

*Key Issues in
Judicial Ethics*

REAL ESTATE INVESTMENTS BY JUDGES

BY CYNTHIA GRAY



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American Judicature Society

Allan D. Sobel
Executive Vice President and Director

Cynthia Gray
Director, Center for Judicial Ethics
Box 190, 3304 N. Broadway
Chicago, IL 60657
(773) 248-6005
FAX (773) 248-6015

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American Judicature Society
The Opperman Center at Drake University
2700 University Ave.
Des Moines, IA 50311
(515) 271-2281
Fax (515) 279-3090
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INTRODUCTION

Canon 4D(4) of the code of judicial conduct allows judges “subject to the requirements of this Code, [to] hold and manage investments of the judge and members of the judge’s family, including real estate....”¹ Thus, in general, a judge may own real estate and may have at least a passive investment in a partnership that engages in real estate investment.

- A judge may own an interest in a general partnership that owns unimproved land (*Florida Advisory Opinion 81-2*).
- A judge may maintain an interest as a tenant in common in 36 acres of strip-pit land (*Kansas Advisory Opinion JE-19*).
- A judge may own a percentage of a corporation that owns a commercial office building (*Massachusetts Advisory Opinion 98-14*).
- A judge may continue to own with his or her spouse a small rental property inherited from family (*New York Advisory Opinion 96-11*).
- A judge may have a passive investment as a general partner in a partnership engaged in real estate investment (*U.S. Compendium of Selected Opinions § 5.2-2(c)* (1998)).

However, a judge’s real estate investments or activities related to real estate ownership may raise concerns under other provisions of the code. This paper discusses ethical limitations on a judge’s real estate investments and management as outlined by judicial discipline cases and ethics advisory opinions.² It considers the ethical issues raised when a judge is a partner in a real estate investment with an attorney, including whether a judge must recuse when a real estate partner appears in the judge’s court and whether a judge may invest in real estate with an attorney who frequently appears before the judge. The paper also reviews the

1. Unless otherwise indicated, references to canons of the code of judicial conduct are to the *1990 American Bar Association Model Code of Judicial Conduct*. The 1990 model code retains most of the basic principles of the 1972 ABA model code but makes several substantial changes and contains many differences in its details. This paper notes any relevant differences between the two model codes. Although the model code is not binding on judges unless it has been adopted in their jurisdiction, forty-nine states, the United States Judicial Conference, and the District of Columbia have adopted codes of judicial conduct based on either the 1972 or 1990 model codes. (Montana has rules of conduct for judges, but they are not based on either model code.)

2. Over 35 states and the United States Judicial Conference have judicial ethics advisory committees to which a judge can submit an inquiry regarding the propriety of contemplated future action. See *Judicial Ethics Advisory Committees: Guide and Model Rules* (AJS 1996).

Relevant provisions of the *1990 American Bar Association Model Code of Judicial Conduct*

Canon 3E(1)

A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:

* * *

(c) the judge knows that he or she, individually or as a fiduciary,...has an economic interest in the subject matter in controversy or in a party to the proceedings or has any other more than de minimis interest that could be substantially affected by the proceeding....

Canon 4D(1)(b)

A judge shall not engage in financial and business dealings that...involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Canon 4D(2)

A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge’s family, including real estate, and engage in other remunerative activity.

Canon 4D(4)

A judge shall manage the judge’s investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

division among the states on the issue whether a judge must recuse from cases in which one of the attorneys is a tenant in a building owned by the judge and examines opinions advising that a judge is prohibited from renting to an attorney who frequently appears before the judge. It also describes other potential tenants to whom a judge should not rent. The paper addresses the restriction on a judge purchasing property that is involved in litigation pending before the judge. It analyzes the guidance advisory committees have given regarding what management activities are permitted for judges and which activities are proscribed. Finally, the paper covers the issue of a judge appearing before an administrative agency regarding land use matters involving the judge’s residence and the conditions imposed on a judge’s service as a member of the board of directors of a homeowners’ association.

JOINT OWNERSHIP OF PROPERTY WITH AN ATTORNEY

Joint ownership or investment in real estate by a judge and an attorney may raise questions about whether the judge is disqualified if the attorney/partner appears in a case before the judge.

In most states, recusal is required when a judge's real estate partner appears in the judge's court. The West Virginia Supreme Court of Appeals publicly reprimanded a judge for presiding over a case in which one of the parties was represented by an attorney with whom the judge owned all the shares of a corporation that held 106 acres of land, on which the judge and his family lived without paying rent. *In the Matter of Means*, 452 S.E.2d 696 (1994).

- A judge may retain ownership of real property even though a joint owner was an attorney, but must recuse in any case in which the attorney/partner is involved (*Florida Advisory Opinion 76-20*).
- A judge may retain an interest in an office building and a parcel of property with members of the judge's former law firm but should disqualify from any legal matters involving the partners (*Florida Advisory Opinion 78-19*).
- A judge need not divest ownership of one-fourth of the outstanding stock of a corporation where one of the other shareholders is an attorney who will appear before the judge, but the judge must recuse if the attorney appears before the judge (*West Virginia Advisory Opinion* (March 1, 1993)).

See also *Maryland Advisory Opinion 65* (1978) (although not required, a judge who is a member of a joint real estate venture with the state's attorney should not hear criminal cases in which the state's attorney appears or helped to prepare); *Michigan Advisory Opinion CI-1091* (1985) (a judge is disqualified from cases involving a law firm if one of the firm's members and the judge are real estate partners); *New York Advisory Opinion 95-1* (a judge who owns investment property jointly with a police officer should recuse from matters involving the

officer absent remittal). Compare *Massachusetts Advisory Opinion 95-6* (a judge is disqualified from cases involving the judge's real estate partner even if the judge and the partner transfer ownership of the property to their respective spouses) with *Louisiana Advisory Opinion 155* (1999) (a judge who jointly owns an office building with attorneys who are likely to appear before the judge may transfer his or her interest to the judge's child so long as the transfer divests the judge of full ownership and control over the property).

Furthermore, because the relationship will result in frequent disqualification, a judge, under Canon 4D(4), should not own real estate jointly with an attorney who regularly appears in the court where the judge sits.

