THE NATIONAL JUDICIAL COLLEGE

Est. 1963

Making the world a more just place by educating and inspiring its judiciary

JUDICIAL ETHICS DIVIDER 4

Prof. Phyllis Williams Kotey

OBJECTIVES:

After this session you will be able to:

1. Identify speech and conduct that may affect the perception and reality of justice in the courtroom;
2. Identify the provision of the Kansas Code of Judicial Conduct that govern judicial speech and judicial conduct;
3. Identify and distinguish between proper and improper judicial speech and judicial conduct;
4. Develop strategies to avoid improper personal judicial speech and judicial conduct;
5. Mitigate the consequences of improper judicial speech and judicial conduct.
6. Identify the provision of the Code of Judicial Conduct that governs ex parte communications;
7. Identify and distinguish between proper and improper ex parte communication between judges and litigants, lawyers, witnesses and/or others;
8. Develop strategies to avoid improper ex parte communication; and
9. Mitigate the consequences of improper ex parte communications.

REQUIRED READING: PAGE

1. Phyllis Williams Kotey, *Judicial Ethics* (March 2018) [NJC PowerPoint].....1

Judicial Ethics

Phyllis Williams Kotey
Senior Judge
Clinical Professor of Law
Florida International University
Miami, FL

Learning Objectives

As a result of this course, judges will be better able to:

Identify issues of judicial speech and conduct that relate to:

- Fairness and the impact of bias
- Ex parte communication and
- Personal conduct;

Specifically,

- Identify speech and conduct that may affect the perception and reality of justice in the courtroom;

- Identify the provisions of the Kansas Code of Judicial Conduct that govern judicial speech and judicial conduct;

- Identify and distinguish between proper and improper judicial speech and judicial conduct;

- Develop strategies to avoid improper personal judicial speech and judicial conduct;

And,

- Mitigate the consequences of improper judicial speech and judicial conduct.

Part 1:
Why Fairness: Impact on the Courts

Why important

- Public confidence eroded by irresponsible or improper conduct
- Respect for the judicial office facilitates orderly conduct of judicial functions
- Perception matters…

"What kind of court did you just call this?

Kansas

Record of Complaints Filed

	2011	2012	2013	2014	2015
Supreme Court	1	0	0	0	0
Chief Judge	1	9	1	2	4
District Judge	11	24	19	9	11
District Magistrate Judge	3	6	5	4	5
Municipal Judge	1	4	0	2	2
Judge Pro Tempore	2	0	2	0	0
Retired Chief Judge	1	0	0	0	0
Retired District Judge	0	0	0	0	1
Senior Judge	0	0	0	0	1
Judicial Candidate	0	1	0	0	0

Why limit prejudicial conduct and speech?

- Maintain public confidence
- Prevent the misuse of public office
- Avoid bias, prejudice and improper influence
- Punish undignified, unlawful and criminal conduct

White Paper

American Judges Association

- Procedural Fairness: A Key Ingredient in Public Satisfaction

* Procedural Fairness: A Key Ingredient in Public Satisfaction - A White Paper of Leben

Findings

“Americans are highly sensitive to the processes of procedural fairness.”

“The perception of unfair or unequal treatment is the single important source of popular dissatisfaction with the American Legal System.”

Four key elements in ensuring perception of fairness

- Neutrality
- Consistency
- Unbiased
- Transparency

Respectful Treatment

Speaks for itself

Trustworthy Authorities

- Benevolent
- Caring
- Sincere

Voice

The opportunity to be heard

As the authority in the courtroom, the judge is key!

Your speech and conduct can speak volumes…

The impact of biased behavior on the receiver is more important than the intent of the speaker or doer

So, the road to…good intentions

Speech and Conduct

Why focus on communication and conduct?

