's request to remand to jail a defendant awaiting sentencing following conviction of first-degree criminal sexual conduct with a person under 13, as required by statute.

At the beginning of a bench trial, the judge left the bench, shook hands with the defendant, and gave a package of documents to defense counsel. In another case, the judge personally retrieved an inmate from lock-up, escorted him to his courtroom, and sentenced him without restraints and with no courtroom security present.

The Court stated that the evidence "paints a portrait of a judicial officer who was unable to 'separate the authority of the judicial office he holds from his personal convictions'" Rejecting the judge's argument that "his conduct should be immune from action by the JTC because he acted 'in good faith and with due diligence,'" the Court stated that, "acting in disregard of the law and the established limits of the judicial role to pursue a perceived notion of the higher good, as respondent did in this case, is not 'good faith.'" Noting that it did not share the judge's concern that its decision "spells the end of judicial independence," the Court explained the decision "reinforces the principle that, although judicial officers should strive to do justice, they must do so under the law and within the confines of their adjudicative role."

Stating that the record revealed confusion on the issue, the Court clarified the role of a judge's motive in judicial disciplinary proceedings.

The master concluded that respondent's actions in eight of the ten allegations were not misconduct because "his heart [was] in the right place." In rejecting the master's approach, the JTC stated that judicial misconduct must be reviewed under an objective, rather than subjective, standard. We agree with the JTC that the standard for

determining whether something constitutes judicial misconduct in the first place is an objective one. . . . However, when determining the appropriate sanction for particular misconduct, the JTC (and this Court) may properly consider a respondent's subjective intent along with other mitigating and aggravating factors.

## Failure to follow the law, chronic tardiness

Based on a stipulation, the Minnesota Board on Judicial Standards publicly reprimanded a judge for (1) failing to follow the law in six cases, (2) improper ex parte orders in four cases, (3) chronic tardiness, and (4) courtesy to court staff. *In the Matter of Cahill*, Public reprimand and conditions (Minnesota Board on Judicial Standards April 21, 2014) (<http://tinyurl.com/lwkvbzt>).

For example, defendant MP, an immigrant, pled guilty to the felony offense of burglary in the third degree. At sentencing, notwithstanding the prosecution's objections, the judge imposed a sentence less than the year and a day called for by the sentencing guidelines because he was concerned that a felony conviction might result in MP's deportation. When the prosecution appealed, the judge issued a memorandum stating:

This court is well aware of two Court of Appeals cases which have held that potential immigration consequences are not to be taken into consideration for sentencing purposes. . . . This court respectfully suggests that the Court of Appeals went astray in those cases. . . .

The Court of Appeals reversed, stating that the district court "is bound by supreme court precedent and the published opinions of the court of appeals."

On Thanksgiving Day 2012, while driving by the courthouse and jail, the judge spontaneously decided to grant a 24-hour furlough to a prisoner. The judge went into the courthouse, personally typed up the furlough, and delivered it to the jail without giving notice or an opportunity to be heard to the prosecution or any interested person. The prisoner had not requested a furlough and declined it because he thought it was a mistake.

In 2012 and 2013, the judge was chronically between eight and 40 minutes late for court. For example, according to electronic key card records, even after he was served with a notice of investigation, the judge was late for court 18 or more times during the five weeks between September 12 and October 17, 2012, and 58 or more occasions in October, November, and December 2013.

## Variety of misconduct

The Minnesota Board on Judicial Standards publicly reprimanded a judge for (1) approving inaccurate time

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## Participating in fund-raising events

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take part in “roasting” a prominent local figure (*Florida Advisory Opinion 2001-9*);

- describe items won in a raffle or announce the winning tickets (*Florida Advisory Opinion 1998-32*);

- be inducted into a hall of fame (*Kansas Advisory Opinion JE-147* (2006));

- present an award (*New York Advisory Opinion 1996-57*);

or

- act as a judge at a talent show (*South Carolina Advisory Opinion 2-2009*).

### Washing dishes and cars

A judge may help out at a fund-raiser in ways that would have little to do with a potential donor’s decision to attend or make a contribution. For example, a California judicial ethics opinion advised that a judge may serve food or work in the kitchen at a fund-raising dinner as long as the judge’s participation was not advertised to entice people to attend or designed to encourage attendees to buy concessions, leave tips for the organization, or increase donations. *California Advisory Opinion 41* (1989). Similarly, the Arizona advisory committee stated that a judge may wash cars at a fund-raiser held by the judge’s church. *Arizona Advisory Opinion 2000-6*. The committee explained:

Washing cars . . . does not involve active solicitation. . . . [T]he judge’s participation is not exceptional, but, rather, the same as everyone else involved in the event. Assuming the judge is just one of many people washing cars, it is very unlikely that people would choose to get their cars washed merely because of the judge’s involvement.

The committee did note that a judge should not stand on “a street encouraging drivers to go to the car wash,” use his or her name in promoting it, or otherwise take “a more active, visible role in the car wash that placed him or her apart from the other participants and attracted attention.”

Reflecting these and other opinions, in 2007, a comment was added to the ABA model code to allow a judge to “serve as an usher or a food server or preparer, or . . . perform similar functions, at fund-raising events” because those “activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.” The reporters’ notes explain that the comment provided “a safe harbor for certain minor and noncoercive activities,” stating, “it is not logical to assume that someone will make a larger donation, merely because a judge is tending the barbecue pit at a charity picnic.”