- A judge may not retain an interest in real property with a lawyer if the partnership will involve frequent contacts and the lawyer is likely to come before the court on which the judge serves (*Florida Advisory Opinion 76-20*).
- A new judge may not retain a 25% interest in a building owned with other members of his or her former law firm in which the firm is a tenant (*Kansas Advisory Opinion JE-95* (2000)).
- A judge should not be involved in a real estate partnership with an attorney who frequently appears before the judge regardless whether the judge is a general or limited partner (*Missouri Advisory Opinion 118* (1986)).
- A newly elected judge who expects to be assigned regularly to felony matters should terminate a real estate partnership with the district attorney as soon as possible (*New York Joint Advisory Opinions 93-122 and 94-24*).
- A judge should divest a partnership interest in two office buildings with one of the judge's former law partners whose practice will frequently bring the partner before the judge's court (*South Carolina Advisory Opinion 5-1991*).
- As soon as possible without serious financial detriment, a recently appointed master-in-equity should discontinue a partnership with an attorney in the ownership of a building where the attorney would be appearing before the master-in-equity (*South Carolina Advisory Opinion 12-1991*).

- A judge should not own real estate jointly with an attorney who regularly appears in the judge's court (*Washington Advisory Opinion 93-4*).
- A judge may not own a one-third interest in a corporation that owns and leases a building where the other owners and some of the tenants are attorneys (*West Virginia Advisory Opinion* (June 14, 1995)).

The South Carolina advisory committee explained:

There is significant risk that a judge's ownership of a partnership interest in an office building with a lawyer, occupied by that lawyer, would be perceived by the general public, and litigants in particular, as having the potential for a lack of impartiality in his judicial conduct.

Such ownership also could have the potential of bringing the judge in conflict with [the attorney/partner] over management of the properties, improvements thereto, payment of rents, etc. The partner's regular appearance before the [judge] could well place the judge in the position, either real or imagined of having undue influence over the business decisions of the partnership due to perceived potential leverage in other areas. *South Carolina Advisory Opinion 12-1991*.

See also *Louisiana Advisory Opinion 146* (1997) (a lawyer who holds an interest in an office building with the district attorney and first district attorney may not accept an appointment as a part-time hearing officer in traffic court where all cases will be brought by an assistant district attorney); *New York Advisory Opinion 95-1* (a judge should sell investment property owned jointly with a police officer if the officer will appear frequently before the judge).

Although in some states recusal is not automatically required if an attorney with whom the judge jointly owns property appears before the judge, the circumstances under which the judge may sit in cases involving the attorney/partner are very limited.

- A judge who jointly owns real estate with two attorneys may hear cases filed by the attorneys if the judge receives no income from the property and it is for sale, but the arrangement could become inappropriate if problems arose such as difficulty with payment of the mortgage, taxes, or insurance (*Alabama Advisory Opinion 81-116*).

- The mere joint ownership of property by a judge and the judge's former law partners does not require the judge to disqualify in cases in which one of the attorneys represents a party if the judge participates as a limited partner and the property is managed totally by the general partners (*Alabama Advisory Opinion 83-198*).
- If a judge and an attorney jointly own land bought as a future vacation spot before the judge took office, the judge need not recuse where the attorney or the attorney's firm appears before the judge (*Florida Advisory Opinion 82-14*).
- Although a judge and an attorney are co-owners of a parcel of land, the judge need not automatically disqualify from matters in which the attorney appears if the judge's investment in the property is minimal, there is no partnership relationship between the attorney and the judge, and the judge does not participate in the management of the land, but the judge should inform counsel and their clients regarding the co-ownership, and may not sit on the case if those parties object (*Maryland Advisory Opinion 105* (1984)).

ACTING AS A LANDLORD

Leasing to attorneys

In most states, a judge must recuse from cases involving an attorney who rents office space in a building owned by the judge. That rule may require the judge to refrain from renting property to an attorney or law firm that regularly practices in the judge's court or even to divest the property. The Georgia judicial ethics committee explained:

A long term lease arrangement might necessitate fairly frequent routine contacts, and this sort of business relationship with lawyers might tend to reflect adversely on the judge's impartiality in the opinion of some members of the public. There would obviously be a potential for disputes between the parties if they should disagree as to their rights and obligations under the lease agreement. This type of office building is to some extent a single-purpose structure, particularly in a non-urban area, and if a judge should become dependent to a significant degree upon the rental income for his livelihood, the decision of a lessee law firm as to whether to renew the lease after the expiration of the original term might have undesirable personal impact upon him. *Georgia Advisory Opinion 16* (1977).³

The restriction applies even though all financial transactions regarding the rental would be handled by the judge's spouse (*Alabama Advisory Opinion 82-130*) or by the judge's business partner (*Arkansas Advisory Opinion 97-5*; *West Virginia Advisory Opinion* (March 1, 1993)). The Arizona committee noted that:

the appropriateness of renting office space to attorneys may depend on the judge's position and the nature of the attorney's practice. It would be permissible, for example, for a justice of the peace to rent an office to an attorney whose practice is restricted to the superior court or a specialized area of the law that would not entail appearances in the justice court. *Arizona Advisory Opinion 95-12*.

The Arkansas Judicial Discipline & Disability Commission imposed an informal adjustment on a judge who had presided at a trial in which one of the

litigants was represented by an attorney who leased office space in a building owned by the judge and his wife. The judge did not disclose the relationship to the other attorney. *Informal Adjustment of Ford* (September 22, 1998).

- A judge is disqualified from cases in which a party is represented by an attorney who rents law office space from the judge (*Alabama Advisory Opinion 97-660*).
- A judge is disqualified from proceedings in which a party is represented by an attorney who rents office space from the judge and the judge knows that the rental payments could be substantially affected by the outcome of the proceeding (*Alabama Advisory Opinion 97-640*).
- A judge is precluded from renting property to attorneys who come or are likely to come before the judge (*Arizona Advisory Opinion 95-12*).
- If the issue of disqualification arises frequently, a judge should stop renting office space to a part-time prosecutor (*Arkansas Advisory Opinion 97-3*).
- A judge who is one of three partners in a general partnership that owns an office building is disqualified from cases involving an attorney who is a tenant in the building even if one of the other partners manages the building, the judge has no direct dealings with the tenants, and the attorney is only one of many tenants (*Arkansas Advisory Opinion 97-5*).
- A judge who rents office space to attorneys is disqualified from all cases in which those attorneys appear even if the management of the building is placed in a blind trust, unless the parties waive disqualification (*Florida Advisory Opinion 97-33*).
- A judge may not rent to a public defender who appears before the judge practically on a daily basis (*Florida Advisory Opinion 87-17*).
- A judge should not hear cases handled by attorneys to whom the judge leases office space (*Kansas Advisory Opinion JE-12*).
- A judge may own an office in which some of the tenants are attorneys who regularly appear

3. The committee did conclude that a newly appointed judge was not precluded from retaining an interest in a building already leased to an attorney or to enter into a lease with an attorney after becoming a judge for space in a building owned before taking the bench. "Such a prohibition," the committee stated, "would unduly penalize the judge and would not be in keeping with the spirit and intent of Canon [4D]." The committee did suggest that a "judge should, to the extent reasonably possible, minimize any direct business dealings between himself and the lessee law firm."

before the judge, but should recuse from all matters in which one of the judge's tenants represents a party; if a substantial number of situations arise in which a judge must recuse, the judge should seek reassignment and, if reassignment is not consistent with the obligations of the judge's office, the judge should not renew the leases of the attorneys/tenants (*Massachusetts Advisory Opinion 93-3*).