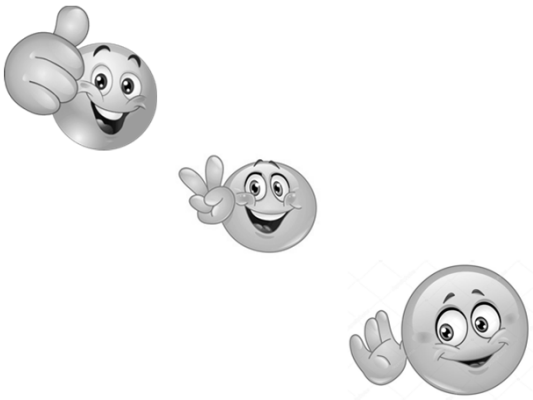
Action indeed is the sole medium for the expression of ethics
(Jane Addams)

Not lets take a subjective look at the “fairness” of the conduct of some judges

Apply a test

What do you think is the effect of each of the following on the perception of justice for a litigant or member of the public?

1 = no restrictions on conduct
2 = avoid conduct
3 = caution



The Test

- Whether the speech or conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

FOR ALL CRIMINAL CONDUCT

Kansas Judicial Ethics Advisory Opinions

- Although advisory opinions are often helpful and frequently relied on by the Commission on Judicial Qualifications, an opinion is not binding on the Commission or the Kansas Supreme Court.

Kansas Judicial Ethics Advisory Opinions

- JE Opinions Nos. 1 – 55
  - Supreme Court Rule 601.
- JE Opinions No. 56 - 166
  - Supreme Court Rule 601A.
- Opinions issued after March 1, 2009
  - Supreme Court Rule 601B.

http://www.dailymail.co.uk/news/article-2425753/Vince-Sicari-New-Jersey-Supreme-Court-rules-judge-moonlight-stand-comedian.html

"The concern is whether an ordinary member of the public can divorce the comedy routine or the roles played by Vince August from Judge Sicari."

What is allowed?

- COMMENT [1] To the extent that time permits, …judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

- Theatre participation allowed if a non-profit
  - Why not profit
  - Risk violation for use of prestige for fundraising, you may have even more leeway in Kansas

But, can he continue to be district fire chief?

2012: JE 176

- …It is our opinion that a district court judge's continued service as fire chief or service as a board member would be prohibited by Rule 3.4 of the Kansas Code of Judicial Conduct…
- …may continue to serve…as a volunteer or EMT

2008: JE 160
Service as director of a county disaster agency

- …a county disaster agency is entirely concerned with issues of fact and policies on matters other than the improvement of the law, the legal system or the administration of justice pursuant to Canon 4C(2)

On the bench, the judge, like the president, wears an American flag pin on her robe. Can you?

Not in Florida by order of the Supreme Court

"During any judicial proceeding, robes worn by a judge must be solid black with no embellishment."

No similar prohibition for Kansas

What about participation in protest?

SOLIDARITY WITH JESUS: Judge Griffen explains his Good Friday demonstration.

Judge Wendell Griffen

- The Court asked for the investigation after reversing an order Griffen issued in a complaint by drug distributor McKesson that the state DOC had been dishonest in obtaining a drug McKesson sold for use in executions

Even if the protest can arguably be linked to improvement of justice by some, this judge heard death penalty cases until he was suspended by the State Supreme Court

- Do you think participating in the protest will be allowed for you since you do hear death penalty cases?

2015: JE 182

- A judge, who regularly presides over protection from abuse cases, may serve as a member of an organization whose purpose is to prevent and eliminate sexual and domestic violence through a statewide network of programs
  - Since all parties are not involved in the process, the contact is improper ex parte communication
- See also 2007: JE 157

2013: JE 178

- A district judge, who presides over the juvenile division, can establish and supervise a citizen review board funded by grants provided by the Kansas Department for Children and Families to address the issue of truancy.
  - The involvement and interaction of parties no different than traditional CINC cases

2012: JE 177

- A district court judge may continue to be the color commentator on radio broadcasts for university games and may accept reasonable compensation...judicial office take precedence and not undermine judge's independence, integrity, or impartiality
- No violation of Rule 3.1(A),(B),(C), or (D)

The test

- Does the speech or conduct create in <u>reasonable minds</u> a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence <u>is impaired</u>

As the authority, the judge is key in eliminating the "justice gap."

What is the justice gap?

