



Ohio Board of Professional Conduct

Ohio Judicial Family Network

Ethics Guide for Judicial Families¹ May 2017

The Code of Judicial Conduct applies exclusively to judges and other lawyers authorized to perform judicial functions in a court. Although not subject to the provisions of the Code, members of a judge's family, particularly the judge's spouse or domestic partner, should have some familiarity with the Code to facilitate the judge's compliance and avoid unnecessary and potentially embarrassing missteps.

Communication is another key element in avoiding missteps. A judge should be aware of community, charitable, and financial activities in which the spouse or domestic partner is involved to ensure the judge does not hear cases that may involve the interests of the spouse or domestic partner.

This guide provides a general overview of situations in which judicial responsibilities and family activities intersect and is not intended to address the myriad of situations in which ethics issues may arise. There is an abundance of guidance available to judge and family members to avoid missteps, and questions may be posed to the legal staff of the Board of Professional Conduct by calling (614) 387-9370.

Overarching Principles of Judicial Conduct

Throughout their campaigns, judicial candidates are reminded to avoid campaign activities that are inconsistent with the "3-Is"—judicial independence, integrity, and impartiality. These same principles carry over after the election and are joined by a fourth "I"—impropriety.

Rule 1.2 of the Code of Judicial Conduct provides that a judge must act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and must avoid impropriety and the appearance of impropriety. Improper conduct is readily discernable—violations of the law, court rules, and other provisions of the Code of Judicial Conduct. Less obvious is what conduct creates an appearance of impropriety. The comments to Rule 1.2 describe conduct that creates an appearance of impropriety as activity that creates, in reasonable minds, a perception that the judge:

¹ Portions of this document are taken from an article entitled, "Ethics Issues Related to Judicial Family Life in Ohio," written by Richard A. Dove, Esq. in the 2009 issue of *Online with the Judicial Family Institute*.

- Violated the Code of Judicial Conduct;
- Engaged in conduct that is prejudicial to public confidence in the judiciary;
- Engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Set against the backdrop of these overarching principles are specific areas in which the activities of family members can intersect with judicial duties and the obligations set forth in the Code of Judicial Conduct. The goal at any intersection is to avoid a collision.

Political Activity

Having completed one or more judicial campaigns, family members are likely familiar with the limitations imposed on judicial involvement in political activity, both during the campaign and after taking office. These limitations do not apply to members of a judge's family who are or plan to become involved in political activity. Yet, family members should consider whether and to what degree their involvement in political activity could reflect adversely on one or more of the "4-I's."

A judge's family member may wish to be active in his or her political party or campaign on behalf of another candidate for public office. Although such activity is permissible, the family member should ensure that his or her activity is not ascribed to the judge. Further, the family member should consider the appearance associated with the following specific political activities:

- Working on or volunteering for another judicial campaign, especially on behalf of a candidate running for the court on which the judicial spouse serves;
- Working on or volunteering for the campaign of an individual who, if elected, would appear regularly before the judge, such as a prosecutor;
- Placing campaign bumper stickers on family owned vehicles driven by the judge.

Family members are also free to seek elective office. However, there is no "family exception" in the Code of Judicial Conduct that allows a judge to engage in political activity when a family member is a candidate for public office. The Board has provided guidance in this situation in [Advisory Opinion 2001-1](#).

Charitable, Civic, and Fundraising Activities

Family members may be involved in a wide array of civic, charitable, education, and religious activities. Having a family member contribute financially to or volunteer for these organizations will not ordinarily impact on the ethical performance of judicial duties. However, closer scrutiny is required when a spouse or domestic partner is an officer, trustee, or employee of an organization and the organization is one that is or may be involved in cases coming before the judge.

The Code of Judicial Conduct requires a judge to disqualify himself or herself from a case in which the spouse, domestic partner, or family member is an officer, director, partner, member or trustee of a party to a pending case. Thus, a judge could not hear a case involving a nonprofit organization if the judge's spouse is employed by or serves on the board of trustees of that organization.

Another area of caution relates to involvement in fundraising activities. A judicial spouse or partner may plan and organize fundraising activities for a charitable organization and may solicit funds for that organization. However, judges are generally prohibited from soliciting contributions for nonprofit organizations, primarily because such solicitations can be viewed as coercive and exploiting the judicial title and office.

Because of these limitations, care should be taken to avoid any direct or indirect judicial involvement in fundraising activities. The judge's name or title should not be used in connection with a fundraising solicitation, including being identified as a co-host of a fundraising event held at the marital residence. The judicial spouse or domestic partner should also consider the targets of charitable fundraising solicitations. A general solicitation of support for a worthy cause is not likely to create significant concern. However, a solicitation that is targeted primarily or exclusively at the legal community, whose members are regularly appearing in court, could be viewed as unduly coercive. In such a situation, it may be advisable for the solicitation to be made by someone other than the judge's spouse or domestic partner.

Business, Employment, and Financial Activities

The work activities of family members ordinarily will not affect the judge's ethical obligations. Naturally, if a family member is a lawyer practicing in the same community as the judge, the judge must refrain from hearing any cases involving that family member and, in some instances, other lawyers with whom the family member practices. If a family member is employed by a lawyer or law firm in a nonlegal capacity, disqualification is not usually required. However, the family member and judge should take care when discussing work-related matters to protect the confidentiality of client information and ensure the integrity of the judicial process.