- If a tenant/attorney practices before a landlord/judge, the judge, as soon as possible without serious financial detriment, must divest the investments (*Michigan Advisory Opinion JI-13* (1989)).
- A judge who has a small ownership interest in an office complex that rents to two attorneys must recuse from cases in which those attorneys appear; if recusal will cause more than minor assignment difficulties, the judge must divest (*New Mexico Advisory Opinion 97-6*).
- A judge should not permit two lawyers who rent space in a building in which the judge is a partner to practice before the judge absent a waiver (*New York Advisory Opinion 95-101*).
- A judge should not rent the judge's former office to an attorney who will frequently appear in the judge's court, and if the judge rents the space to an attorney who appears before the judge only infrequently, the judge must disclose the relationship and may preside only upon the consent of all parties (*New York Advisory Opinion 95-11*).
- A judge may lease office space to an attorney who will probably be appearing in the judge's court if the rental is commercially reasonable; the duties of landlord do not interfere with judicial duties or involve the judge in frequent conferences and transactions with the attorney; the letting is conducted by a realty firm; there is no strained relationship resulting from late rental payments, failure to repair, or other disagreements; the judge does not depend to a significant degree on the rental income; and disqualification will not be frequent; but the judge should disclose the relationship if the attorney appears before the judge and disqualify unless

the parties enter a waiver (*Oklahoma Advisory Opinion 2000-1*).

- If it is likely that an attorney will appear before a judge, the judge should not rent to the attorney (*Pennsylvania Advisory Opinion 86-1*).
- A judge may not lease her former law office, of which she is the sole owner, directly to attorneys who will be practicing in her court (*Texas Advisory Opinion 153* (1993)).
- A judge who owns a building that has lawyers as tenants must sell the property, refer all cases handled by lawyers who are tenants in the building to another judge, or not rent to lawyers (*West Virginia Advisory Opinion* (January 22, 1991)).
- A newly-elected judge must terminate a lease agreement with a lawyer that is part of an agreement between the judge and the lawyer for the purchase of the judge's law practice as soon as possible absent serious financial detriment to the judge and definitely within one year after taking office (*Wisconsin Advisory Opinion 97-4*).

See also *New York Advisory Opinion 93-91* (a judge is prohibited from renting residential property to attorneys or other individuals who are likely to appear in the judge's court); *New York Advisory Opinion 88-38* (a judge should not rent space from an attorney who practices before the judge's court because "a landlord/lawyer . . . has significant control over the cost of the judge/tenant's rent and other related services").

In some states, however, a judge may sit in cases in which an attorney/tenant appears, unless the lawyer falls behind in the rent or disagreements arise between them. The Kentucky judicial ethics committee, for example, reasoned that the routine, periodic payment of rent and the typical landlord-tenant relationship are not financial dealings that involved the judge in frequent transactions with lawyers. Furthermore, the committee stated,

when rent payments are made on time and relations between landlord and tenant are not strained, the judge's interest as a landlord cannot be said to be "substantially affected" [within the meaning of Canon 3E(1)(c)] by the outcome of a particular proceeding. Therefore, there would seem to be no need for disqualification of the judge solely because of the existence of the landlord-tenant rela-

tionship between judge and attorney. *Kentucky Advisory Opinion JE-7* (1980).

The committee did state:

Every effort should be made to deal at arm's length in renting to lawyers. For instance, it might be desirable to negotiate the lease through another person, such as a real estate agent, in order to avoid any suggestion of impropriety. Also, the premises should not be rented for less than their fair market values. Finally, the name of the judge as owner of the building should not be given public prominence

The committee added, "Should the lawyer fall behind in his rent, or should disagreements arise between them, the judge should then, of course, disqualify"

- A judge may continue to lease a building to an attorney even after being elected and may hear cases involving that attorney (*Maryland Advisory Opinion 71* (1980)).
- As long as the rent paid by the attorney to the judge is at fair market value, the judge may sit on a case in which the attorney/tenant appears (*Missouri Advisory Opinion 161* (1994)).
- A judge is disqualified from matters involving two local attorneys who are tenants in a building owned by the judge's spouse (*West Virginia Advisory Opinion* (June 30, 1997)).
- A judge may lease real estate to attorneys without having to be disqualified in cases where those attorneys appear but should disclose the landlord/tenant relationship in appropriate circumstances (*Washington Advisory Opinion 93-8*).

See also *Alabama Advisory Opinion 98-719* (a judge is not disqualified from a case in which one of the attorneys subleases office space in a building owned by the judge); *Illinois Advisory Opinion 97-17* (a judge who is a city prosecutor's landlord and to whom the prosecutor owes money is not disqualified from cases prosecuted by part-time assistant prosecutors who are not associated with the city prosecutor in private practice).

Family members renting to attorneys

Several advisory opinions indicate that an appearance of impropriety may be created if the judge's spouse or a member of the judge's immediate family is the

landlord of an attorney who frequently appears in the judge's court.

- Members of the judge's immediate family may not receive financial benefit either directly or in trust from property rented to the judge's former firm (*Alabama Advisory Opinion 81-115*).
- A judge's spouse may not lease space in an office building the spouse owns to a lawyer who appears before the judge (*South Dakota Advisory Opinion 95-2*).
- A trust created to benefit a judge's minor children should not rent space in a building to lawyers who practice in the judge's court (*Texas Advisory Opinion 179* (1995)).
- A judge is disqualified from matters involving two local attorneys who are tenants in a building owned by the judge's spouse (*West Virginia Advisory Opinion* (June 30, 1997)).
- An office building in which the prosecuting attorney's office leases space should not be conveyed to the judge's spouse or children living in the judge's household, but the property may be conveyed to the judge's emancipated child who is not living in the judge's household (*West Virginia Advisory Opinion* (December 22, 1993)).

