

# JUDICIAL CONDUCT REPORTER

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

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## The judge as author by Cynthia Gray

**A**lthough there are some restrictions on content and promotion, judges may author or co-author fiction or non-fiction books on legal and non-legal topics and receive compensation.

- A judge may be one of the authors of a book that is intended to provide practical guidance for Arkansas lawyers. *Arkansas Advisory Opinion 96-4.*
- A judge may write a children's book. *Florida Advisory Opinion 2010-12.*
- A judge who serves in the criminal division may write a crime novel with the help of an assistant state attorney who does not appear before her. *Florida Advisory Opinion 98-1.*
- A judge may author a book about defending child abuse cases published by a commercial publishing company. *Florida Advisory Opinion 88-14.*
- A judge may co-author with a lawyer a procedural manual to be published and sold by a commercial publisher for royalties or compensation. *Florida Advisory Opinion 78-12.*
- A judge may receive compensation for writing a novel in which legal issues are part of the plot. *Illinois Advisory Opinion 97-1.*
- A judge may self-publish a novel that is loosely based on her experiences as a trial judge or have a commercial publisher publish it. *Louisiana Advisory Opinion 220 (2009).*
- A judge may publish a bench book on a topic that she addresses in cases and collect revenues and royalties. *New York Advisory Opinion 10-84.*
- A criminal court judge may up-date his treatise on criminal law. *New York Advisory Opinion 08-137.*
- A judge may write works of fiction. *New York Advisory Opinion 99-145.*
- A judge may co-author a law book with an attorney and profit from the publication. *New York Advisory Opinion 95-145.*
- A judge may profit from the publication of a manual on criminal procedure that he originally prepared for a judicial

seminar. *New York Advisory Opinion 93-37.*

- A judge may publish short stories and novels. *Oklahoma Advisory Opinion 02-5.*
- A judge may write a book about his experience campaigning for judicial office. *Pennsylvania Informal Advisory Opinion 11/4/2009.*
- A judge may co-author a book on a legal subject with a lawyer. *Pennsylvania Informal Advisory Opinion 99-1-21.*
- A judge may publish a collection of short stories. *South Carolina Advisory Opinion 30-1995.*
- A judge may publish an up-dated edition of a book he co-authored prior to his election for lay members of public boards and commissions. *South Carolina Advisory Opinion 12-2011.*
- A judge may write a book concerning the legal system. *Washington Advisory Opinion 86-2.*

*But see North Carolina Advisory Opinion 2010-3* (during her tenure, a judge may not for personal profit publish a book on her experiences in child support court that contains accounts of court proceedings and the personal travails of litigants who have appeared before her).

Further, judges are allowed to write articles for both legal publications and general interest publications.

- A judge may write a column for a monthly Christian magazine. *Alabama Advisory Opinion 07-888.*
- A judge may write an article on underage drinking for publication by the state department of transportation or a local newspaper. *Kansas Advisory Opinion JE-97 (2000).*
- A judge may write an article on the Chinese justice system for compensation. *Maryland Advisory Opinion 1976-8.*

- A judge may, upon request, critique an attorney's performance after a trial only if he offers to do the same for the attorney's opponent and does not offer advice about how to win cases. *New York Opinion 12-149*.

- A judge may obtain the advice of a disinterested legal expert about a prosecutorial practice that is not currently before the judge but that she has previously observed and anticipates may come before her again. *New York Opinion 13-32*.

- A judge who is concerned an attorney has an alcohol problem is not required to report the attorney to the discipline committee if he has spoken to the attorney and contacted the Lawyer Assistance Program, unless the attorney's conduct is so egregious that further action is warranted. *New York Opinion 13-10*.

- Groups or persons may donate items for children to play with while they are in court as long as judges and court personnel do not solicit the donations. *Florida Opinion 2013-5*.

- Judges may convene a meeting to provide attorneys with information about budget cuts and their potential impact on the administration of justice and to request help in reducing the cuts or ameliorating the impact. *California Opinion 2013-1*.

- When paying bar association dues, a judge is not required to request a deduction in the amount attributable to advocacy activities. *Washington Opinion 13-3*.

- A judge need not disqualify himself or disclose when an attorney in a case is a first-degree relative of his co-judge. *New York Opinion 12-154*.

- When a judge knows that she has a social media connection with a party, witness, or lawyer in a case, the judge should conduct the same analysis she makes whenever a matter involves a person she has a connection with professionally or personally. *ABA Formal Opinion 462 (2013)*.

- A judge should not become social networking "friends" with attorneys who may appear before him. *Connecticut Informal Opinion 2013-6*.

- Judges may, based on merit, select the attorneys who are eligible for appointment as counsel for parents in dependency and neglect proceedings and monitor their performance. *Colorado Opinion 2013-2*.

- A court may create a roster of service providers if all interested providers have an opportunity to apply and the criteria are reasonable and unbiased, but a judge should not refer a defendant to a specific provider. *Utah Informal Opinion 12-2*.

- A judge who requires defendants convicted of certain crimes to attend victim impact panels may observe a panel in a different county but should, to the extent feasible, observe anonymously without being identified as a judge. *New York Opinion 12-64*.

- A family court judge may not, as an extra-judicial activity, request Department of Social Services case files

for truant children and collaborate with caseworkers, educators, attorneys, and parents to improve the children's attendance even if she will not preside in any of the cases. *New York Opinion 12-18*.