Under this reasoning, a judge may:

- flip hamburgers or put mustard on hot dogs at a concession stand at sporting events at his children’s school (*Florida Advisory Opinion 2005-7*);

- help decorate a hall where a fund-raising event will be held (*Florida Advisory Opinion 2001-09; Indiana Advisory*

*Opinion 1-1996*);

- act as a waiter, bus boy, cook, or dishwasher at a club’s spaghetti dinner fund-raiser (*New York Advisory Opinion 2010-103*);

- assist with set-up, food preparation, and clean-up during a volunteer fire department’s fund-raiser (*New York Advisory Opinion 2010-22*);

- work out of sight of the public, for example, cooking or washing dishes at a fund-raiser (*Pennsylvania Informal Advisory Opinion 8/11a/2009*);

- clean tables, serve coffee, wash dishes, and similar tasks at a fund-raising breakfast for the volunteer fire department (*West Virginia Advisory Opinion* (July 11, 2008)));

- help set up camp, prepare foods, and provide other assistance to riders during an AIDS bicycle ride (*New York Advisory Opinion 1996-147*); or

- put up signs, recognize sponsors, direct walkers, set out food and drink stands, register participants, hand out raffle prizes, and pick up in-kind donations for a fund-raising walk (*New York Advisory Opinion 2007-17*).

However, a judge may not perform these roles if the judge is given celebrity status. Thus, a judge may not:

- act as a celebrity bartender during a bar association fund-raiser (*New York Advisory Opinion 2002-25*);

- participate as a celebrity server serving dessert to the amusement of the guests at a fund-raising dinner for an organization of court-appointed child advocates (*Texas Advisory Opinion 220* (1997)));

- participate as a celebrity bagger in an arrangement in which a store contributes to a charity a percentage of sales made while the judge bags groceries (*Florida Advisory Opinion 1990-27; Illinois Advisory Opinion 1999-1*);

- run a 100-yard dash in her robes (*Illinois Advisory Opinion 1996-10*);

- participate in a “dunk a judge” booth to raise funds for charity (*Illinois Advisory Opinion 1996-10; New Mexico Advisory Opinion 2004-4*); or

- serve as a celebrity judge to judge restaurant chefs’ entries in a fund-raising event (*Wisconsin Advisory Opinion 1998-1*).

Although there is a split on the issue, most advisory committees allow a judge to, for example, sell refreshments and act as a cashier at a concession stand that raises funds for a non-profit organization. For example, the Kansas committee advised that a judge may volunteer at a concession stand selling candy, soft drinks, sandwiches, and similar items during a school sporting event in which teams from her children’s school participate even if a portion of the profits go to school-related groups. *Kansas Advisory Opinion JE-134* (2005). Noting “to solicit means to entreat, ask earnestly or urge another (for funds),” the committee reasoned

that there is no solicitation at a concession stand because “customers merely state what items they want and pay the listed price.” Other committees have given similar advice.

- A judge may sell refreshments at a festival fund-raiser, Christmas trees for a service organization, or crafts at a school benefit. *Indiana Advisory Opinion 1-1996*.

- A judge may act as a cashier at a used book sale benefiting a library or at a food stand operated by a charitable organization. *Maine Advisory Opinion 2009-4*.

- A judge may volunteer with other parents to work in a concession booth selling food and drinks at public events to raise money for local children’s sports team on which his child plays. *Nevada Advisory Opinion 2014-4*.

- A judge may collect tickets at a football game or work in a concession stand during a school activity. *West Virginia Advisory Opinion* (November 3, 1995).

But see *Louisiana Advisory Opinion 133* (1996) (judge may not sell or encourage people to buy pull tab tickets at a festival, the proceeds of which will be used for charitable and educational purposes); *New York Advisory Opinion 2010-103* (judge may not sell food at a fund-raiser if the food is sold at a substantially higher price than in retail commercial establishments); *Pennsylvania Informal Advisory Opinion 8/11a/2009* (judge may not work at a booth at which items are sold during a church fund-raising event). Cf., *Florida Advisory Opinion 2000-17* (judge may not work in a concession stand during her child’s school fund-raiser if it involves active solicitation of funds or selling goods); *Florida Advisory Opinion 2005-7* (“a judge would do well to aspire to participate in community activities as something other than a cashier,” but may “fill in for a co-volunteer who must step away from the cashier’s duties momentarily”).

The Joint Commission that proposed amendments to the ABA model code in 2007 considered the issue but did not adopt a provision expressly allowing or banning a judge from, for example, acting as a cashier or ticket-taker. “Whether such activities are appropriate,” the reporters’ notes state, “depends upon analysis of the overall event, and the significance of the judge’s participation” to determine if there is any coercion, however “subtle or unstated.”

## Playing music and softball

A judge may perform at a fund-raising event as part of a group providing entertainment as long as:

- The judge’s title is not used in program materials, and the judge’s name is listed only as a member of the group;
- The judge is not singled out for recognition before or during the event;
- The judge’s participation is comparable to that of others in the group, and the judge is not a soloist or featured performer;
- The judge’s participation is not advertised to entice attendance or designed to encourage purchases or donations; and
- The fund-raising takes place before the performance.