Blind trust

Several advisory committees have rejected the suggestion that if the judge places real estate in a blind trust, the property may be rented to an attorney who regularly practices before the judge. See *Alabama Advisory Opinion 86-275*; *Virginia Bar Advisory Opinion LEO-368* (1980). But see *South Carolina Advisory Opinion 5-1985* (a blind trust would be an acceptable solution for the management of a judge's real estate investments with former law partners "provided the Trust remained in fact a Blind Trust"). In fact, the Kentucky committee warned that a blind trust was precluded by the requirement in Canon 3E(2) that a judge be informed about his or her personal and financial interests. *Kentucky Advisory Opinion JE-7* (1980). The *Reporter's Notes to the [1972 Model] Code of Judicial Conduct* explain that:

One important result of requiring a judge to know about his financial interests is to preclude the use

of a so-called “blind trust” by a judge as a means of protecting himself from disqualification or from the necessity of investing in a manner to minimize the likelihood of his disqualification. The Committee rejected the blind trust concept for several reasons:

1. The complexity and cost of the blind trust would make it unavailable to most judges.
2. There was doubt as to how blind the blind trust would be. The judge, for example, may be required to sign an income tax return that reports investment income and capital gains and losses. There are many other ways in which the blindfold may be removed.
3. Most important was the doubt that the public and litigants would believe that the trust was blind if after a decision the fact was disclosed that the judge had had a substantial blind trust interest in the winning party in a proceeding before him.

E. W. Thode, *Reporter's Notes to the Code of Judicial Conduct*, at 64-65 (ABA 1973).

Appointing tenants

A judge may not make appointments to attorneys who are leasing office space from the judge.

The New York Commission on Judicial Conduct publicly censured a judge who, among other misconduct, rented an official building, office equipment, furniture, furnishings, and a law library to three attorneys whom the judge appointed successively to serve as counsel for the public administration. *In the Matter of Laurino*, Determination (March 25, 1988). The commission found that “[b]ecause of his control over counsel’s position and the substantial fees awarded to him, [the judge] had a distinct advantage over counsel in the rental negotiations for [the judge’s] private building. It was...inherently coercive for [the judge] to suggest that counsel rent his building.” The commission also found that a “reasonable person might question whether counsel’s appointment or retention in office was based on merit or [the judge’s] self-interest in the rents he would receive.”

Adopting a consent agreement, the California Commission on Judicial Performance publicly admonished a judge who had appointed two attorneys who rented office space from the judge and one attorney who had a social relationship with the judge to represent criminal defendants in numerous cases. *Inquiry Concerning Shook*, No. 148, Decision and Order Im-

posing Public Admonishment (October 29, 1998).

While Attorney Ben Sadler rented office space in a building owned by the judge and the judge’s wife, the judge appointed Sadler to represent criminal defendants in approximately 50 cases and in approximately 28 cases that were paid through a county-wide system. When Sadler appeared before the judge, the judge did not disclose the landlord-tenant relationship or disqualify himself. The judge approved Sadler’s fees on the cases. In mid-1993, the judge recommended Sadler to an attorney appointment panel. For almost two years, the judge appointed Sadler to approximately 22 cases in which attorney fees were paid through the panel. Approximately 15 of the appointments were not made according to the panel attorney rotation list (called “collars”). Sadler received more “collar” appointments from all judges combined than did any other indigent defense panel attorney, and all but one of Sadler’s collar appointments were made by the judge.

Attorney Joel Oiknine was a prospective tenant in the office building owned by the judge and his wife. After, Oiknine expressed doubt that he could afford the rent, the judge told him that, if he rented office space in the building, the judge would recommend him to the indigent defense panel, and he would receive criminal appointments from the judge that would cover the rent. For three years, the judge appointed Oiknine to represent criminal defendants in cases before the judge.

Leasing to other types of tenants

A judge may also be prohibited from acting as a landlord for certain types of tenants other than attorneys. In general, a judge may lease to private or government agencies.

- A judge may lease office space to the county board of education (*Alabama Advisory Opinion 93-485*).
- A judge may lease to a non-profit human services corporation that had no direct contract with the court but did contract with a government agency to provide family counseling and juvenile services (*Florida Advisory Opinion 93-49*).
- A judge may lease an office building to one of several entities that provide mental health coun-

selling services to adolescents through the state department of corrections (*Louisiana Advisory Opinion 123* (1995)).

- A judge may lease commercial real estate to the state department of general services for use by the division of parole and probation (*Maryland Advisory Opinion 95* (1982)).
- A judge may lease real property to the county in which the judge is an elected official (*Missouri Advisory Opinion 110* (1985)).

However, a judge may not lease office space to a tenant, either private or governmental, that has a contract with the courts, to which the judge refers litigants for evaluation or treatment, or that will appear frequently in the judge's court.

- A judge may not lease an apartment building to a council on alcoholism because the judge refers convicted D.W.I. offenders to the council's driving schools and those referrals generate fees for the council (*Alabama Advisory Opinion 88-339*).
- A judge may not lease a building to a non-profit human services corporation that provides probation supervision pursuant to a contract with the court (*Florida Advisory Opinion 93-49*).
- A judge should not lease property to the department of corrections (*Florida Advisory Opinion 90-1*).
- A judge may not lease office space in a building the judge owns to the office of youth development of the department of public safety and corrections where the agency advises the judge's court on sentencing for juvenile offenders and supervises juvenile offenders placed on probation (*Louisiana Advisory Opinion 167* (2000)).
- A judge may not lease a building to a drug and alcohol treatment center that provides evaluations and treatment to defendants appearing before the judge (*New York Advisory Opinion 96-90*).
- A judge may not rent a commercial building to one of two certified private alcohol treatment agencies located in the judge's jurisdiction where everyone convicted of D.W.I. must complete an alcohol evaluation and treatment program and

the judge controls the flow of those cases (*Washington Advisory Opinion 86-6*).

The South Carolina committee stated that, where a county does not have space available for the office of a newly elected judge, the judge may rent office space to the county for use as the judge's county office. *South Carolina Advisory Opinion 12-1996*. The committee advised that the rental price should be set at market value as determined by an independent realtor and the judge should disclose the rental agreement any time the county is a party. Similarly, the Tennessee judicial ethics committee stated that a judge may rent an office to the state for the judge's own use if the arrangement was the result of an open bid process and there were no violations of conflicts-of-interest laws. *Tennessee Advisory Opinion 95-7*. In contrast, the Louisiana committee on judicial ethics stated that a judge may not lease building space to a police jury when the space will serve as the office of that judge. *Louisiana Advisory Opinion 109* (1993). See also *Louisiana Advisory Opinion 106* (1993) (the court of appeal may not lease space for a satellite office from the husband of the judge who will occupy that office, even at a commercially competitive rate).