- A judge may donate goods for an auction to benefit the children's law center, may donate funds to the center, and may pay for admission to and attend its fund-raising event if the judge obtains adequate assurance that his identity will not be publicized and his title will not be used for promotion; in any case in which the center is a party or counsel, the judge should consider whether the timing, nature, and size of his donations require disqualification or disclosure. *Connecticut Informal Opinion 2012-30*.

- A judge may host a community screening of a documentary about the effects of a long prison sentence on the relationship between incarcerated mothers and their children and moderate a discussion of the film, but

may not permit fund-raising at the event, although a community group may sell refreshments. *New York Opinion 11-118*.

- A judge may not accept an award from a non-profit organization at a candlelight vigil for victims and survivors of domestic violence. *Connecticut Emergency Staff Opinion 2012-29*.

- A judge may not participate in a task force to address issues encountered during the 2012 general election. *Florida Opinion 2013-3*.

- If the judge is not mentioned, a judge's husband may be designated to receive payments for a school fund-raising event, and his name may appear on a flyer for the event. *Illinois Opinion 13-1*.

- A judge should withdraw his agreement to speak at a continuing legal education program and object in writing on learning that the sponsor is using his name and title in a manner that clearly implies attendance will put attorneys in a special position to influence him. *New York Joint Opinion 12-62/12-69*.

- A judges' association may permit non-judicial co-sponsors of an educational conference to raise funds from foundations, bar associations, law schools, and lawyers. *New York Opinion 12-86*.

- A judge charged with violating the vehicle and traffic laws may negotiate with the prosecutor for reduction or dismissal of the violation, either pro se or through an attorney, but must not invoke her judicial title or status. *New York Opinion 12-96*.

- A judge may coach a middle school mock trial team. *Connecticut Informal Opinion 2013-11*. ★

## Recent advisory opinions

***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/).***

## Dismissing cases

The Ontario Judicial Council publicly reprimanded a judge for dismissing 33 criminal charges involving 10 accused persons when the crown attorney was late returning to court after a recess. *In the Matter of Chisvin* (Ontario Judicial Council November 26, 2012) ([www.ontariocourts.ca/ocj/ojc/public-hearings-decisions/2012/chisvin/](http://www.ontariocourts.ca/ocj/ojc/public-hearings-decisions/2012/chisvin/)).

On July 21, 2011, the judge was presiding over criminal matters scheduled for final resolution, including guilty pleas. A 20-minute recess was taken at 11:23:11. The clerk returned to court at approximately 11:40, unlocked the doors, and paged all persons to attend court, with a separate page for the crown attorney. Again at 11:45:21, all persons having business in the courtroom were paged, stating court was about to commence, with another page for the assistant crown attorney.

At 11:46:21, the judge re-entered the courtroom. The assistant crown attorney was not present, and the courtroom clerk again paged him. The judge told the clerk to tell the crown attorney that “if there’s not a prosecutor here within a minute, the list will go for want of prosecution.” The clerk called the office of the crown attorney, spoke to a receptionist, and said, “I need a Crown in 202....” The judge told the clerk, “Tell them they have 30 seconds. The list is about to go for want of prosecution, Madam Clerk.”

The clerk advised the judge that the crown attorney’s office was sending an attorney and paged the assistant crown attorney again. A defense lawyer asked whether the clerk had called the crown attorney’s office. The judge responded, “It’s not her function (a) to call the Crown’s office, (b) the list is about to go for want of prosecution.” The defense lawyer offered to go to the crown attorney’s office. The judge responded: “Thirty seconds...that’s all.” At 11:47:48, the judge dismissed the 33 criminal charges remaining on the docket, stating, “All right, all provincial matters are dismissed for want of prosecution.”

At 11:53:44, the assistant crown attorney returned to the courtroom. The following exchange took place:

The Court: Mr. McCallion, all provincial matters have been dealt with by want of prosecution. There was no Crown in here for some 10 minutes and you were being paged and paged and paged. They’ve been dismissed for want of prosecution. We have only federal matters left on the list.

McCallion: I apologize Your Honour. I was — I’ve just, I’ve received a [psychiatric] report...with respect to Mr. S[name redacted] who is...

The Court: That might be. Court comes when court is back. You were paged. You were paged in the hallway, the Crown’s office was called, no Crown. They’re dismissed for want of prosecution.

The Council noted that, to remedy the dismissals, resources had to be expended to have informations re-sworn, new summonses served on affected persons, and appeals filed to protect the right to proceed. The Council also found that victims and defendants who had expected their matters to be finally concluded that day were left with uncertainty as to the outcomes and inconvenienced by having to return to court.

## Payments to drug fund

The Mississippi Supreme Court reprimanded a judge and suspended him from office for 30 days without pay for dismissing criminal charges in 38 cases in exchange for payments to a “drug fund” established by the city police chief. *Commission on Judicial Performance v. Smith*, 109 So. 3d 95 (Mississippi 2013).

The city police chief instituted a program in which some criminal defendants could avoid prosecution in exchange for a payment to a “drug fund.” The judge, with full knowledge of the program, presided over 38 cases from December 2009 through July 2010 in which charges were dismissed and/or remanded to file upon the recommendation of the police chief and the motion of the prosecutor with simultaneous payments of \$250 to \$3,000 by the defendants into the drug fund. The judge and the prosecutor ceased the practice when the FBI began investigating the alleged mishandling of the drug fund money by the police chief.