Under those conditions, judicial ethics committees have advised that:

- A judge who is a member of a singing group may perform with the group at a charity benefit. *Arizona Advisory Opinion 2000-6*.

- A band of which a judge is a member may play on a fund-raising radio broadcast for a public radio station. *Arkansas Advisory Opinion 1993-6*.

- A judge may act in a play to raise money for the sponsoring organization. *Illinois Advisory Opinion 1995-23*.

- A judge may participate as a member of a musical group that will host a free performance for friends and families with containers for contributions to charities chosen by other band members. *Maine Advisory Opinion 2005-3*.

- A judge may perform in an event sponsored by the state bar to raise funds to support legal services. *New Mexico Advisory Opinion 2012-2*.

- A judicial officer may perform as part of a community band at a concert to raise funds for the band’s trip to Japan and need not leave the stage before a request for donations is made; publicity about the band’s trip may state that one of the members is a judge when the professions of the other band members are mentioned; non-judge band members may solicit “sponsorships” by local businesses if they do not state that one of the members is a judicial officer. *Washington Advisory Opinion 2014-2*.

But see *Florida Advisory Opinion 2003-16* (judge may not participate in a bar association’s fund-raising event by performing a skit or displaying a talent); *Florida Advisory Opinion 2008-22* (judge may not appear as a “dignitary guest” actor in a fund-raising production of the Nutcracker for a non-profit ballet company when advertising will use his name and title); *Texas Advisory Opinion 41* (1979) (judge may not appear as an operatic singer at a fund-raiser).

Similarly, playing as a member of a sports teams is permitted.

- A judge may play in a softball tournament to raise money for needy families even if the event is broadcast on local radio. *Arizona Advisory Opinion 2000-6*.

- A judge may participate in a softball game or similar event for charitable causes. *Michigan Advisory Opinion J-8* (2014).

Cf., *Arkansas Advisory Opinion 1993-3* (judge may not manage or play on a softball team that would play against teams from the executive and legislative branches if her participation would be highly publicized and spectators support their favorite teams or players by contributing money to a charitable organization).

There is a split in the opinions on whether a judge may participate as a model in a fashion show that is also a fund-raising event. Compare *Florida Advisory Opinion 2014-7* (judge may participate as a model at a fund-raising event that will benefit a free child-care facility in the courthouse and the women’s bar association’s assistance

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to law students); *Michigan Advisory Opinion JI-71* (1993) (judge may model in a fund-raising fashion show if his participation does not detract from the dignity of the judicial office and he does not solicit funds); *Pennsylvania Informal Advisory Opinion 8/6/02* (judge may model clothes at a fund-raising fashion show if her name, title, and likeness will not be used to promote the show, she will not be introduced as a judge, and the audience will not bid on the clothes), with *Florida Advisory Opinion 2000-17* (judge may not participate as a model in a fashion show fundraiser); *New York Advisory Opinion 1998-33* (judge may not serve as a model at a charitable event even if she is not identified as a judge and will not collect funds); *Washington Advisory Opinion 1993-5* (judge may not appear as a model at a fashion show when some of the admission proceeds will be donated to charity).

A judge may not set an amount of money for an individual to pay or try to raise as "bail" in a fund-raiser referred to as "Jail and Bail," "The Great American Lockup," or a "Lockup for Charity." *Michigan Advisory Opinion JI-125* (2001). Accord *New York Advisory Opinion 1990-69* (judge may not act as a fictitious "judge" in a mock "jail and bail" fund-raiser for the American Cancer Society); *South Carolina Advisory Opinion 1-2011* (judge may not act as a "celebrity judge" as part of a fund-raising event in which participants are picked up and placed in a pretend jail and then released in front of the judge when they pay the pledged amount). Nor may a judge participate as the person who submits to the mock arrest and furnishes bail by soliciting funds from family, friends, businesses, and others. *Indiana Advisory Opinion 1-1996*; *Kansas Advisory Opinion JE-20* (1987). The Indiana committee, however, suggested that a judge could participate by playing another role in the mock proceedings.

Judicial ethics committees have advised judges not to participate in telethons or similar on-air fund-raisers by requesting pledges or answering the phones.

- A judge may not go on the air and appeal to listeners to donate money to a public radio station as part of its pledge drive. *Florida Advisory Opinion 1986-14*.

- A judge may not appear on a television or radio program in which donations are solicited for a charitable organization. *Georgia Advisory Opinion 37* (2007).

- A judge may not serve as a celebrity guest on a radiothon to explain why he is a member of a non-profit organization and urge listeners to join if the celebrity designation stems from his position as a judge. *Michigan Advisory Opinion JI-87* (1994).

- A judge may not participate in a telethon as a special guest. *Michigan Advisory Opinion J-8* (2014).

- A judge may not participate in the phone bank for the local public radio station's on-air fund drive, but he may participate in behind-the-scenes activities, such as placing labels on forms and inputting data into a computer. *New*

*York Advisory Opinion 2014-8*.

- Even if he would not be identified, a judge should not answer telephones at an organization's fund-raising telethon because television cameras will periodically scan the faces of those answering the telephones. *New York Advisory Opinion 1998-154*.

- A judge may not answer telephones to accept donations, be a celebrity guest, or be on a telethon's VIP telephone panel. *Ohio Advisory Opinion 1995-13*.

