



Ohio Board of Professional Conduct

ETHICS IN SPECIALIZED DOCKET COURTS

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OVERVIEW

- Judicial Ethics / Judicial Employees
- Public Employee Ethics
- Special Ethics Issues in Specialized Dockets



JUDICIAL ETHICS

- Abuse of Position
- Integrity
- Impartiality
- Decorum/Demeanor
- Confidentiality
- Ex Parte Communications
- Political Activity/Campaigns/Fundraising



PUBLIC EMPLOYEE ETHICS

- Gifts/Anything of Value
- Misuse of Office
- Conflicts of Interest
- Supplemental Compensation



ETHICAL ISSUES IN SPECIALIZED DOCKETS

- Maintaining the independence, integrity, and impartiality of the court;
- Maintaining role as an independent arbiter and guardian of legal rights when collaborating with law enforcement;
- Judge maintaining final decision-making authority in all cases;
- Maintaining appropriate arms-length relationship with community organizations and other institutions.



ETHICAL ISSUES IN SPECIALIZED DOCKETS

- Appropriate relationships/detachment with participants from judge and staff;
- Non-court contact with participants;
- Courtroom conduct of judge and staff toward defendants;
- Fundraising;
- Creating and working with non-profit organizations;
- Serving on non-profit boards under contract with court.
- Receiving free goods and services from third parties.



COURT EMPLOYEE ETHICS OVERLAP



STRUCTURE OF THE JUDICIAL CODE

- Canon 1: Upholding the integrity of the judiciary & avoiding impropriety & appearance of impropriety.
- Canon 2: maintaining impartiality, competence & diligence
- Canon 3: conflicts of interest
- Canon 4: political activity



APPLICATION OF THE JUDICIAL CODE TO COURT STAFF

- Rule 2.12(A) of the Code of Judicial Conduct provides:
- A judge shall generally require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code.



CANON 1 – UPHOLDING THE INTEGRITY OF THE JUDICIARY

- A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary.
- For Staff: Demonstrating the highest standards of **personal integrity, honesty, and truthfulness** in all professional and personal dealings, avoiding misuse of court time, equipment, supplies, or facilities for personal use.
- A higher standard for court personnel.



UPHOLDING THE INTEGRITY OF THE JUDICIARY (CONT.)

- Examples:
 - Knowingly make omissions on their time cards or personnel records
 - Backdate a court document
 - Falsely claim reimbursement for mileage or expenses
 - Lie about leaving work early for a doctor's appointment



CANON 1- INTEGRITY OF THE JUDICIARY

- Rule 1.3 A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.
- “Do You Know Who I Am?”



ABUSE OF PRESTIGE OF OFFICE

JUDGE/STAFF CAN

- Write a letter of recommendation
- Attend court hearing of a family member if no attempt is made to highlight judicial office to influence decision making.

JUDGE/STAFF CANNOT

- Refer to judicial office to avoid a traffic citation.
- Use court stationery to gain an advantage in conducting personal business.
- Appear in ad for alma mater.



CANON 2- IMPARTIAL, COMPETENT & DILIGENT

Rule 2.3– Bias, Prejudice, and Harassment

- A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- A judge shall not... manifest bias or prejudice, or in engage in harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation and shall not permit staff, court officials, or other subject to the judge’s direction and control to do so.



EXAMPLES OF BIAS/PREJUDICE

- Epithets, slurs, demeaning nicknames
- Negative stereotyping, humor based on stereotypes
- Threatening, intimidating, or hostile acts
- Suggestion of connections between race, ethnicity and a crime or domestic matter.
- Facial expressions and body language can convey bias.



BIAS AND PREJUDICE CONT.

Examples:

- “I’m for the little guy, not the government.”
- “Bend over backwards to help victims.”
- “You’re our sworn enemies.”- to an Arab defendant.
- “What did our country ever do to you people?” – to a Mexican defendant.



DECORUM AND DEMEANOR

- Rule 2.8
- (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.



DECORUM AND DEMEANOR (CONT.)

- Set an example for other employees and court participants.
- Suppress use of profanity
- Control temper and emotions
- Avoid conflict with court participants and employees
- Suppress anger or yelling at court participants
- Sarcasm
- Inappropriate humor



CONFIDENTIALITY (CONT.)