ABA past president William Hubbard coined this phrase to describe the perception and reality of the “lack of access”

"Too many people shut out of justice, ABA President says
Chicago Sun Times, September 12, 2014.

Part 2:
Ex Parte Communication

Begin to use the Model code as a guide

Learning Objectives

As a result of this session, judges will be better able to:

- Identify the provision of the Code of Judicial Conduct that governs ex parte communications;

Learning Objectives

- Identify and distinguish between proper and improper ex parte communication between judges and litigants, lawyers, witnesses and/or others;

Learning Objectives (cont.)

- Develop strategies to avoid improper ex parte communication; and

Learning Objectives (cont.)

- Mitigate the consequences of improper ex parte communications.

In re Henderson, 301 Kan. 412, 343 P.3d 518 (2015).

- A judge of the district court was found to have made offensive and demeaning comments of a sexual nature to female attorneys and staff members; interfered with an attorney's practice by sending an ex parte email communication to the attorney's client that expressed bias or prejudice toward the attorney;
- The Supreme Court found violations of 1.2 and 1.3 of Canon 1 and Rules 2.2, 2.3, and 2.9 of Canon 2.

What Is Ex Parte Communication?

Communication: Written or Verbal

- Improper
  - Parties
    - Legally entitled
    - Not present
  - Litigation
    - Pending
    - Impending

Proper

- General discussion of law
- Incidental contact

Exceptions: Contact Allowed

- Rule 2.9(A)1 (formerly 3B(7)(a))
- Scheduling
  - Not a substantive matter
  - Does not confer advantage
  - Properly communicated to absent party(ies)

Exceptions (cont.)

- Administrative duties
- Emergencies
- Consent

Legally Authorized:
Rule 2.9(A)(5)

- Criminal
  - Warrant applications
  - Grand jury proceedings
- Civil
  - Temporary restraining orders
  - Default judgments

At your table

- Briefly describe an ex parte communication with another that raised concern for you
- Why did it cause you concern?
- How did you respond?

What rule(s) govern(s) judicial ex parte communication?

Rules 2.6(A) and 2.9(A)

- Rule 2.6(A) Ensuring Right to be Heard
- Rule 2.9(A) Ex Parte Communications

Rule 2.6(A) Commentary

- The right to be heard is an essential component of a fair and impartial system of justice.
- Substantive rights can be protected only if the procedures are observed.

Why are there prohibitions against judicial ex parte communication?

Prohibitions Necessary to Prevent:

- Bias
- Improper influence
- Prejudice
- Coercion
- Exploitation

Response

- Yes
- No
- Unable to determine

Communication with Lawyers

Question 1

After receiving a call from the attorney for one of the parties, you modify an order you entered.

1. Yes
2. No
3. Unable to determine

Unable to Determine

- Violations have been found for communication re:
  - Drafting orders
  - Admissibility of evidence
  - Attorney fees
- Issue: nature of the amendment
  - ND declined to discipline judge who corrected an erroneous order after receiving a call from one of the parties.

Reasoning of the Court

- The judge had amended the judgment to reflect his original intention.
- Cautioned that, while similar communication had been previously allowed, future leniency not a guarantee.

Do you have a procedure for dealing with such a phone call?

What about emails?
Do you have a protocol?

Communication with Witnesses and Interested Persons

Question 2
Can you have a Facebook page?

Yes
No
Unable to determine

Facebook

Louisiana lawyer who sits as a child support judge posted a couple of status updates viewable to his 400 or so “friends” that prompted one of them to contact the local paper.

Isn’t court a public event?

The judge “friends” an attorney on Facebook appearing in a case before him.

What if the Judge comments:
“Good day in trial” on his facebook page.

What would be the effect of disclosure of the comment?

The judge visits the business website of one of the litigants appearing before him and quotes information from the site in his order.

Public Reprimand of Terry(2008)

- NC Judicial Standards Commission publicly reprimanded
- Rule makes clear that the prohibition against a judge investigating the facts in a matter extended to information available in all mediums <u>including electronic</u>

But see

U.S. v. Bari, 599 F3d 176 (2010)

Issue

- Whether the District Court Judge Denny erred in considering during a supervised release revocation hearing information confirmed by its own Internet search.