- A judge may not participate in a local telethon to benefit muscular dystrophy research. *West Virginia Advisory Opinion* (November 11, 1991).

*But see Arizona Advisory Opinion 2000-6* (judge may take phone calls from donors in an on-air fund drive for public television or radio if she does not actively solicit funds and is not identified by name or title).

### Walking, running, biking, dancing

Advisory committees allow judges to participate in walks, runs, bike rides, or similar events in which participants make contributions or secure pledges to raise funds for charitable organizations. However, the opinions advise that a judge may not be identified as a judge on the roster of participants or in any other way connected with the event. Further, the opinions state that a participating judge may not solicit pledges or support (or allow others to do so in his name), except from family members or judges over whom the judge does not exercise supervisory or appellate authority, in states that have adopted those exceptions from the model code. See *Arizona Advisory Opinion 2000-6* (walk-a-thon); *Massachusetts Advisory Opinion 2000-4* (bike ride to raise money for AIDS research); *Michigan Advisory Opinion J-8* (2014) (walk-a-thon for a charitable cause); *New York Advisory Opinion 2007-17* (walking with a team to raise funds for a charitable organization); *New York Advisory Opinion 2006-114* (walking to raise funds for a charitable organization dedicated to fighting an illness); *New York Advisory Opinion 1996-147* (bicyclist for an AIDS ride); *Pennsylvania Informal Advisory Opinion 1/21b/2009* (dancing in a "Dancing with the Stars" type fund-raiser); *South Carolina Advisory Opinion 11-2013* (fund-raising event similar to the television show "Dancing with the Stars"); *Washington Advisory Opinion 2006-7* (Leukemia and Lymphoma Society's team for a Seattle-to-Portland bicycle ride); *Wisconsin Advisory Opinion 2009-1* ("polar plunge" fund-raising event for Special Olympics); *Wisconsin Advisory Opinion 1998-7* (charity bicycle ride). Cf., *Massachusetts Advisory Opinion 2008-11* (judge who participates in a walk or similar event to raise money for charitable organizations should make every effort to prevent a fund-raising web-site with her name from being publicly available and, if the effort is unsuccessful, should not permit her name to appear on the site).

According to some opinions, a judge participating in a walk or similar event should not accept even unsolicited donations from individuals who work in the court. *See Massachusetts Advisory Opinion 2008-11* (judge who is participating in a fund-raising walk to raise money for cancer research should reimburse a probation officer who contributed money without being solicited by the judge if the charity will not refund the contribution); *New York Advisory Opinion 2012-40* (judge participating in a walk may not accept donations from co-workers or other persons who become aware of her commitment to raise funds).

## Auctions

Judicial ethics opinions advise that a judge may donate items to be auctioned at a charitable fund-raiser but only if the item does not involve the judge's personal participation and the judge is not identified by title as the donor; the opinions do not agree, however, on whether the judge may be identified by name only.

- A judge may donate signed artwork for a silent auction sponsored by the Women's Section of the Alabama State Bar Association to raise funds for a scholarship if the judge's title is not used to promote the item or the auction. *Alabama Advisory Opinion 2009-899*.

- A judge may not bake a cake that will be sold or auctioned for charity if the bakers' names and photographs will be next to the cake even if his title would not be included. *Arizona Advisory Opinion 2000-6*.

- A judge may not contribute a hand-crafted mask to an on-line auction to raise funds for a hospice when the auction would identify the donor as a judge. *Colorado Advisory Opinion 2013-4*.

- A judge may donate goods to an auction to benefit the Children's Law Center if she obtains adequate assurance that her identity as the donor will not be publicized and her title will not be used. *Connecticut Informal Advisory Opinion 2012-30*.

- A judge who is moderately well known in custom knife-making and collecting circles may not provide knives for an

auction to raise funds for community organizations. *Florida Advisory Opinion 2007-4*.

- A judge may not provide artwork or crafts he made to a bar association's fund-raising sale or auction. *Florida Advisory Opinion 2003-16*.

- A judicial officer may donate a signed print of a photograph to the local bar association's annual fund-raising event but not to an auction that benefits a local non-profit dispute resolution center that offers out-of-court mediation services. *Washington Advisory Opinion 2006-1*.

- A judge, who is also a professional photographer, may agree to photograph the winning bidder at a fund-raising auction if her judicial status is not disclosed in the catalog, advertising, or bidding process. *Washington Advisory Opinion 2006-1*.

- A judge may not agree to have lunch with the successful bidder at an auction for a charity. *Arizona Advisory Opinion 1994-4*.

- A judge may not allow a not-for-profit organization to auction off dinner and drinks for 12 in the judge's home. *Florida Advisory Opinion 2001-9*.

- A judge may not agree to host a lunch as an item to be auctioned in a silent auction fund-raiser for a non-profit research organization. *Nevada Advisory Opinion 2010-3*.

- A judge may not donate playing golf, attending sporting events, or having dinner with the judge to a bar association fund-raising auction. *New York Advisory Opinion 2010-205*.

- A judge may not donate race car driving lessons or band performances by the judge to an auction for a legal services organization. *New Mexico Advisory Opinion 2008-4*.

- A judge may not allow the winner of a school fund-raising auction to sit with him during a court session and be his guest at dinner. *New York Advisory Opinion 1999-45*.