The judge argued that he was merely sustaining motions made by the prosecutor and that, even if he erred in doing so, that error did not constitute fraud, corrupt motive, or bad faith that warranted discipline. The judge admitted, however, that his decision to accept the lesser pleas contingent on payments into the drug fund was at least partially motivated by his desire to collect fees for the city. The Court concluded, “Judge Smith’s good intentions notwithstanding, his judicial conduct . . . constituted a gross abuse of power.”

## Variety of misconduct

Pursuant to the judge’s agreement, including an agreement not to run for re-election, the Georgia Judicial Qualifications Commission publicly reprimanded a judge and suspended him without pay for 60 days for a variety of misconduct. *In re Bass*, Public Reprimand (March 18, 2013) (<http://www.gajqc.com/news.cfm>).

The judge admitted that (1) without legal authority, he had ordered criminal defendants to make payments for what he called administrative costs that the county was not entitled to receive “in what appeared to be an

## Recent cases

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effort to ‘maximize’ the collection of revenue;” (2) failed to include surcharges required by law in fines imposed on criminal defendants, which deprived the state of revenue; (3) appointed his son to serve as judge in his absence; (4) engaged in a private Facebook chat with a woman who contacted him on behalf of her brother about a DUI matter; (5) segregated Hispanic defendants from the courtroom to speak with them about their cases without a court reporter or the prosecutor present; (6) while on the bench, asked members of the audience to vote for him in the upcoming election; (7) questioned court officials regarding their support of his election opponent; (8) was hostile to an attorney who made a contribution to his election opponent; (9) made numerous threatening and confrontational statements to the owners and employees of the private probation services company under contract with the court because they would not publicly support his candidacy; (10) confronted members of the state patrol about objections they had to some of his rulings; and (11) held a “trial” in absentia over the objection of the defendant’s counsel and “created an atmosphere of theatre...by asking counsel to place an empty chair in the courtroom and suggest[ing] that the defendant’s name be hung on it.”

### Public feud

Based on the judge’s consent, the North Carolina Judicial Standards Commission publicly reprimanded a judge for becoming embroiled in a public feud with town officials and engaging in “overly aggressive” actions outside the legitimate exercise of the powers of his office. *Public Reprimand of Tillett* (March 8, 2013) ([www.aoc.state.nc.us/www/public/coa/jsc/publicreprimands/jsc12-013A.pdf](http://www.aoc.state.nc.us/www/public/coa/jsc/publicreprimands/jsc12-013A.pdf)).

Eleven days after the judge’s adult son was detained by the Kill Devil Hills police, the judge met in his chambers with officials from the town of Kill Devil Hills and its police department. During the meeting, the judge complained about his son’s detention as well as police misconduct that did not involve his son. The meeting became confrontational, and the judge warned the officials that they needed to take care of the complaints. He exhibited a demeanor that the other participants described as stern, aggressive, agitated, and angry. Several participants felt threatened by his conduct and his discussion of a superior court judge’s ability to remove officials from office.

Throughout 2011, the judge received grievances from police officers about personnel issues, the chief of police, and the assistant town manager. Outside of any formal hearing or court proceeding, the judge concluded that the police chief was guilty of professional malfeasance and repeatedly argued to the district attorney that his office had the duty to file a petition for the removal of the police chief. At first, the district attorney’s office assured the judge that a petition would be filed but ultimately concluded that

there was insufficient evidence to support such a petition.

On January 5, 2012, the judge met with the district attorney and a member of the district attorney’s staff about complaints lodged against the district attorney’s office and its failure to file a petition against the chief of police. The judge requested that a sheriff’s deputy be present at the meeting. The deputy’s presence and the judge’s critical and aggressive comments intimidated the officials from the district attorney’s office.

### Comments on Facebook

Granting a joint motion to resolve charges, the Alabama Court of the Judiciary publicly reprimanded and censured a judge for making public comments about pending contempt proceedings against a lawyer on his Facebook page and in an e-mail to other judges. *In the Matter of Allred, Reprimand and Censure* (March 22, 2013) (<http://judicial.alabama.gov/judiciary/COJ42PUBLICREP.pdf>).

When a member of a Facebook group of the judge’s law school classmates raised a question about his actions against a lawyer, the judge posted a response that began, “Here’s the whole story. Please spread it far and wide.” He identified the lawyer by name and explained that she rarely came to court when she had cases set and would repeatedly file motions to reinstate when he dismissed her cases, which he would grant. He continued:

In January she missed a docket where she had about 8-10 cases. I dismissed them all. She filed a motion to reinstate. So I set it for a hearing and ordered her to appear to show-cause why she shouldn’t be held in contempt. She didn’t show up. I issued a warrant but I’m going out of town tomorrow. So I sent a deputy to get her yesterday so I could deal with it before I got out of town and she wouldn’t have to sit in jail while I was gone.

Her office lied to the deputy and she’s been running ever since. She’s made a bad situation much worse. She’s basically in open defiance of numerous orders from me to turn herself in. She’s gone from one act of contempt to about five. She’s a fugitive and she’s facing twenty five days now.