- Rule 3.5 -Use of Nonpublic Information
- A judge shall not knowingly disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.
 - Comment 2- probable decision disclosed to an employee of the court.



CONFIDENTIALITY (CONT.)

- Safeguard confidential information both oral and written-unless authorized by court.
- Refuse to use such information for personal advantage.
- Abstain from public comment about pending matters.



EX PARTE COMMUNICATION

- Rule 2.9
 - Communication concerning a pending or impending matter; and
 - Between counsel or party and the judge; and other side is not present; or
 - Any other communication made to the judge outside the presence of parties/counsel



EX PARTE COMMUNICATION

- Rule 2.9 – Specialized Docket Exception
 - A judge may initiate, receive, permit, or consider an ex parte communication when administering a specialized docket, provided **the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage** while in the specialized docket program as a result of the ex parte communication.
 - Cmt. [4A] Judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.



EX PARTE / DISQUALIFICATION

- *In re Disqualification of Giesler*, 2011-Ohio-7083
 - Family Dependency Treatment Court (“HOPE”)
 - Conflict
 - Created by ex parte communications with parties and witnesses.
 - Judge denies harboring any bias or prejudice
 - No party gained any procedure, substantive, or tactical advantage from HOPE participation
 - 2.9 contemplates that when administering a specialized docket, judges will assume a more interactive role with parties and others



EX PARTE / DISQUALIFICATION

- *In re Disqualification of Blanchard*, 2017-Ohio-5543
 - Family drug court; impartiality questioned.
 - Judge heard prejudicial facts about the parents in the drug-court hearings that are not part of the record in a abuse-neglect-dependency case.
 - Judge argued no automatic finding of bias or appearance of bias by hearing drug-court case.
 - Mere fact presided over drug-court does not mandate disqualification.
 - What a judge learns in his or her official judicial capacity in another proceeding is not the kind of information that leads to disqualification.



SPECIALIZED DOCKETS AND NONPROFIT ORGANIZATIONS

Adv. Op. 2017-06

- Under the Ohio Ethics Law a court may not employ a person who is simultaneously employed by a nonprofit drug treatment center that has contracted with the court to provide a services for its specialized drug court docket.
- Dual employment can impact the independence, integrity, and impartiality of the judge and court.
- Create an appearance of impropriety.
- No solicitation of funds on behalf of treatment center.



SPECIALIZED DOCKETS AND NON-PROFIT ORGANIZATIONS

Creation of Nonprofit Entity by Court or Judge

- Likely involve the judge and his or her key staff;
- Independence, integrity, impartiality compromised;
- Prestige of office possibly abused;
- Coercion of those with matters before the court to contribute.

2017 Board Staff Letter



SPECIALIZED DOCKETS AND NON-PROFIT ORGANIZATIONS

Service on Board of Non-profit Under Contract With Court

- Cannot have an interest in a public contract (fiduciary/financial).
- A board member has an interest in the contracts of the non-profit.
- Service on the non-profit board that provides services to specialized docket program is a thing of value that could manifest a substantial and improper influence upon the judge.
- Violates RC 102.03, 2921.41, 2921.43
- See Adv. Op. 1991-11, 2006-7.



UPHOLDING THE LAW

- Constitutional Issues in Specialized Dockets
 - Religious tolerance – Mandatory AA meetings; religious freedom.
 - *Hannas v. Inner City Christian Outreach, Inc.*, 542 F.Supp. 2d 683.
 - Imposing restrictions if reasonable and related to the rehabilitation
 - Termination of drug court participation
 - Due process
 - Right to counsel



PUBLIC EMPLOYEE ETHICS



ETHICS ISSUES – *ALIVE AND WELL IN OHIO*

▶ *“Brice mayor resigns amid Ohio ethics investigation.”*

- ▶ Hired or recommended the hire of mother, sister, and cousin.
- ▶ Evaluated and promoted family members.
- ▶ Goal: “Keep your name out of the newspaper.”



SOURCES OF LAW/RULE

- **Ohio Ethics Law**

- Enacted in 1974
- Recognizes that direct conflicts of interest can exist in public service due to:
 - Personal financial interests
 - Family financial interests
 - Business associates



OHIO ETHICS LAW

- Misuse of Official Position for Personal Gain
- Soliciting or Receiving Anything of Value
- No Interest in a Public Contract
- Solicit/Receive Improper Compensation
- Confidentiality



OHIO ETHICS LAW (CONT.)