Examples of the types of nonlegal employment or business activities that could impact on a judge's ethical obligations include:

- The judge's parents own a business that manages rental properties, and the business is a frequent party to landlord-tenant actions filed in the judge's court;
- The judge's spouse is the CEO of a hospital, and the hospital is regularly a party in cases filed in the judge's court;
- The judge's child serves on the board of trustees of a condominium association, and the association is a party to litigation in the judge's court.

As a public official, a judge is also subject to the Ohio Ethics Law, the provisions of which may be implicated by the business or employment activities of a family member. The Ohio Ethics Law prohibits a judge from entering into a contract to purchase goods or services for the court from a business in which a family member has an interest. Thus, if a judge's son owns a computer software company, the judge could not hire her son's company to provide computer services to the court.

Other financial activities, unrelated to business or employment, could impact on the proper performance of the judge's duties. If a judge's spouse owns real estate as an investment, the judge could not preside over a case that could have a substantial impact on the value of the spouse's investment. The same is true for cases in which the outcome could have a substantial effect on the value of stock or the shares of a partnership held by a spouse or domestic partner.

Gifts and Other Things of Value

Although phrased differently, both the Code of Judicial Conduct and Ohio Ethics Law prohibit a judge from soliciting or accepting gifts and other things of value. These prohibitions are intended to ensure that public officials perform their duties free of substantial and improper influence and, in the case of judges, adhere to the principles of integrity, impartiality, and independence.

The Code of Judicial Conduct prohibits a judge from accepting any gift or other thing of value, but then tempers the prohibition with 12 specific exceptions. The Code further requires a judge to urge the judge's spouse, domestic partner, and other family members living with the judge to avoid the acceptance of gifts or other things of value. The Ohio Ethics Law prohibits a public official, including a judge, from soliciting or accepting anything of value that may improperly influence the performance of official duties.

The axiom, "if it sounds too good to be true, it probably is" is applicable to the receipt of gifts or other things of value. If a judge or family member unexpectedly receives a special discount from a local car dealer or a discounted interest rate from a local bank, this could be because the car dealer or bank has a case pending before the judge or is attempting to curry favor in anticipation of future litigation. The limitation on the receipt of gifts may require reevaluation of long-standing social arrangements, such as an annual vacation at a resort owned by a lawyer whose firm appears before the judge.

Tickets to the theater, concerts, or sporting events or offers to play golf at an exclusive country club are "things of value," the receipt of which could have ethical consequences. It may be nice to score free tickets to the Ohio State-Michigan game or play a complementary round of golf at an exclusive country club, but the hidden cost may be a disciplinary complaint. Unless the offer of complementary tickets falls within one of the 12 listed exceptions contained in the Code, the best advice is pay for the tickets or decline the opportunity if payment is not feasible. With respect to tickets, the face value is a good "floor" for determining the value of the ticket, but it also may be necessary to determine the market value of hard to find tickets to exclusive events or other unique opportunities.

As mentioned, the Code of Judicial Conduct sets forth 12 exceptions to the prohibition on gifts. The more common exceptions include:

- *Gifts from family or close friends*—if the judge does not preside over cases involving family members or close friends, including lawyers, then the prohibition on gifts does not apply.
- *Ordinary social hospitality*—two couples own separate Summer cottages and host each other, one weekend a year, at their respective places. Such an arrangement would reasonably be viewed as ordinary social hospitality. However, the offer of a week’s vacation at a lawyer’s resort condominium in Florida, at no charge or at a nominal charge, would likely be viewed as something more than ordinary social hospitality.
- *Wedding, birthday, and anniversary gifts*—gifts of reasonable value from relatives and friends are permissible; a honeymoon cruise from a local lawyer with whom you and the judge have a passing acquaintance would not.
- *Complementary tickets to bar association events*—receipt of these tickets are generally permissible as are tickets for certain events associated with educational, charitable, and civic activities in which the judge is involved.

Any gift received by a judge that is valued at more than \$75 must be disclosed on the judge’s annual financial disclosure statement. This reporting requirement applies to all gifts, with the exception of those from close family members and gifts received by will, inheritance, or a family trust. Only the source of the gift must be disclosed; the value or nature of the gift is not reported on the form.

Comments on Pending Cases

A judge may not make any statement that might affect the outcome or impair the fairness of a proceeding, that substantially interferes with a fair trial or hearing, or that constitutes a pledge, promise, or commitment. Although not applicable to judicial family members, these standards are nonetheless good guidelines for spouses, domestic partners, and other family members to follow in conversations with others.

Family members may be asked, in a casual or social setting, about a pending or recently decided case. A family member may have an opinion about the matter, but that personal opinion may quickly be attributed to the judge and circulated throughout the community. A real-life, Ohio example involved a judge who was preparing to serve on a three-judge panel in a death penalty case. The judge’s lawyer-husband was overheard making a comment that his wife would have no problem imposing the death penalty in the impending case. The comment triggered an attempt to have the judge disqualified from the panel and was reported in the local newspaper.

Declining to discuss pending cases or offer opinions not only avoids potential difficulty for the judge, but it helps promote the principles of fairness and impartiality and promotes confidence in the judiciary.

Conclusion

Judges often encounter difficulty in navigating the detailed requirements of ethics laws and rules. This difficulty can be even greater for family members who may be unfamiliar with the many provisions applicable to judicial officers. Judicial family members in this state are fortunate to have resources, through the Ohio Judicial Family Network, to seek answers to questions and avoid potential missteps.