In some states, disqualification is required if a tenant is involved in a case before the judge.

- A judge who leases office space to the superintendent of the county board of education would be required to disqualify in any case in which the county board of education was a party (*Alabama Advisory Opinion 93-485*).
- A judge who leases property to a newspaper is disqualified from proceedings in which the newspaper is named as a party, but is not disqualified from a case in which one or more of the parties are stockholders in the newspaper (*Alabama Advisory Opinion 84-210*).
- A judge must disqualify from any proceeding that involves a drug and alcohol evaluation and treatment center that accepts referrals from the court and is the lessee of a building co-owned by the judge (*New York Advisory Opinion 97-55*).

However, the Maryland committee stated that whether a judge who leases commercial real estate to a private

individual or entity must recuse depends on several factors:

- “the extent of any personal and direct relationship between the judge and the tenant emanating from the lease,”
- “whether the tenant’s interest in the case may affect his ability or desire to perform under the lease, his desire to continue or renew the lease, or his attitude toward the judge as a judge or as a landlord,”
- “the relative substantiality of the benefits accruing to the judge from the lease,” and
- “whether the private relationship by virtue of the lease might reasonably cause others to question the judge’s impartiality in the matter.”

Maryland Advisory Opinion 95 (1982). With respect to public agencies, the committee stated:

A public body is not quite so monolithic as most private entities. It is not to be supposed, for example, that a judge would be improperly influenced in a criminal case prosecuted by a locally elected State’s Attorney because the Department of General Services has leased space from him for some State agency; nor is it likely that the Department of General Services will act one way or another with respect to the property because of the judge’s decision in a case involving some other State agency.

See also Massachusetts Advisory Opinion 91-1 (a judge who has a 5% interest in an office building as beneficiary of the realty trust that owns the building is not disqualified from cases in which the lottery commission, which is a tenant in the building, is a stakeholder but should not participate in any other cases involving the commission).

PROPERTY INVOLVED IN COURT PROCEEDINGS

Judges have been disciplined for purchasing property that is involved in litigation pending before the judge. For example, the Connecticut Council on Probate Judicial Conduct publicly reprimanded a judge for purchasing real property from an estate being settled in his court and subsequently approving the final account of the executor. *Patterson v. Council on Probate Judicial Conduct*, 577 A.2d 701 (1990).

In *In re Yaccarino*, 502 A.2d 3 (1985), the New Jersey Supreme Court removed a judge for, among other misconduct, trying to buy property that was one of the assets at issue in litigation pending before the judge regarding the dissolution of several corporations and the distribution of corporate assets. The court found that the judge’s attempted purchase created the appearance that the judge was exploiting his position by seeking to obtain the property at an unreasonably low price.

The Kansas Supreme Court publicly censured a judge who had made an offer to buy a condominium from an estate only 18 days after he signed the orders admitting the will to probate and who purchased a home that was the subject of a foreclosure action pending before him. *In the Matter of Handy*, 867 P.2d 341 (1994). The court found that, “at the very least, the judge’s actions indicated an insensitivity to the appearance of impropriety.” The court noted that there was no evidence that the judge had obtained an unfair advantage in purchasing the condominium, but concluded that it was a better practice for a judge to refrain from purchasing property under such circumstances. With respect to the judge’s purchase of property that was the subject of a foreclosure action before him, the court found that the ownership of the property by a lending institution should have prompted the judge to inquire whether the property was involved in litigation in his court.

Similarly, the Maine judicial ethics committee stated that the judge who signed the judgment of foreclosure for a parcel of real estate may not bid on the property at the auction even if the foreclosure was not contested and the judge obtained releases from the mortgagor and mortgagee. *Maine Advisory Opinion 92-2*. The committee reasoned that the “public might

perceive that a judge was more willing to sign a judgment and more willing to overlook deficiencies in the plaintiff's case if the judge had an interest in obtaining the property." The Kansas ethics advisory committee also stated that a judge may not purchase assets from the estate of a minor from the conservator while proceedings are pending before the court upon which the judge is sitting even if the matter has been reassigned to another judge and the attorney for the owners assures the judge that any conflict will be waived. *Kansas Advisory Opinion JE-81* (1998). See also *U.S. Compendium of Selected Opinions* § 2.11(a-1) (1998) (a judge should not make a purchase at a public sale conducted by the United States Marshal or purchase assets from an estate in bankruptcy). But the Louisiana judicial ethics committee stated a judge may acquire a house that is the subject of foreclosure proceedings before the judge if the judge recuses and discloses the conflict and the owners and the foreclosing bank waive the conflict. *Louisiana Advisory Opinion 103* (1992).

If the judge's involvement in the sale is merely administrative, the judge may be able to purchase the property without violating the code. For example, the Maine committee stated that a judge who signed the abstract of judgment for a public sale of land may bid at the auction because signing the abstract is a mere formality that does "nothing to cause the foreclosure or the auction. *Maine Advisory Opinion 92-2*. The Ohio Supreme Court found that no appearance of impropriety was created when, 11 days after a judge signed a journal entry confirming sale of property in a foreclosure action, he joined in the partnership that purchased the property at a sheriff's sale. *Ohio State Bar Association v. Reid*, 708 N.E.2d 193 (Ohio 1999). Although conceding that the timing of the real estate transaction may, at first blush, seem suspect, the court stated that public auctions, by their nature, are impartial with respect to any bidders. The court noted that the judge had no knowledge of his partner's purchase of the property and had not been approached concerning the establishment of the partnership before he signed the order. Finally, the court noted that the property in question was offered twice before at a public auction, and at the third auction, one of the judge's partners was the sole bidder and purchased the property at the agreed-upon price and that if the judge's partner had not purchased the property, a fourth sale would have been necessary, and the price would have been lowered. See also *U.S. Compendium of Selected*

Opinions § 2.11 (a-1) (1998) (if an independent party who is not acting as agent or nominee for the judge purchases an asset from the bankrupt estate, the judge may in a subsequent arm's length transaction purchase the asset from the independent party).