- It was NOT reversible error for a judge to employ an internet search to confirm a reasonable intuition on a matter of common knowledge.
- The judgment of the District Court is AFFIRMED.

Additional Resource

- When Judges Rely on Their Own Online Research
  - http://www.wiggin.com/files/32904_BAYER%20NLJ%20reprint.pdf
- http://www.americanbar.org/content/dam/aba/migrated/judicialethics/resources/TPL_jethics_internet.authcheckdam.pdf

Question 3

Prior to sentencing, you privately speak with the victim and the defendant's employer

1. Yes
2. No
3. Unable to determine

Violation Found

- Recusal required by Arizona court
- Parties deprived of right to controvert or correct the information
- Oregon court removed a judge for ex parte discussion with occurrence witnesses

Would it make a difference if the case was in a specialty court?

Maybe

Rule 2.9 Commentary:

May initiate, permit or consider ex parte communications…when serving on therapeutic or problem-solving courts…judges may assume a more interactive role with parties, treatment providers, probation officers, social workers and others.

Advice from Non-Legal Experts

Rule 2.9(A)

A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person consulted and the subject matter…and affords the parties reasonable opportunity to object and respond…

Communication with Judges and Other Court Personnel

Rule 2.9(A)(3)

- A judge may consult with court personnel whose function it is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges…
- Must avoid receiving factual information that is not a part of the record.

Question 4

After presiding over a high profile trial, can you speak to a conference of judges, court administrators, and others, about a the trial.

Is this proper?

- Yes
- No
- Unable to determine

- What factor(s) must you consider in deciding whether you can participate?

- After appeal
  - Discussion of the law, outside of the explicit or implicit context of a case, will not usually be considered an ex parte communication

Communication from Law Enforcement Personnel

Question 5

You routinely review the comments of officers that are attached to the citation in the court file and read them in open court

1. Yes
2. No
3. Unable to determine

Violation Found

- FL: consideration of comments of the officers without disclosure to the defendant was improper.
- Attempts to influence outcome including arrests, warrants (child support), bond and plea agreements have been found in violation.

What is a disinterested legal expert?

Question 6

You privately meet with a nervous witness only to encourage them to testify?

Violation Found

The judge's effort to "act in the best interest" of the child does not excuse this violation according to WA court when admonishing the judge.

Judge's Good Faith Contact

- Personalize system
- Demystify court
- Interpretation of settlement
- Concern for children in custody case

Violation Found

- FL: reversal of case required when state proofread order prior to entry of it even though substitute judge appointed.
- Disinterested expert first interpreted in case in which the judge called a prosecutor who handled criminal appeals re: jury instruction law.
- May request proposed order after ruling.

Can all improper communication be avoided?

Not likely

What Can Avoid Violations?

- Intervention
  - Explain the rule
  - Explain the effect of communication
- Prevention
  - Discourage chamber visits
- Telephone
  - Not answer
  - No calls to home

What Can Avoid Violations? (cont.)

- Train staff
  - Run interference
  - Check mail
  - Check email
- Disclosure
  - Avoids need for corrective action
  - Prevents disqualification

What Can Avoid Violations? (cont.)

- Disqualification
  - Necessary if prejudice irremediable
  - Can cause mistrial and prevent retrial
    - Judge/prosecutor contact required, mistrial and jeopardy attached

Part 3: Judicial Personal Conduct

The consequences of conduct on and off the bench

All take an oath, but

No one size fits all…

Why focus on communication and conduct?