In an e-mail to every circuit and district judge in the state at their court system e-mail addresses, the judge stated:

I am sending this email with great regret, but I must ask for your help. The lawyer listed above is in open violation and defiance of many of my court orders. There is a warrant issued for her arrest that she has been made aware of many times. She continues to defy my order and is a fugitive from justice. [Lawyer A] is from [an Alabama city] and does a great deal of collection work around the state. If she appears in your courtroom, please see that she is arrested and held. If you’ll contact my office . . . or the Walker County Sheriff . . . , I will send a Walker County deputy to pick her up. Thanks in advance for your help. ★



## 23rd National College on Judicial Conduct and Ethics

October 23-25, 2013 • Embassy Suites Chicago—Downtown/Lakefront

The 23rd National College on Judicial Conduct and Ethics will provide a forum for judicial conduct commission members and staff, judges, judicial ethics advisory committees, and others to discuss professional standards for judges and current issues in judicial discipline.

The College will begin Wednesday October 23 with registration and a reception. Thursday morning there will be a plenary session, followed by concurrent break-out sessions through Friday noon. The topics for discussion are

described below. AJS will apply for certification for continuing legal education credit for the College.

**The registration fee is \$350 through August 23, but \$375 beginning August 24.** The registration is not refundable unless cancellation is received in writing prior to October 9, 2013.

**A printable registration form and on-line College registration are available at [www.ajs.org](http://www.ajs.org).**

### Hotel Information

You must register for the College and reserve rooms at the hotel separately. National College room rates at the Embassy Suites Chicago—Downtown/Lakefront (+16.4% tax and 9.25% sales tax) are: Single rate \$239, Double rate \$249, Triple rate \$259, Quad rate \$279. Rates include complimentary guestroom internet access, cooked-to-order breakfast, and nightly manager's reception for attendees staying at the hotel. **Reservation cut-off is September 20, 2013 or**

**when the College block is filled.** If available, rooms may be booked at College rates for three days before and three days after the meeting. **To obtain the College rates, you must use the group code "AJS" when you make reservations at 800-HILTONS [800-445-8667] or click the hotel link on the College page at [www.ajs.org](http://www.ajs.org).** The Embassy Suites Chicago—Downtown/Lakefront is located at 511 North Columbus Drive, Chicago.

### Plenary Session

#### Best Practices in Judicial Ethics and Discipline

In this "crowd-sourced" session, participants will share their ideas about what policies and procedures supreme courts, judicial conduct commissions, and judicial ethics advisory committees can adopt that will provide judges the ethical guidance they need, ensure an effective, fair

discipline system, and promote public confidence in the integrity of the judiciary.

**Moderator:** *Cynthia Gray*, Director, Center for Judicial Ethics, American Judicature Society

### Break-Out Sessions

#### Social Media and Judicial Ethics

One thing everyone agrees with is that judges should be extremely cautious about using social media such as Facebook and Twitter. This program will review advisory opinions to consider what guidelines judges should follow to avoid becoming one of the increasing number of judges whose use of social media has made the headlines and led to discipline.

**Moderators:** *Judge M. Sue Kurita*, Judge, County Court at Law #6; Member, Texas State Commission on Judicial Conduct • *Justice Barry R. Schaller* (retired), Connecticut Supreme Court, Chair, Connecticut Committee on Judicial Ethics; Judge Trial Referee, Connecticut Appellate Court

#### Off-Bench Conduct

Although the code of judicial conduct applies to all of a judge's activities, not every personal shortcoming – adultery or bankruptcy, for example – necessarily becomes a discipline case. This session will debate what standards conduct commissions and advisory committees can use to focus on the off-bench conduct most likely to undermine public confidence in the judiciary.

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

## Pro Se Litigants and Judicial Ethics

What ethical duties do judges have when dealing with pro se litigants? Should the code of judicial conduct be modified to allow judges to give more assistance to pro se litigants? These issues and others raised by the increase of self-represented litigants appearing in courtrooms will be discussed in this session.

**Moderators:** *Judge Joyce Williams Warren*, 6th Judicial District, Little Rock; Member, Arkansas Commission on Judicial Discipline and Disability • *Judge Keith Levy*, District Court, Juneau; Member, Alaska Commission on Judicial Conduct

## Determining the Appropriate Sanction

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

**Moderators:** *Steven Scheckman*, Schiff, Scheckman & White LLP; General Counsel, Ethics Review Board of the City of New Orleans • *Judge John P. Erlick*, King County Superior Court; Member, Washington State Commission on Judicial Conduct

## Drawing the Line on Judicial Demeanor

This session will address how judicial conduct commissions can distinguish between a momentary lapse in judicial courtesy that can be excused and a lack of judicial temperament that must be remedied. Further, it will consider when and how commissions should impose conditions such as mentoring or counseling on a judge with a demeanor problem.

**Moderators:** *Michael C. Martinez*, LPC, LCPC, Contemporary Counselors and MCM Clinical, Chicago • *Judith A. Olean*, Former Rio Rancho, New Mexico Municipal Judge • *Randall D. Roybal*, Executive Director, New Mexico Judicial Standards Commission

## Disqualification

Looking at case law and advisory opinions in the post-*Caperton* context, this session will apply the standard

requiring disqualification "when a judge's impartiality might reasonably be questioned" to various scenarios.

**Moderators:** *Justice Martha Hill Jamison*, 14th Court of Appeals, Houston, Texas; President-Elect, American Judicature Society • *Judge Edward C. Moss*, 17th Judicial District, Brighton, Colorado; Member, American Judicature Society National Advisory Council

## Getting it Just Right: Judicial Discipline and Scandal

Do judicial conduct commissions sometimes not go far enough in responding to complaints and let serious misconduct slip through the "legal error" crack? Do commissions sometimes go too far and discourage judges from speaking out about problems in the courts? This session will consider what lessons commissions can learn from the Pennsylvania "Kids for Cash" case and other scandals to balance accountability and independence.