MANAGING REAL ESTATE INVESTMENTS

Although Canon 4D(2) allows a judge to manage real estate investments, commentary to that provision indicates that it is limited to “investments owned solely by the judge, investments owned solely by a member or members of the judge’s family, and investments owned jointly by the judge and members of the judge’s family.” Moreover, advisory opinions prohibit a judge from personally and actively managing real estate. For example, the New York committee advised that a judge may continue to own commercial real estate as a tenant-in-common as long as the judge takes no active role in the management or operation of the property. *New York Advisory Opinion 89-108. Accord South Carolina Advisory Opinion 5-1985* (a judge should refrain from all managerial functions within a real estate partnership). That limitation is based on Canon 4D(3), which prohibits a judge from serving “as an officer, director, manager, general partner, advisor or employee of any business entity.”⁴

It has been suggested that the distinction between managing a real estate investment, permitted by Canon 4D(2), and managing a real estate business, prohibited by Canon 4D(3), is “that a judge may establish policy and participate in decisions, while actual management is left to others....” *In re Foster*, 318 A.2d 523 (Maryland 1974). Thus, the advisory committee for federal judges, although noting that a judge may hold and manage investments, including real estate, advised that a judge should not personally manage or operate any business, including a farm or ranch. *U.S. Advisory Opinion 30* (1974). The committee explained that this limitation “would not preclude his participation in decisions with respect to the purchase, sale and use of land, the purchase of equipment and supplies, or the sale of farm produce or livestock from a farm or ranch which he owns but is operated by a farm manager or hired man.” *See Ohio Advisory Opinion 95-10* (a judge who co-owns a farm with his or her spouse may raise beef cattle and sell hay, grain, and seed).

4. Canon 4D(3) of the 1990 model code created an exception that allows a judge to “manage and participate in: (a) a business closely held by the judge or members of the judge’s family, or (b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge’s family.” Many state code provisions on financial activities vary from the model code provisions, and judges should review the code in effect in their own states on issues such as engaging in remunerative activity and serving as an officer of a business.

Examples of prohibited management activities include:

- negotiating for the sale or other disposition of property (*Maryland Advisory Opinion 32* (1975)).
- participating in the expansion and maintenance of a commercial property (*New York Advisory Opinion 93-17; In the Matter of Imbriani*, 652 A.2d 1222 (New Jersey 1995)).⁵
- receiving rent checks from the bookkeeper for a real estate corporation (*In the Matter of Imbriani*, 652 A.2d 1222 (New Jersey 1995)).
- assisting the bookkeeper in the payment of a corporation’s bills (*id.*).
- assisting a corporation’s accountant in filing tax returns (*id.*).

However, the Maryland committee stated that a judge may personally negotiate a lease and collect rent from an attorney/tenant of a small office building owned by the judge. *Maryland Advisory Opinion 71* (1980). The committee concluded that those activities would not “constitute anything more than a minimal degree of involvement in the management of real estate.” *See also New York Advisory Opinion 92-33* (a judge may collect rent from the tenant of a one-family residence).

Based on an agreed statement of facts and joint recommendation, the New York State Commission on Judicial Conduct determined that admonition was the appropriate sanction for a judge who had continued to serve as secretary/treasurer and director of a corporation after becoming a judge and who had failed to disqualify from cases involving an attorney who was making lease payments or mortgage payments to the judge as principal of the corporation. *In the Matter of Torraca*, Determination (November 7, 2000) (www.scjc.state.ny.us/torraco.htm). Before becoming a judge, the judge and his law partner formed a corporation that had as its main asset the building containing the corporation’s law office. From 1982 when he became a judge to October 1999, the judge continued

5. In *In the Matter of Imbriani*, the New Jersey Supreme Court removed a judge from office for managing the affairs of a corporation while serving as a judge; receiving funds from the corporation in compensation for his activities while serving as a judge; and pleading guilty to theft from the corporation.

to serve as secretary/treasurer of the corporation, the mailing address of which was the judge's chambers. The judge collected rents from various tenants. From September 1994 to September 1997, the corporation leased the building to the law firm of Andrew and Victoria Kossover. In September 1997, the corporation sold the office building to the Kossovers. The corporation held a mortgage on the property from September 1997 to July 1999. The judge presided to disposition over three of Andrew's cases without disclosing the continuing financial transactions with Andrew.

Another limitation on a judge's management of real estate is the requirement in Canon 4A(3) that a judge's extra-judicial activities not "interfere with the proper performance of judicial duties." The Supreme Judicial Court of Massachusetts removed from office a judge who, among other misconduct, personally supervised operations at a development project in which he held a financial interest during regular court hours, averaging only three hours a day at the courthouse. *In re Troy*, 306 N.E.2d 203 (1973).⁶

Finally, a judge investing in real estate must keep in mind the exhortations that a "judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities" (*Canon 2*) and "shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (*Canon 2A*). In *In the Matter of Handy*, 867 P.2d 341 (1994), the Supreme Court of Kansas publicly censured a judge for violating these provisions in a real estate transaction. The judge had breached a contract to buy a piece of property and then did not notify the realtors, lenders, or buyers of his own property that he had been sued and served with process for that breach. The court concluded that the judge's less than candid conduct violated the code of judicial conduct.

In owning and managing real estate investments, a judge is required to comply with any applicable laws, including zoning ordinances. Affirming the decision of the Commission on Judicial Discipline, the Nevada Supreme Court removed a judge from office for, among other misconduct, using his residential property for commercial purposes even after the community planning department had personally advised him in writ-

6. The other conduct for which the judge was disciplined included lying under oath, pressuring a lawyer to make a political contribution, directing that a tidewater area be illegally filled, and procuring substantive free legal services from lawyers.

ing of the proper zoning for the property. *In the Matter of Davis*, 946 P.2d 1033 (1997).⁷ The judge also caused his agents to trespass on the property of the adjoining property owner to hook up water and sewer lines. The commission noted the judge's conduct was particularly egregious because he deliberately and knowingly violated the very ordinances that he was obligated to enforce.

In *In the Matter of Staeger*, 476 N.W.2d 876 (1991), the Supreme Court of Wisconsin suspended a former judge from eligibility for the position of judge for three years for his persistent failure to obey a court order to clean up his property. The judge had been found in violation of an ordinance by storing junk on his property and had been ordered to remove the offensive material; the judge still had not complied with the order two years later and was found in contempt and jailed for seven days. The court found that the judge's failure to obey the order constituted gross personal misconduct, undermining the public's respect for the judicial system.

7. The other conduct for which the judge was removed included: borrowing money from court employees; publicly endorsing and campaigning for a candidate for judicial office; running a personal business from his judicial chambers and using city employees and jail trustees to do work for the business; taking court employees to an automobile sales business and berating and intimidating an employee of that company; directing court employees during normal court hours to go to his mother's nursery business to provide Spanish translating services; directing or suggesting to persons appearing before him who had been found guilty to contribute money to certain charities in lieu of paying fines to the city; and wrongfully asserting his Fifth Amendment right by refusing to answer simple, non-incriminating questions posed by the commission's special prosecutor.