Action indeed is the sole medium for the expression of ethics

(Jane Addams)

Therefore,
Your ACTIONS as a judge matter and you must know what to do and what to say to avoid misconduct

Complaints

Demeanor and Decorum

Kansas Substance of Complaints 2015

Inappropriate Judicial Conduct 193	**Improper Influence 171**	**Inappropriate Personal Comment 96**	**Legal or Appealable 90**
Retaliation 80	Conflict of Interest 76	Prejudice/Bias 75	Violation of Law 54
Denied Fair Hearing 51	Failure to Discharge Disciplinary Responsibilities 33	Delay 23	Disagreement with Ruling 22
Injudicious Temperament 20	Incompetence in Law 12	Ex Parte Communication 11	Administrative Inefficiency 9
Abuse of Power 4	Improper Political Activity 4	Failure to Enforce Order 4	Failure to Control 1

Complaints

- Inappropriate humor
- Intemperate speech, and the
- Disparaging of lawyers, other judges, court personnel and participants

In re Pilshaw, 286 Kan. 574, 186 P.3d 708 (2008)

- A judge of the district court was found to have lost her temper and engaged in emotional outbursts.
- The Supreme Court found violations of Canons 2A and 3B(3) and (4).
- The Supreme Court ordered public censure.

4 Canons (Principles)

Rules and Comments

Canon 1

- A judge shall uphold and promote the, independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety (3 parts)

Rule1.1:
Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.2:
Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3:
Avoiding Abuse of the Prestige of Judicial Office

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.

Checklist

- Compliance with the Law
- Promoting Confidence in the Judiciary
- Avoiding Abuse of the Prestige of Judicial Office

Canon 2

A judge shall perform the duties of judicial office impartially, competently, and diligently

- Rule 2.1: *Precedence to the Duties of Judicial Office*
- Rule 2.2: *Impartiality and Fairness*
- Rule 2.3: *Bias, Prejudice, and Harassment*
- Rule 2.4 *External Influences on Judicial Conduct*
- Rule 2.5: *Competence, Diligence, and Cooperation*
- Rule 2.6: *Right to Be Heard*
- Rule 2.7: *Responsibility to Decide*
- Rule 2.8: *Demeanor and Jurors*
- Rule 2.9: *Ex Parte Communications*
- Rule 2.10: *Pending and Impending Cases*
- Rule 2.11: *Disqualification*
- Rule 2.12: *Supervisory Duties*
- Rule 2.13 *Administrative Appointments*
- Rule 2.14: *Disability and Impairment*
- Rule 2.15: *Responding to Misconduct*
- Rule 2.16: *Cooperation with Disciplinary Authorities*

Checklist

- ✓ Giving Precedence to the Duties of Judicial Office
- ✓ Impartiality and Fairness
- ✓ Bias, Prejudice, and Harassment
- ✓ External Influences on Judicial Conduct
- ✓ Competence, Diligence, and Cooperation
- ✓ Ensuring the Right to Be Heard
- ✓ Responsibility to Decide
- ✓ Decorum, Demeanor, and Communication with Jurors

- ✓ Ex Parte Communications
- ✓ Judicial Statements on Pending and Impending Cases
- ✓ Disqualification
- ✓ Supervisory Duties
- ✓ Administrative Appointments
- ✓ Disability and Impairment
- ✓ Responding to Judicial and Lawyer Misconduct
- ✓ Cooperation with Disciplinary Authorities

Canon 3

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office

- Rule 3.1: *Extrajudicial Activities in General*
- Rule 3.2: *Governmental Bodies and Government Officials*
- Rule 3.3: *Testifying as Character Witness*
- Rule 3.4: *Appointments*
- Rule 3.5: *Use of Nonpublic Information*
- Rule 3.6: *Discriminatory Organizations*
- Rule 3.7: *Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities*

- Rule 3.8: *Fiduciary Positions*
- Rule 3.9: *Arbitrator or Mediator*
- Rule 3.10: *Practice of Law*
- Rule 3.11: *Financial, Business, or Remunerative Activities*
- Rule 3.12: *Compensation for Extrajudicial Activities*
- Rule 3.13: *Gift Reporting*
- Rule 3.14: *Reimbursement of Expenses and Waivers of Fees or Charges*
- Rule 3.15: *Reporting Requirements*

Checklist

- ✓ Extrajudicial Activities in General
- ✓ Appearances before Governmental Bodies and Consultation with Government Officials
- ✓ Testifying as a Character Witness
- ✓ Appointments to Governmental Positions
- ✓ Use of Nonpublic Information
- ✓ Affiliation with Discriminatory Organizations
- ✓ Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities
- ✓ Appointments to Fiduciary Positions