**Moderators:** *James J. Alfini*, Professor of Law and Dean Emeritus, South Texas College of Law • *Victoria B. Henley*, Director-Chief Counsel, California Commission on Judicial Performance

## The Role of Public Members

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

**Moderators:** *Colleen Concannon*, Member, Arizona Commission on Judicial Conduct • *Ricardo Morales, Jr.*, Member, Florida Judicial Qualifications Commission

## Introduction to the Canons for New Members of Judicial Conduct Commissions

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

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

A printable registration form and on-line College registration are available at [www.ajs.org/index.php/judicial-ethics/national-college-judicial-conduct-and-ethics](http://www.ajs.org/index.php/judicial-ethics/national-college-judicial-conduct-and-ethics).

- A judge may write an article with general legal information for an educational pamphlet directed to non-lawyers considering divorce to be sold for profit and may receive compensation. *Michigan Advisory Opinion JI-76* (1993).
- A judge may write articles about the probate process for a local newspaper. *New Mexico Advisory Opinion 97-5*.
- A criminal court judge may write articles for a legal trade publication. *New York Advisory Opinion 08-137*.
- A judge may write a law review article addressing the powers of the governor. *New York Advisory Opinion 05-70*.
- A judge may write without compensation a monthly column for a local newspaper about non-legal events, activities, and organizations of interest to a particular ethnic community. *New York Advisory Opinion 93-23*.
- A judge may write articles on legal topics for publication in newspapers and receive compensation provided the source of the payment does not give the appearance of influencing the judge and the amount is reasonable and does not exceed what someone who is not a judge would receive. *Ohio Advisory Opinion 89-21*.
- A judge may author an article on a legal subject. *Pennsylvania Informal Advisory Opinion 3/3/2009*.
- A judge may submit to a law review an article analyzing expert testimony in federal courts and the impact on West Virginia jurisprudence. *West Virginia Advisory Opinion* (January 18, 2002).

*But see Maryland Advisory Opinion 2001-1* (a judge may not write a recurring column titled “Tell It To the Judge” in

## Blogs

Keeping up with the times, advisory committees extend the permission to write to new internet forums such as blogs. See *Florida Advisory Opinion 2012-7* (blog that reports on Florida Supreme Court and Court of Appeal cases); *New York Advisory Opinion 10-138* (blog that comments on current events).

The Washington committee stated that a judge may have an internet blog promoting “a more fair, just and benevolent society” but should exercise caution as to how that blog is used and how he responds to the comments to ensure that the blog does not call his impartiality into question. *Washington Advisory Opinion 09-5*. The committee recommended that the judge consider posting a disclaimer that the opinions expressed are only those of the author and should not be imputed to other judges and consider outlining the constraints to which judges are subject. If possible, the committee suggested, the judge should review a comment before allowing it to be published on the blog or regularly monitor the comments.

a national magazine for compensation).

A judge may not write materials to assist only one component of the justice system. See *California Advisory Opinion 65* (2012) (a judge with a criminal law assignment may not write training bulletins for law enforcement); *Nebraska Advisory Opinion 96-9* (a judge may not write an occasional column for a local newspaper that is published primarily for law enforcement officers). However, if a book can be purchased by all members of the bar and the general public and the judge does not give partisan advice on strategy, a judge may write a chapter for a book on prosecutorial ethics published by a national organization of prosecutors. *New York Advisory Opinion 07-37*.

## Content

There are restrictions on the content of judges’ books or articles, all designed to ensure that their writings do not undercut public confidence in their impartiality. Thus, advisory committees have limited judges’ ability to address controversial legal issues but have not prohibited such discussions altogether.

- A judge may write an article critical of a ballot measure about the administration of justice, but not an article opposing a ballot measure affecting funding for the state children and family trust fund. *California Advisory Opinion 65* (2012).
- A judge may write an article criticizing the Administrative Offices of the Courts and the Chief Justice for court closures and voluntary salary waivers. *California Advisory Opinion 65* (2012).
- A judge may write an article for a legal periodical with a legal analysis criticizing a recent Supreme Court decision. *California Advisory Opinion 65* (2012).
- A judge may not write an op-ed piece critical of affidavits of prejudice filed against another judge that could be viewed as intimidating to the lawyers who had filed the affidavits. *California Advisory Opinion 65* (2012).
- A judge should not submit to a law review an article highly critical of the correctional officers union, recent administrations, and the get “tough on crime” movement because the tone and certain statements cast doubt on his capacity to act impartially in cases involving prison guards, inmate brutality, three strikes sentencing, and drug offenses. *California Advisory Opinion 65* (2012).
- A judge may write an informative article about the divorce process for a divorce company’s web-site as long as he does not answer hypothetical questions in a way that appears to commit him to a particular position or make remarks that could lead to disqualification or be construed as indicating how he would rule on a case. *Florida Advisory Opinion 07-21*.
- A judge may not publish an article that makes conclusions as to the constitutionality of tort reform legislation.