APPEARING BEFORE ADMINISTRATIVE AGENCIES

In general, a judge may appear before or write a letter to an administrative body about zoning and land use issues affecting the judge's residence. The 1972 model code prohibited a judge from appearing at a public hearing before, or otherwise consulting with, an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice. Canon 4C(1) of the 1990 model code added an exception to that rule for a judge "acting pro se in a matter involving the judge or the judge's interest."⁸

- To protest a neighbor's non-conforming use that devalued a judge's home and an application for a liquor license in the judge's neighborhood, a judge may attend hearings, offer testimony as a property owner, and sign a protest petition (*Maryland Advisory Opinion 99* (1982)).
- A judge may testify before a local zoning board in reference to a petition for an exception or variance on a parcel of land that adjoins the judge's home (*Rhode Island Advisory Opinion 87-7*).
- A judge may write a letter to the city board of review requesting a variance from a local zoning ordinance necessary to build an addition to her home (*South Carolina Advisory Opinion 10-1996*).
- A judge may participate in the formation of a local improvement district that has the goal of having a vote scheduled to have streets in the judge's neighborhood paved (*Washington Advisory Opinion 97-8*).
- A judge may oppose the U.S. Forest Service's proposed plan to build facilities for off-road use on property that adjoins or is near land the judge owns for a weekend home (*Washington Advisory Opinion 97-8*).

8. Prior to the addition of that exception to the Nebraska code, the Nebraska ethics advisory committee stated that a judge may not appear, either alone or with others, before a city planning commission to support or oppose a proposed development that could affect real estate owned by the judge. *Nebraska Advisory Opinion 92-3*.

While making a request to or appearance before an administrative body, a judge must exercise great care not to use the judicial position to influence the decision or to create the appearance that the judicial position is being used for that purpose. Therefore, a judge:

- should not initiate or participate in personal contacts with the hearing officer or the administrative office (*Maryland Advisory Opinion 99* (1982)).
- should voice his or her opinion only insofar as a zoning question may affect the judge's property (*New York Advisory Opinion 92-21*).
- should voice his or her opinion only in the judge's individual capacity as a property owner (*New York Advisory Opinion 92-21*).
- should plainly state the facts and reasoning supporting the request to make it clear that a personal favor is not being sought (*South Carolina Advisory Opinion 10-1996*).

See *In re Ali*, Determination (New York Commission on Judicial Conduct November 21, 1986) (a judge was reprimanded for publicly advocating a moratorium on construction of a microwave transmission tower and creating the impression that he had enjoined further work at the facility).

Such appearances are probably not allowed if they relate to investment property owned by the judge.

In *In re Foster*, 318 A.2d 523 (Maryland 1974), the Court of Appeals of Maryland censured a judge for "personally and publicly assum[ing] command responsibility" in furtherance of a speculative real estate development project that depended for success on official action of the city and that resulted in a substantial profit to the judge. For example, the judge had personally attended at least three meetings with officials to discuss the development, including the zoning that would be required; had engaged in extensive correspondence concerning the project, including letters to officials that were typed by his secretary during her regular work hours; had made a number of telephone calls to officials; and had several meetings in his court chambers.

The court concluded, "It would seem that as regards investments in real estate, the critical question is whether a judge can maintain a low profile."

In almost every case of this sort, there is no litmus test, but rather an elastic standard based on questions of degree. Certainly, when a course of conduct persists over a period of two years and involves personal appearances, continuing correspondence and frequent telephone calls, an atmosphere is created where ground is given for the reasonable suspicion [that the judge was directly or indirectly lending the influence of his name or the prestige of his office to aid or advance the welfare of a private business].

The court concluded that, “It was inevitable that this would cause reasonable suspicion and distrust in the public view of the particular judge.”

The Ohio Supreme Court publicly reprimanded a judge for appearing at zoning commission meetings to speak on behalf of real estate partnerships in which he owned an interest. *Ohio State Bar Association v. Reid*, 708 N.E.2d 193 (Ohio 1999). The judge had spoken on at least four occasions at governmental meetings and before a planning commission on behalf of real estate partners of which he was a partner. The court noted that it had always been the judge’s position that he was a passive investor in all of his real estate partnerships. Therefore, the court concluded there was no reason for the judge to appear and speak on behalf of his partnership interests at zoning commission meetings and that the judge’s testimony was intended to lend the prestige of his office to advance the interests of himself and his partners. *But see York Advisory Opinion 92-21* (a judge may speak at a planning board meeting about a zoning issue that affects the judge’s commercial property).

HOMEOWNERS’ ASSOCIATION

A judge may, with certain conditions, serve on the board of directors of a not-for-profit cooperative, condominium association, or homeowners’ association related to the judge’s residence. *Illinois Advisory Opinion 95-13*; *New Hampshire Advisory Opinion 78-1*; *New York Advisory Opinion 88-98*; *Virginia Advisory Opinion 00-9*; *U.S. Advisory Opinion 29* (revised 1998).⁹ *Accord Commentary to Canon 4C(3)*, *California Code of Judicial Conduct* (“Service on the board of a homeowners’ association or a neighborhood protective group is proper if it is related to the protection of the judge’s own economic interests”). *See also Arizona Advisory Opinion 95-1* (a judge may belong to the committee of a non-profit homeowners’ association that nominates directors or officers); *New York Advisory Opinion 95-133* (a judge may serve on a recreational community homeowners association steering committee formed to assist the transfer of the operation from the developer to the property owners).

The advisory committee for federal judges noted that the duties of a homeowners’ association “relate only to the operation and maintenance of the members’ residence facility,” and “are those the judge would find necessary to undertake were he living in a privately owned single-family residence.” *U.S. Advisory Opinion 29* (revised 1998). The committee continued:

[S]ervice [as a director for such an association] is not readily to be characterized either as “civic” activity within the permissive reach of Canon [4C] or as a “business dealing,” within the prescriptive contemplation of Canon [4D(3)]. It has attributes of both in that, on the one hand, the endeavor possesses certain commercial features, but on the other hand, closely approximates a real estate investment not forbidden to the judge under Canon

9. The Florida advisory committee has stated that a judge should not serve on the board of directors of a homeowners’ association (although the judge may be a member) because the volume of condominium cases and the many adverse interests in that type of association make it likely that it would be regularly engaged in adversary proceedings before the courts. *Florida Advisory Opinion 81-7*; *Florida Advisory Opinion 81-10*; *Florida Advisory Opinion 84-1*. When those opinions were issued, the Florida code, like Canon 5B(1) of the 1972 model code, prohibited a judge from serving on the board of a non-profit organization “if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in proceedings in any court.” Subsequent to those opinions, however, the Florida code (reflecting a change in the 1990 model code) was changed to prohibit a judge from serving on a board of a non-profit organization only “if it is like that the organization (i) will be engaged in proceedings that would ordinarily come before the judge, or (ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.”