- Penalties
 - Misdemeanor, six months/1,000 penalty
 - Felony, 18 months/\$5,000 penalty
- Forfeiture of Public Employment/Retirement



PERSONAL GAIN

- Revised Code 102.03(D) and (E) prohibit:
 - Use of authority or influence of office to secure things of value for oneself, family, outside business or associates
 - Soliciting or accepting things of value
 - And that pose a substantial and improper influence in performance of duties
- The source of the thing of value
- The amount of the thing of value



ANYTHING OF VALUE

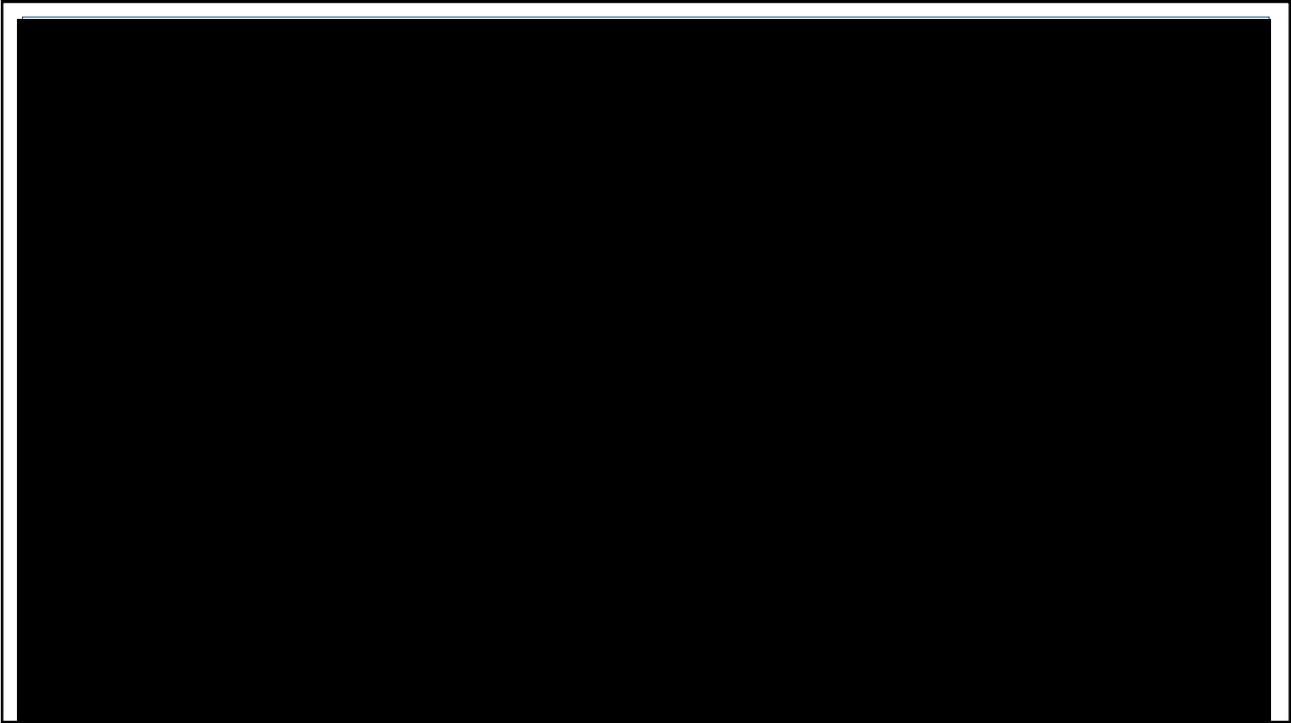
- Cash/Goods
- Offer of outside employment by vendor
- Payment of debts
- Loans
- Cost of lavish meals
- Golf outings/season tickets
- Discounts on personal consumer items.



IMPROPER SOURCES OF THINGS OF VALUE:

- Those doing or seeking to do business with agency. (Contractors/Vendors/Non-profits).
- Those regulated by the court.
- Those having specific interests before court.