*Florida Advisory Opinion 2002-2.*

- In a monthly newspaper column for a local newspaper about the county's court system, a judge should not intimate how she would rule on matters that may come before her. *Florida Advisory Opinion 99-14.*

- A judge may write a bi-weekly column analyzing recent decisions about attorneys fees but should refrain from stating how he would rule on a related question and should be careful how he suggests remedying problems caused by the decisions. *Florida Advisory Opinion 95-37.*

- A judge may publish a blog that reports on Florida Supreme Court and Court of Appeal cases without editorializing, criticizing, or otherwise evaluating the opinions. *Florida Advisory Opinion 2012-7.*

- A judge may write an article disagreeing with holdings in an area of federal law that does not apply in New York, suggesting alternative ways to construe the law, and proposing reforms. *New York Advisory Opinion 12-31.*

- A judge may author an article criticizing the court's limited authority to review administrative agency determinations and recommending a modification of the statute. *New York Advisory Opinion 05-158.*

- A judge may publish a book that includes her views about how her small community can re-establish itself but should not include any controversial discussion about the enforcement of municipal codes or quality of life offenses. *New York Advisory Opinion 06-6.*

- A judge may write a column for a bar association's newsletter on the county's "red light" automatic camera program that objectively describes previous motions and decisions without comment and without raising evidentiary issues or challenges that have not previously been decided. *New York Advisory Opinion 10-153.*

- A judge may co-author a scholarly article that will review statutes and cases but should not discuss litigation strategies. *New York Advisory Opinion 04-115.*

- A judge may publish an article that supports the implementation of drug courts in response to another judge's article opposing drug courts. *Pennsylvania Informal Advisory Opinion 10/21/2008.*

### **Pending cases**

The most obvious content restriction is the prohibition on judges commenting on pending or impending cases.

- A judge should not write about a capital case in which the death penalty was imposed before the sentence is carried out. *Alabama Advisory Opinion 99-739*

- A judge may write articles for publication about the reasoning process by which she reached a decision in a particular case only if the case has been fully resolved. *Arizona Advisory Opinion 95-4.*

- A judge should not write articles for a magazine commenting on pending or impending cases involving the Internet. *New York Advisory Opinion 00-115.*

- A judge presiding over criminal cases may write commentaries for a publisher on criminal law if the judge does not urge a particular outcome for cases that remain in litigation. *New York Advisory Opinion 90-24.*

When cases are no longer pending, judges have more latitude to discuss them in their writings.

- A judge may write a book recounting the salient facts of murder cases tried before the judge where all of the cases were final and the book was written in a fashion that respected the law and did not undermine public confidence in the integrity and impartiality of the judiciary. *California*

## **Prefaces**

With some caveats, advisory committees have given judges permission to write forewords, prologues, or prefaces for books written by others.

- A judge may author a foreword to a book written by a police officer on child safety and the Internet if the judge reviews the entire book and satisfies herself that authoring the foreword would not cast doubt on her impartiality or reflect a predisposition with respect to particular cases, issues, parties, or witnesses and if she has editorial control over the content of the foreword and the right to review any biographical information used. *Connecticut Advisory Opinion 2010-15.*

- A judge may write the preface to a book about the history of the county if there is no mention of his official position. *Florida Advisory Opinion 77-5.*

- For a book concerning the prevention and treatment of alcoholism, a judge may, without compensation, write an introduction recommending the book to judges and other professionals. *Maryland Advisory Opinion 1980-7.*

- A probate and family court judge may write a foreword without pay for a book on divorce, but should be careful about what she says and how she associates with anything in the book. *Massachusetts Advisory Opinion 93-2.*

- A judge may write a foreword for a book on the bicentennial of the U.S. Constitution without remuneration. *Ohio Advisory Opinion 87-8.*

*But see New York Advisory Opinion 97-1* (a judge should not write a foreword to a book about the judge's court intended to earn a profit for the publisher and author).



*Advisory Opinion 65* (2012).

- A retired judge with continuing judicial assignments may self-publish a novel that is loosely based on the judge's experiences as a trial judge or allow a commercial publisher to publish the novel as long as the publication does not occur until after the final disposition of any cases to which the novel might allude. *Louisiana Advisory Opinion 220* (2009).

However, the federal advisory committee urged a judge, even after final disposition of a case, to "exercise special caution when writing about a case the judge has heard" and to "be especially careful to avoid the potential for exploitation of the judicial position." *U.S. Advisory Opinion 55* (2009).

If referring to a criminal case, the judge should consider whether the comments might afford a basis for collateral attack on the judgment. A judge must avoid writings that are likely to lead to disqualification. In every case, the judge should avoid sensationalism and comments that may result in confusion or misunderstanding of the judicial function or detract from the dignity of the office. Finally, the judge should consider the language, intent, and spirit of the entire Code when deciding to write about a case handled by the judge.

See also *Alabama Advisory Opinion 99-739* (discouraging a judge from writing a book about one or more cases over which the judge presided even after final disposition).

### Use of a judge's title

The prohibition on a judge using the prestige of office to advance private interests requires a judge to prohibit "anyone associated with the publication of such materials" from exploiting the judge's office in a manner that violates the code of judicial conduct and requires the judge to "retain sufficient control over the advertising to avoid such exploitation." Comment 4, Rule 1.3. American Bar Association *Model Code of Judicial Conduct* (2007). See *Arkansas Advisory Opinion 96-4* (book contract language that requires a publisher to use the judge/author's name and qualifications when advertising and marketing the book "in accordance with appropriate professional standards

and ethics" complies with the provision requiring judicial control over advertising).