*Cf., Kansas Advisory Opinion JE-78* (1997) (a meal prepared by a judge may be auctioned for charity; the Commission on Judicial Qualifications expressed concern with the advice and noted it is not bound by advisory opinions).

## Event committees

Some advisory opinions on the issue prohibit a judge from serving on the host committee for a fund-raising event.

- A judge may not serve on the host committee for fund-raising banquets for organizations involved in prison evangelistic programs and victim assistance when the responsibilities include lending her name to banquet invitations and programs, serving as a host at a table to help develop relationships, obtaining church support and involvement, and recruiting other committee members. *Alabama Advisory Opinion 1998-712*.

- A judge may not serve as chair of the public schools scholarship foundation fund-raising gala. *Louisiana Advisory Opinion 182* (2002).

- A judicial officer may not chair a fund-raising event for a civic organization even if she is not responsible for the sale of individual tickets. *Washington Advisory Opinion 1991-9*.



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Summer 2014

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Executive Director

Published quarterly  
\$36 per year, single copy \$11

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© 2014  
American Judicature Society  
ISSN: 0193-7367

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## Participating in fund-raising events

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Other committees allow such service with conditions.

- A judge may serve as the chair of a fund-raising fashion show for a civic group and help plan the event if he takes reasonable steps to ensure his role is truly and completely anonymous. *Arizona Advisory Opinion 2000-6*.

- A judge may be listed as a committee member or honorary committee member for a fund-raising event provided judges do not make up the majority of the committee and the titles of all committee members are listed if the judge's title is listed. *Indiana Advisory Opinion 1-1996*.

- A judge may be a member of a committee organizing a gala ball to support state bar association programs dedicated to the improvement of the legal profession and the administration of justice if her name would not appear on any literature regarding the ball and she would not personally solicit any funds. *Nebraska Advisory Opinion 2003-5*.

- A judge may serve on an honorary committee for a charitable organization's fund-raising dinner only if he is a member of the organization, has a close personal relationship with the organization or the event, or is a close personal friend of the person being honored. *Nevada Advisory Opinion 2001-3*. See also *Nevada Code of Judicial Conduct*, Canon 4C(4)(b).

Some committees have issued apparently contradictory opinions on the issue. Compare *New York Advisory Opinion 2007-118* (judge may serve as honorary chair at a charitable fund-raiser provided his role is unadvertised and ancillary to the event and he will not be the guest of honor or participate in any fund-raising), with *New York Advisory Opinion 2006-69* (judge may not serve as honorary co-chair of a law school fund-raising event); *New York Advisory Opinion 2005-94* (judge may not be listed as a member of the committee for her law school's annual alumni leadership awards dinner, which raises funds for the school); *New York Advisory Opinion 1999-8* (judge may not allow her name to be listed as an honorary member of a bar association's ad hoc committee with the sole purpose of inviting people to a fund-raising event); *New York Advisory Opinion 1989-92* (judge may not be the honorary chair of a charitable fund-raising arts festival). Compare *Pennsylvania Informal Advisory Opinion 5/10/04* (if he believes that his participation will not assist a non-profit organization raise funds, judge may serve as honorary chair of an event and give medals to the winners of athletic contests if the funds will be raised before the public receives the program book with his name and photograph), with *Pennsylvania Informal Advisory Opinion 2/21/08* (judge may not be the honorary co-chair of a non-profit organization's fund-raising event); *Pennsylvania Informal Advisory Opinion 5/3/04* (judge may not serve on a ball committee when her name will be on the solicitation letter or literature and she is supposed to find new people to attend); *Pennsylvania Informal Advisory*

*Opinion 9/30/03* (judge may not serve on a committee if his name would appear on an invitation soliciting others to attend a fund-raising event); *Pennsylvania Informal Advisory Opinion 3/20/00* (judge may not be a member of the host committee for a fund-raising event, be listed on the invitation, encourage attendance, or greet guests at the event). Compare *Texas Advisory Opinion 150* (1992) (judge should not permit her name to be included in a list of the members of the host committee on an invitation to a fund-raising event), with *Texas Advisory Opinion 251* (1999) (judge may serve on the honorary committee for a Sickle Cell Association fund-raiser); *Texas Advisory Opinion 252* (1999) (judge may serve on the host committee for a guardian ad litem task force fund-raiser).

### Unadvertised awards

Some states have created an exception that allows a judge to accept an award or speak at a fund-raising event if the judge's participation is omitted from any prior announcements or advertisements about the event. For example, the Wisconsin code of judicial conduct provides:

A judge may be a speaker or guest of honor at an organization's fund-raising event provided there is no advertising of the judge as speaker or guest of honor in order to encourage people to attend and make contributions and provided that any contributions at the event are made prior to the judge's speech or presentation as guest of honor.

Similarly, the New York code of judicial conduct allows a judge to accept an "unadvertised award ancillary to" an organization's fund-raising event. With those conditions, a New York judge may at a fund-raising event, for example, accept an award, have her biography in a pamphlet distributed at the event, and permit her judicial title to be used in her introduction (*New York Advisory Opinion 2004-57*), present an award (*New York Advisory Opinion 2004-141*), read aloud the names of fallen service members (*New York Advisory Opinion 2005-54*), or give the invocation (*New York Advisory Opinion 1997-130*).