[4D(2)]. It is, moreover, directed at the saving of expense and at the wise expenditure of funds rather than to the earning or realization of income.

Whether a judge can serve should be decided on a case-by-case basis, the committee concluded. For example, the committee stated:

If . . . the duties entail business-type contacts, substantial in number or character, with outside enterprises particularly of the kind that could result in litigation, a judge's indulgence in the activity becomes questionable, and he or she should then give consideration to leaving those responsibilities to others.

See *South Carolina Advisory Opinion 2-1983* (a judge may be a member of but should not serve in any administrative or controlling capacity in a property owners' association formed to address changes caused by an influx of real estate investors).

Service on a homeowners' association board is allowed under the following conditions:

- if the condominium is not large or substantial (*U.S. Advisory Opinion 29* (revised 1998)).
- if the duties are routine and primarily internal (for example, allocating responsibilities; employing maintenance, security, and other personnel; providing for services; and formulating occupancy rules) (*U.S. Advisory Opinion 29* (revised 1998)).

Moreover, a judge may serve on the board as long as the judge:

- does not give legal advice or serve on the association's legal committee (*Illinois Advisory Opinion 95-13*; *New York Advisory Opinion 89-133*; *Virginia Advisory Opinion 00-9*).
- does not participate in any decision that is likely to lead to litigation (*New York Advisory Opinion 89-133*).
- does not give investment advice to the board (*New York Advisory Opinion 88-98*).
- does not engage in fund-raising activities for the association (*Illinois Advisory Opinion 95-13*; *Virginia Advisory Opinion 00-9*).
- receives no compensation (*New Hampshire Advisory Opinion 78-1*). *But see New York Advisory*

Opinion 94-08 (a judge may receive nominal compensation for serving as a member of the board of trustees of a not-for-profit condominium trust).

If a judge can comply with those restrictions, the judge may also serve as an officer of the board. *U.S. Advisory Opinion 29* (revised 1998).

- A judge may be president of a large apartment co-operative (*New York Advisory Opinion 96-8*).
- A judge may serve as an officer of a not-for-profit cooperative or condominium corporation that manages a community of cottages (*New York Advisory Opinion 98-2*).
- A judge may serve as an officer of a homeowners' association (*New York Advisory Opinion 98-44*).
- A recently appointed judge may continue to serve as treasurer of the co-operative apartment building where the judge resides (*New York Advisory Opinion 98-93*).
- A judge may serve as an officer of a property owners association related to the judge's residence (*Virginia Advisory Opinion 00-9*).

However, concerns that the president of a homeowners' association would inevitably have to take action that may result in adversary proceeding pursued in the judge's court led the West Virginia advisory committee to conclude that a judge should not serve as president of the association. *West Virginia Advisory Opinion* (March 16, 1999).

Similarly, the New York advisory committee, although generally allowing a judge to serve on a homeowners' association board of directors and as an officer, requires a judge to abstain from voting on the approval of prospective purchasers (*New York Advisory Opinion 88-98*) and prohibits a judge from serving on the admissions subcommittee of such an organization (*New York Advisory Opinion 95-69*) because such service would require the judge to participate in decisions that are likely to lead to litigation. *But see U.S. Advisory Opinion 29* (revised 1998) (passing on prospective occupants is listed as an allowable duty of a judge serving on a homeowners' association board).

SUMMARY

The code of judicial conduct expressly allows a judge to own real estate and to engage in real estate investments. However, the permission to invest in real estate is subject to other requirements in the code.

In most states, recusal is required if a judge's real estate partner appears in a case before the judge. Moreover, because the relationship will require frequent disqualification, a judge should not, under Canon 4D(4), own real estate with an attorney who regularly appears in the judge's court. Even if those states in which a judge's recusal is not automatically required, the circumstances in which a judge may hear a attorney/partner's cases are very limited.

In most states, a judge must recuse from cases in which an attorney rents office space in a building owned by the judge. That rule may require the judge to refrain from renting property to an attorney or law firm that regularly practices in the judge's court or even to divest the property. In a few states, however, a judge may sit in cases in which an attorney/tenant appears, unless the lawyer falls behind in the rent or disagreements arise between them. A blind trust cannot be used to permit an attorney to lease office space in a building owned by a judge before whom the attorney appears. There is also an appearance of impropriety if a judge's spouse or member of the judge's immediate family is the landlord of an attorney who frequently appears in the judge's court. A judge may not make appointments to attorneys who are leasing office space from the judge.

In general, a judge may lease to private corporations or government agencies, but a judge may not lease office space to a tenant, either private or governmental, that has a contract with the courts, to which the judge refers litigants for evaluation or treatment, or that will appear frequently in the judge's court.

A judge is prohibited from purchasing property that is involved in litigation pending before the judge, for example, property that is part of an estate being settled in the judge's court or that is the subject of a foreclosure action.

Although a judge is allowed to manage real estate investments, a judge is prohibited from personally and actively managing real estate. The distinction between the permissible management of a real estate investment and the prohibited management of a real estate busi-

ness is one of degree. While a judge may establish policy and participate in decisions regarding the purchase, sale, and use of land, actual management must be left to others. Examples of prohibited management activities include negotiating for the sale of property and participating in the expansion and maintenance of a commercial property. A judge must also ensure that management of the judge's real estate investments does not occupy so much of the judge's time that it interferes with the performance of judicial duties. Moreover, in owning and managing real estate investments, a judge is required to comply with any applicable laws, including zoning ordinances, and to be scrupulous and candid in all real estate dealings. A judge must not appear before a government agency on behalf of real estate ventures in which the judge owns an interest.

A judge may appear before or write a letter to an administrative body about zoning and land use issues affecting the judge's residence. However, a judge must ensure that his or her activity is and appears to be as a private individual, not as a judge, by refraining from personal contacts with the hearing officer or the administrative office, expressing his or her opinions only with respect to questions that affect the judge's property, using personal letterhead in any written correspondence, and plainly stating the facts and reasoning behind the request.

A judge may serve as an officer on the board of directors of a cooperative, condominium association, or homeowners' association related to the judge's residence. That permission assumes that the duties of board membership are routine and do not entail substantial business contacts with outside enterprises. Moreover, the judge should not give legal or investment advice or participate in decisions likely to lead to litigation.