However, judge authors are not required to hide their identities. Thus, a judge may publish novels or short stories under the judge's real name and with a personal picture (*Oklahoma Advisory Opinion 02-5*) or publish a book of poems under his name even if the community knows he is a judge (*New Mexico Advisory Opinion 09-5*).

Further, at least if the judicial status is not emphasized, most judicial ethics opinions allow judges to be identified as a judge or by title in biographical materials and on the cover of a publication to inform the reader of the author's qualifications and experience.

- A judge may be pictured in a robe on the jacket cover of a book she authored on being a judge. *Arkansas Advisory Opinion 05-6*.

- A judge may use her title on the cover of a legal practice guide and monthly newsletter. *California Advisory Opinion 65* (2012).

- A judge who authors law-related articles, treatises, and books may use his title in promoting them. *California Advisory Opinion 65* (2012).

- The title and experience of a judge who has written a book may be included in a biographical sketch that contains only factual statements. *Connecticut Informal Advisory Opinion 2012-13*.

- A publisher may post a photograph of a judge on the author page for the children's book she wrote, and a press release may mention that the author is a judge. *Florida Advisory Opinion 2010-12*.

- A judge who has published a book to help parents teach children the consequences of crime may identify himself as a circuit court judge with considerable experience in criminal and juvenile matters on the inside title page in a short biographical sketch. *Florida Advisory Opinion 82-5*.

- Biographical information included in the foreword of a legal thriller authored by a judge may refer to her position as a judge. *Florida Advisory Opinion 76-17*.

- An advertisement for a legal manual written by a judge may prominently display the author's name and judicial position and declare that the book is "a must for every attorney who ever takes an appeal to the Florida district courts of appeals or the supreme court of Florida." *Florida Advisory Opinion 76-17*.


- A judge who has written a book on fines and costs in criminal cases for use by the local judiciary may be identified by name and title on the publication. *Illinois Advisory Opinion 96-8*.

- A judge may allow the publisher of her novel to include her judicial experience in the author's biography. *Louisiana Advisory Opinion 220* (2009).

- A judge who has written an autobiographical book may be identified as a judge in the book and on the back cover. *New Mexico Advisory Opinion 12-11*.

- A judge who has written a book of poems may include

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her title in an incidental manner in her personal background. *New Mexico Advisory Opinion 09-5*.

- A company with which a judge is self-publishing a work of fiction may mention his judicial position in a press release and include a statement on the book cover indicating that he currently presides in a particular court. *New York Advisory Opinion 06-105*.

- At book-signings and public discussions of a book he has written, a judge may state that he is a judge in response to questions. *New York Advisory Opinion 06-105*.

- A judge may permit the use of the title “justice” before his name and the use of a photograph of him wearing a robe in the advertising and promotion of a book he has written on trial objections. *New York Advisory Opinion 98-89*.

- A judge who has published short stories and novels may indicate in a biography that she is a judge and authorize the

use of a personal photograph on the book’s jacket as long as her vocation is not emphasized in the biographical sketch. *Oklahoma Advisory Opinion 02-5*.

- A judge may publish a collection of short stories using her name and may state her official position in the biographical sketch. *South Carolina Advisory Opinion 30-1995*.

However, several opinions advise that, for publications that are not law-related, a judge/author may be identified as a judge only in biographical materials and not in advertisements. See *California Advisory Opinion 65* (2012); *South Carolina Advisory Opinion 03-12*.

However, judges may not directly sell books they have written.

- A judge may not personally solicit sales of a book he has

## Book reviews

Whether a judge may review a book depends on whether the purpose of the review is promotional or informational. Further, advisory committees differ on whether a judge must prohibit the use of complimentary blurbs from the judge’s review in promoting the book or even whether the likelihood of such use precludes a judge from writing a review.

- A judge may write a review of a book about an historical event for a legal periodical as an academic exercise and not for commercial purposes even though any positive comments are likely to be used to market the book. *California Advisory Opinion 65* (2012).

- A judge may not write a commentary to be included on a book jacket or in a testimonial regarding the value of a bar publication that would be used to market the book. *California Advisory Opinion 65* (2012).

- A judge may not write a testimonial/endorsement for a legal practice guide published by a non-profit, bar-related legal organization. *Connecticut Advisory Opinion 2010-35*.

- A judge should not give an appraisal intended to be used to promote the sales of a book, but may write a book review in a journal or newspaper intended to inform the legal community or the general public of a new contribution to the legal or general literature, even if the publisher later uses excerpts from the review to promote sales of the book and even if the newspaper or journal compensates the judge for the review. *Illinois Advisory Opinion 94-15*.

- A judge may write a review of several books on methamphetamine addiction. *Nevada Advisory Opinion JE08-8*.

- A judge may not provide an endorsement of a book that would appear on the cover and identify him as a judge even if his name is not used. *New York Advisory Opinion 12-26*.

- A judge may not provide a quote to be included on the inside leaf of a book a friend has written about auditing for fraud even if her title will not be mentioned and the only compensation is a complimentary copy of the book. *New York Advisory Opinion 11-54*.

- A judge may write a book review but may not permit the author or publisher to use any portion of the review to promote the book’s sale. *New York Advisory Opinion 06-114*.

- A judge may submit to the *New York Law Journal* a review of a book authored by a clergy member who serves at the judge’s house of worship, but should not permit the author or publisher to use any portion of the review to promote the book’s sale. *New York Advisory Opinion 05-28*.