Other committees have rejected that approach. See, e.g., *Illinois Advisory Opinion 2001-5* (judge may not be a guest of honor at a civic organization's fund-raising event even if his name would not be used on invitations or promotional materials); *Connecticut Informal Advisory Opinion 2013-29* (judicial officer may not serve as the master of ceremonies for an event to benefit children's programs even if his name is not used in publicity and will not appear in the program book); *Massachusetts Advisory Opinion 1999-17* (judge may not accept an honor from a local Boys and Girls club at a holiday auction that benefits the club even if her name and title are excluded from all literature advertising the event). But see *Arizona Advisory Opinion 2000-6* (at a university's fund-raising dinner, judge may be honored for reasons independent of her position as a judge if she is only

one of many alumni being honored and her title and position are not publicized); *Arizona Advisory Opinion 2004-4* (judge may be inducted into a school district's hall of fame during a dinner to raise funds for scholarships if other individuals are also being honored, if he is being honored for

his community involvement and his career as an attorney as well as his judicial achievements, and if only his name, without reference to his position, is included on invitations). ★

## Discipline for charitable fund-raising

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door to her chambers; her secretary posted one of the flyers in the court employees' entranceway. The flyer indicated that interested persons should give the judge a check for the fund-raiser before April 17, and that the judge would randomly pick one check and pay for that person's ticket, returning the winner's check. Some individuals personally handed the judge checks for the event, and some mailed them to her house.

Based on a stipulation, the California Commission on Judicial Performance publicly admonished a judge for, in addition to other misconduct, soliciting donations to a fund-raising auction for a charitable organization, selling auction tickets and having court staff sell tickets, acting as an auctioneer, and using his judicial secretary to create documents connected with the organization, some of which were on judicial letterhead. *In the Matter of Quall*, Decision and order (California Commission on Judicial Performance June 2, 2008) ([cjp.ca.gov/pubdisc.htm](http://cjp.ca.gov/pubdisc.htm)). Since at least 1994, the judge and his wife had led volunteer medical relief "missions" every two years to Kenya and Tanzania. An auction was held to support the mission in the spring before the trip.

The judge was the main organizer of the auction and sometimes acted as the auctioneer at the event. He solicited donations, including from a court commissioner, a sheriff and under-sheriff, a deputy public defender, a marshal, and local businessmen by calling, asking when he happened to run into them, or directing his judicial secretary to contact them. The judge made one request from the bench while an attorney was asking for a continuance.

The judge also personally solicited attendance for the auction, asking several people if they wanted to buy tickets or if they knew anyone else who might want tickets. The judge directed others to sell auction tickets, including a court interpreter, an under-sheriff, and a marshal.

### Career vehicle

Granting the petition of the Judicial Standards Commission, the New Mexico Supreme Court removed a judge for, in addition to other misconduct, his relationship with a non-profit organization that recruited, trained, and oversaw volunteer court-appointed special advocates for children in juvenile dependency proceedings and that regularly appeared before him. *In the Matter of Castellano*, 889 P.2d 175 (New Mexico 1995). The judge had de facto control of First CASA, used the prestige of his office to solicit funds for

the organization, and conveyed the appearance or allowed others to convey the appearance that persons who contributed would be in a special position to influence his decisions. The judge also used First CASA as a vehicle to advance his political career and to place himself and his work at the center of attention to further his own interests.

The judge's wife served as executive director of First Casa for a salary and acted as its primary fund-raiser. She solicited contributions from lawyers who regularly appeared before the judge and used his chambers and telephone to solicit funds. The judge allowed the organization to use his name, title, and photograph in a brochure that solicited funds and to put his official telephone numbers on its stationery. In 1993, the judge ruled in favor of a law firm's client the same day the firm made a \$1,000 contribution to First CASA. A second law firm made a \$1,000 contribution while the judge was presiding over a criminal trial involving a relative of a member of the firm.

*See also Inquiry Concerning Hyde*, Decision and order (California Commission on Judicial Performance May 10, 1996) ([cjp.ca.gov/pubdisc.htm](http://cjp.ca.gov/pubdisc.htm)) (at judge's request, court secretary spent the equivalent of approximately 24 work days on tasks for a charity such as creating a 94-page mailing list, generating a fund-raising letter, and typing labels, envelopes, by-laws, and personnel policies); *Alred v. Judicial Conduct Commission*, 395 S.W.3d 417 (Kentucky 2012) (raising funds from companies and individuals for playground equipment for his children's elementary school); *In re Brown*, 662 N.W.2d 733 (Michigan 2003) (failing to ensure that her name and title were not used in an invitation to a fund-raising event); *In re Shannon*, 637 N.W.2d 503 (Michigan 2002) (advising defendants whose traffic tickets were dismissed to purchase tickets for the Detroit Fire and Police Field Day from a police officer sitting at a table in the courtroom); *In the Matter of Coffey*, Public reprimand (Nebraska Commission on Judicial Qualifications September 29, 2006) (serving as honorary co-chair of a fund-raising dinner for the state chapter of the National Multiple Sclerosis Society); *In the Matter of Smoger*, 800 A.2d 840 (New Jersey 2002) (recommending that persons at whose weddings he had officiated donate to specific charities, involving his court staff in the receipt and delivery of the donations, and suspending \$100 of a \$200 fine the day after the defendant had donated to a charity as recommended by the judge when he had officiated over the defendant's