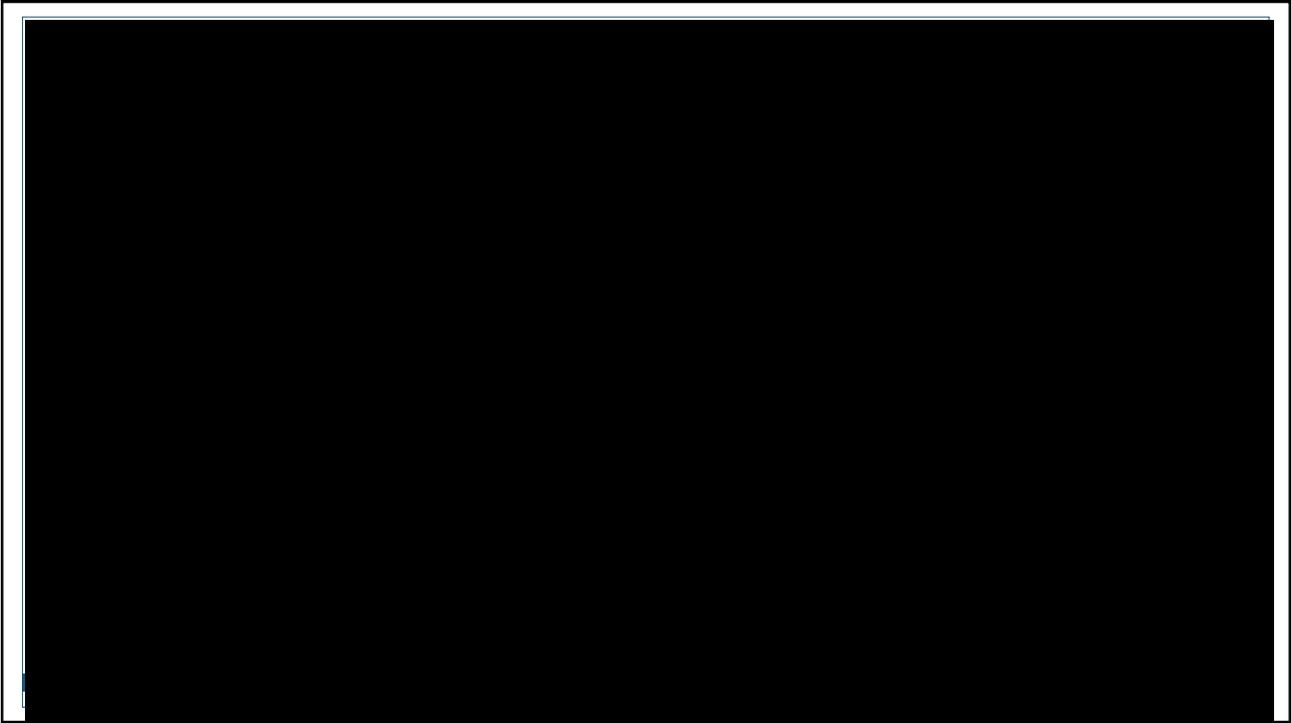




NO INTEREST IN A PUBLIC CONTRACT

- R.C. 2921.42 prohibits:
 - Authorizing or using authority of office to secure any public contract for the official, a family member or a business associate.
 - Having a direct financial or fiduciary interest in profits/benefits of a public contract with an agency with which the public official is connected.
- *Be Careful:* Dual employment of court employees





SOLICITING/RECEIVING IMPROPER COMPENSATION

- R.C. 2921.43: A public employee cannot be compensated from anyone other than employer for doing job duties.
- Private sector parties: cannot compensate public employee for doing job duties.



GIFTS AND COURT EMPLOYEES

- Policy regarding the receipt of gifts by an individual employee or group of employees
 - “No gifts please”
 - Report gift to supervisor



GIFTS AND COURT EMPLOYEES

- Implicates Jud.Cond. R. 1.2 (independence, integrity and impartiality); (appearance of impropriety).
- Source of the gift
- Amount of the gift
 - Value and surrounding circumstances can create an improper influence on the performance of duties.



GIFTS AND SPECIALIZED DOCKET COURTS

- Accepting goods and services from non-profits, vendors, etc.
 - Adv. Op. 2004-05
 - Adv. Op. 2009-02
- Requesting donations for specialized docket court.
 - Adv. Op. 2004-13