- A judge may review a legal publication but should not prepare a testimonial that would be included in a marketing brochure or provide a quote about a book for the book jacket. *New York Advisory Opinion 97-133*.

- A judge may not author a quote about a book involving legal issues simply to be used on the book jacket in conjunction with its sale, but may write a book review for publication in the *New York Law Journal* or elsewhere. *New York Advisory Opinion 93-14*.

- A judge may not write a review of a book on a legal subject when the publisher has stated that it will use some of the judge’s comments to promote sales. *Pennsylvania Informal Advisory Opinion 11/4/03*.

- A judge may write a letter to be included in a booklet about substance abuse as long as it cannot be interpreted as an endorsement of the booklet and does not impact the appearance of the judge’s impartiality in the trial of related matters. *Texas Advisory Opinion 192* (1996).

written at a table set up at the annual state bar convention. *California Advisory Opinion 65* (2012).

- A judge may not get directly involved in financial transactions for the sale of her book that would interfere with the proper performance of judicial duties. *Connecticut Informal Advisory Opinion 2012-13*.

- A judge who has written a book should not solicit sales or be in the immediate vicinity of a sales pitch while attending a reception to celebrate its publication. *Pennsylvania Informal Advisory Opinion 4/22/04*.

- A judge may not directly sell a book he has written to a member of the bar or allow his judicial assistant to do so. *Florida Advisory Opinion 89-6*.

- At a book signing, the financial transactions for selling a book written by a judge must be handled by someone other than the judge. *Louisiana Advisory Opinion 235* (2011).

- Sales of a book about the legal system written by a judge must be made by a third person. *Washington Advisory Opinion 86-2*.

See also *Inquiry Concerning Ross*, Decision and Order (California Commission on Judicial Performance April 30, 1998) ([http://cjp.ca.gov/res/docs/s\\_c\\_cites/Ross\\_JR\\_48\\_Cal.4th\\_CJP\\_Supp.\\_19.pdf](http://cjp.ca.gov/res/docs/s_c_cites/Ross_JR_48_Cal.4th_CJP_Supp._19.pdf)) (judge sold copies of a book he had written to attorneys and jurors at the courthouse and used his bailiff).

## Promotional activities

A judge who has written a book may cooperate with her publisher's program of publicizing the book through standard channels, such as book signings, a publisher's website, sending out review copies, interviews, and giving talks, and may retain a professional promotional firm to supplement the publisher's promotion. *Connecticut Informal Advisory Opinion 2012-13*. However, book signings may not be held at the courthouse or any location that would lend the prestige of judicial office, and any appearances by the judge must not interfere with her judicial duties. *Connecticut Informal Advisory Opinion 2012-13*. A judge may not take time from her judicial responsibilities, engage in coercive activities, or use court resources to sell an autobiographical book she has written. *New Mexico Advisory Opinion 12-11*.

Other examples:

- A judge whose article on the judicial process is being published in a local trade association's magazine may appear with the association president on the cover of the issue. *Alabama Advisory Opinion 97-667*.

- A judge may write to public librarians and boards of education requesting them to purchase a children's book he has written if he uses his name but not his title or office in the letter. *Alabama Advisory Opinion 96-619*.

- A judge may advertise a legal work in the local bar newsletter. *California Advisory Opinion 65* (2012).

- A judge who has written a children's book may participate in a book signing where the books are sold. *Florida Advisory Opinion 2010-12*.

- A judge may give a copy of a book he has authored to an attorney and autograph a book purchased by an attorney. *Florida Advisory Opinion 89-6*.

- A judge may send invitations to a book signing to a private mailing list if the title "judge" is not used in the invitation and the invitation is not placed in publications targeted to the legal community. *Louisiana Advisory Opinion 235* (2011).

- A judge who has self-published a novel loosely based on her experiences as a trial judge may participate in book signings. *Louisiana Advisory Opinion 220* (2009).

- A judge may participate in a local bar association's "author's night/book signing" and identify himself as a judge. *New York Advisory Opinion 11-4*.

- A judge who has written a work of fiction intended for children may participate in traditional book signings and public discussions of the book. *New York Advisory Opinion 06-105*.

- A judge who has published a collection of short stories may participate in promotional activities, including signing autographs. *South Carolina Advisory Opinion 30-1995*.

- A judge may send e-mails or post cards announcing the publication of his novel to members of the bar as long as the e-mail does not refer to his position and is not sent from his judicial e-mail address and the postcards do not show a return address for his chambers. *South Carolina Advisory Opinion 11-2011*.

- A judge may advertise a book she has written concerning the legal system in a bar publication. *Washington Advisory Opinion 86-2*.

The Connecticut judicial ethics committee advised that a judge may promote his writings on a personal webpage, accessible through an academic institution's website or maintained independently. *Connecticut Informal Advisory Opinion 2012-12*. The webpage may contain biographical information, identify his judicial status, and list his articles, books, courses, talks, and lectures as long as he retains the right to pre-approve any biographical information used on the page. Further, the committee instructed the judge to monitor the page to ensure that it does not include links to advocacy groups, comments about any pending or impending matters, and content that would cast doubt on his impartiality. Because a book may be sold by numerous vendors, the committee advised that a judge's page should not contain a link to a single or select vendor such as Amazon.com but could include a link to a publisher's website, specifically to a publisher's webpages that describe his books or other writings. In general, the committee warned the judge to "exercise caution in choosing website links because of the potential that such choices could be perceived as an endorsement of the contents and/or owner of such other website." ★



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