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## Discipline for charitable fund-raising

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wedding); *In the Matter of Wingenroth*, Order (New Mexico Supreme Court October 19, 2011) (personally participating in the solicitation of funds or other fund-raising activity for a golf tournament held to benefit a high school baseball program); *In the Matter of Harris*, 529 N.E.2d 416 (New York 1988) (participating in the "Jail Bail for Heart" fund-raiser in which the sheriff brought persons who had collected money for the American Heart Association to the courthouse where the judge "fined" them in the amount of money they had collected); *In the Matter of Post*, Determination (New York State Commission on Judicial Conduct October 12, 2010) ([www.cjc.ny.gov/Determinations/all\\_decisions.htm](http://www.cjc.ny.gov/Determinations/all_decisions.htm)) (asking a town code enforcement officer and assistant district attorney to purchase \$100 raffle tickets to benefit her son's wrestling club and allowing her vehicle, which bore a judicial license plate, to be displayed to promote a car wash to benefit the women's softball team on which she played); *In the Matter of Kaplan*, Determination (New York State Commission on Judicial Conduct May 17, 1983) ([http://www.cjc.ny.gov/Determinations/all\\_decisions.htm](http://www.cjc.ny.gov/Determinations/all_decisions.htm)) (assisting his wife with advertisements she had solicited for a synagogue dedication journal by giving forms to attorneys in chambers and receiving the forms from attorneys for delivery to his wife); *In the Matter of Paris*, Determination (New York State Commission on Judicial Conduct September 16, 1999) ([www.cjc.ny.gov/Determinations/all\\_decisions.htm](http://www.cjc.ny.gov/Determinations/all_decisions.htm)) (being a guest of honor with family members at a dinner dance that benefited a Catholic schools foundation); *In re Hartman*, Opinion (February 11, 2005), Order (Pennsylvania Court of Judicial Discipline May 18, 2005) ([www.cjdpa.org/decisions/index.html](http://www.cjdpa.org/decisions/index.html)) (permitting his office and courtroom to be used for organizational meetings for the area Halloween Parade; personally collecting money, on occasion "over the counter," for T-shirts sold for fund-raising and for charitable activities; permitting advertisements for charitable and community activities in his office waiting area); *In re Arrigan*, 678 A.2d 446 (Rhode Island 1996) (soliciting attorneys to purchase jewelry for the benefit of the Franciscan Missionaries of Mary; permitting his chambers to be used for the sale of sweaters for the benefit of an immigrant group; selling over \$5,000 in raffle tickets to several judges and approximately 40 attorneys who practiced in his court); *In re Taylor*, Public reprimand (Tennessee Court of the Judiciary June 6, 2011) ([www.tsc.state.tn.us/boards-commissions/court-judiciary](http://www.tsc.state.tn.us/boards-commissions/court-judiciary)) (fund-raising for a "Citizens Heritage Display" for the courthouse lobby).

### Publicly funded private foundation

Judges have also been disciplined for using, not just the prestige or resources of their office, but also the power of their office to increase the funding of charitable organizations. For example, in *In re James*, 821 N.W.2d 144 (Michigan 2012), the judge "treated . . . as her own 'publicly funded private foundation'" fees collected in an alternative sentencing program for non-violent defendants. A statute

provided that 50% of fees from such programs be applied to payments to victims, and the balance applied to fines, costs, supervision fees, and other assessments or payments. The judge, however, authorized the distribution of more than \$14,000 from the account to local charitable, fraternal, and religious organizations, including donations for a table for 10 at a testimonial event, a local basketball camp, a police auxiliary annual picnic, cheerleader uniforms, a school's "Europe fund," gifts for board members of a finance authority, embroidered shirts bearing her name, a court newsletter, funeral flowers, and expenses related to Law Day.

The Court found that none of the donations was a proper operational expenditure for the program, stating that the judge had "expended monies intended for crime-victim restitution and for additional legislatively mandated priorities to other sources in a manner that she alone controlled." Emphasizing that the judge choose the charities, the Court noted that "many of these expenditures were for advertisements that promoted the judge, prominently displaying her picture and only tangentially mentioning the [community service program]."

In *In the Matter of Storie*, 574 S.W.2d 369 (Missouri 1978), the judge had approved plea bargains that included an agreement that, in consideration for a reduced charge, dismissal, or a nolle prosecqui, the defendant would make a contribution to a fund the judge maintained to improve court facilities. The Court stated that, "although respondent may have acted without an evil intent, the practical effect to the public is that of a 'pay-off'" and that his consent and participation "in the operation of a 'library fund' . . . from an objective standpoint, gave the appearance that justice was for sale in his court." See also *In the Matter of Merritt*, 432 N.W.2d 170 (Michigan 1988) (maintaining a fund to assist indigent drug and alcohol abusers with contributions from attorneys amerced for late filings, tardiness, or failure to appear); *In the Matter of Davis*, 946 P.2d 1033 (Nevada 1997) (diverting over \$405,000 from the city treasury to charities the judge selected by directing or suggesting that persons found guilty contribute money in lieu of paying fines); *In the Matter of Dunbar*, Determination (New York State Commission on Judicial Conduct July 3, 1979) ([http://www.cjc.ny.gov/Determinations/all\\_decisions.htm](http://www.cjc.ny.gov/Determinations/all_decisions.htm)) (imposing conditional discharges in five cases that required the defendants to pay \$50 to a specific charity); *Public Warning of McDougal* (Texas State Commission on Judicial Conduct June 30, 1999) (providing defendants in traffic cases with the option of making donations to a charity chosen by the prosecutor in exchange for dismissal of their tickets); *In re Felsted*, Stipulation and order (Washington State Commission on Judicial Conduct September 7, 1990) ([www.cjc.state.wa.us](http://www.cjc.state.wa.us)) (allowing certain individuals to make voluntary contributions to law enforcement-related services in exchange for dismissal of their tickets). ★

sheets for his law clerk, (2) refusing to allow a defendant to withdraw his plea, (3) trying a defendant in absentia, and (4) suggesting that a deaf psychologist would be "agenda driven" in her examination of a deaf defendant. *In the Matter of Walters*, Public reprimand and conditions (Minnesota Board on Judicial Standards April 22, 2014) (<http://tinyurl.com/m8r8hf>).

For example, the judge's law clerk, PH, consistently did not have enough work to do and regularly failed to work full eight-hour days. To avoid boredom, PH took some pro bono bankruptcy cases, which he worked on during his regular work hours. PH usually did not come to work when the judge presided in another county or was on leave. The judge did not attempt to find additional work for PH or notify court administration that PH was available to do other work. In 2012, the chief judge twice e-mailed all of the district's judges, court reporters, and law clerks about the importance of following branch policies regarding the tracking and reporting of work hours. The judge did not discuss the need for accurate time sheets with PH, failed to properly supervise his time, and did not attempt to ascertain or ensure that the hours reported on his time sheets were accurate. The judge knew or should have known that PH did not work the hours reported but nevertheless signed and approved his time sheets.

### Small claims case

The Louisiana Supreme Court suspended a judge for 60 days without pay for engaging in numerous ex parte communications with the parties in a small claims case, having her constable obtain the police report of an altercation between the parties, failing to disqualify herself despite the ex parte communications and independent fact-finding, and allowing her constable to "assist" in the proceedings and in her decision-making. *In re Foret* (Louisiana Supreme Court May 23, 2014) (<http://tinyurl.com/l6ycts2c>).

Norris and Gloria Comeaux filed a small claims case against Charles and Carol LeBlanc. Both prior to and after the filing of the lawsuit, the judge engaged in numerous ex parte communications with the parties concerning the substantive issues in the case, directly and through her constable. The judge also independently investigated the background of the case by having her constable obtain the police report of an altercation between Mr. Comeaux and Mr. LeBlanc.

During a hearing in the case, the judge permitted her constable to question the parties and a witness, determine the order of the proceedings, threaten to hold the litigants in contempt, and comment at length on his opinion of the defendants' case, including making points not raised by the plaintiffs and about which there was no testimony or evidence. The judge also asked the constable at the conclusion of the hearing what he thought of the case.

The Court noted that, according to the joint stipulations, the judge had a practice of obtaining police reports in her cases and frequently allowed her constable to "assist" with hearings, including regularly permitting him to question witnesses, especially in criminal matters.

### Bar discipline for judicial misconduct

The Florida Supreme Court disbarred a former judge for a significant personal and emotional relationship with the lead prosecutor in a death penalty case that she failed to disclose in the case or during an investigation by the Judicial Qualifications Commission. *The Florida Bar v. Gardiner* (Florida Supreme Court June 5, 2014) (<http://tinyurl.com/nzq3p2h>).

On Friday, March 23, 2007, the judge was presiding over the trial in a capital murder case. That evening, the judge encountered assistant state attorney Howard Scheinberg, the lead prosecutor in the case, while eating dinner at a restaurant. The meeting was accidental and not planned. After dinner, the judge, Scheinberg, and others decided to go to a bar. Scheinberg drove to the bar with a member of the group, who was then a law student. During the drive, the law student raised the possible appearance of impropriety that might arise from the judge and the lead prosecutor in a ongoing murder trial socializing. Upset by the conversation, Scheinberg left the bar shortly after arriving. The judge attempted to learn what had upset Scheinberg and spoke with him on the phone several times over the weekend.

When the trial resumed on Monday, March 26, the judge did not disclose her interaction with Scheinberg. On March 27, the jury returned its guilty verdict. Later that day, the judge and Scheinberg had a lengthy phone conversation, during which Scheinberg told the judge about his discussion with the law student. The judge assured Scheinberg there was nothing for him to be concerned about. Beginning with that conversation, the judge and Scheinberg commenced a "significant personal and emotional relationship."

On April 30 and May 1, the judge presided over the penalty phase of the case; the jury recommended the death penalty. On August 24, the judge entered an order sentencing the defendant to death.

In the five-month period before the judge imposed the death penalty, she and Scheinberg exchanged 949 cell phone calls and 471 text messages. In particular, on the day before, the day of, and the day following the judge's imposition of the death sentence, she and Scheinberg communicated by phone and text 44 times. The Court found that the judge deliberately and knowingly chose not to disclose this relationship to the defense, despite her clear duty to do so.

Shortly after the defendant appealed, media sources began reporting allegations about the relationship between the judge and Scheinberg. Ultimately, the state attorney's office agreed to a new trial. ★



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