- ✓ Service as Arbitrator or Mediator
- ✓ Practice of Law
- ✓ Financial, Business, or Remunerative Activities
- ✓ Compensation for Extrajudicial Activities
- ✓ Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value
- ✓ Reimbursement of Expenses and Waivers of Fees or Charges
- ✓ Reporting Requirements

Canon 4

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the integrity, or impartiality of the judiciary

- **Rule 4.1:** Political and Campaign Activities of Judges and Judicial Candidates in General
- **Rule 4.2**: Political and Campaign Activities of Judicial Candidates in Public Elections
- **Rule 4.3**: Activities of Candidates for Appointive Judicial Office
- **Rule 4.4**: Campaign Committees
- **Rule 4.5**: Activities of Judges Who Become Candidates for Nonjudicial Office

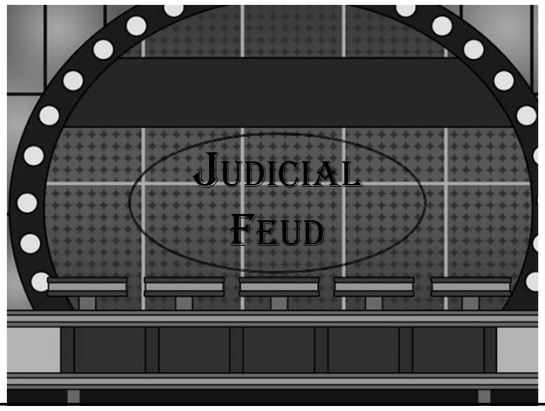
Checklist

- ✓ Political and Campaign Activities of Judges and Judicial Candidates in General
- ✓ Political and Campaign Activities of Judicial Candidates in Public Elections
- ✓ Activities of Candidates for Appointive Judicial Office
- ✓ Campaign Committees
- ✓ Activities of Judges Who Become Candidates for Nonjudicial Office

Why Important?

Prima facie evidence of good faith in event of JQC

You need to know before you act!



Divide into groups

- First to BUZZ
- For each problem each team will identify why that Code does or does not apply
- Use must use language from the code support your answer
- Next decide if the conduct is ethical, unethical or unable to determine

Which canon(s) apply?

CANON 1
A judge shall uphold and promote the, independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety

CANON 2
A judge shall perform the duties of judicial office impartially, competently, and diligently

CANON 3
A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office

CANON 4
A Judge Or Candidate For Judicial Office Shall Not Engage In Political Or Campaign Activity That Is Inconsistent With The Independence, Integrity, Or Impartiality Of The Judiciary.

Scenario 1

- Judge Bee N. Volve, a lifetime Girl Scout, is the keynote speaker at the Gold and Silver Award Ceremony where girls and adult volunteers will be honored for their service. No tickets will be sold for the event
- Can she?
- What code provision?

- Is encouraged to speak concerning non-legal subjects
- Conduct extra-judicial activities so that they do not appear to a reasonable person to be coercive
- May not participate in fundraisers, as a featured speaker or guest of honor, where the event's purpose is not law-related
- If there is no charge to attend, it is NOT a fundraiser, would be permitted to be speaker

Scenario 2

Judge N. Sentiv is assigned to hear DUI cases. SADD has offered to provide the courtroom with gift cards for teens who sign a no drinking and driving pledge. The courtroom has space inside the entry door to allow groups or persons to donate and teens to sign the pledge card.

- Is this an ethical violation?
- What code provision?

- Soliciting donations from groups or persons who appear before the judge may convey the impression that the judge will favor those who donate
- Soliciting donations from groups or persons, regardless of whether those groups or persons appear before the judge, also may appear to be coercive to those who are not inclined to donate but who fear the judge's disfavor if they do not donate

- Distinguish from where drug court judge would solicit or receive "incentive gifts" such as sporting event tickets, movie passes, and gift certificates from lawyers or law firms
- A judge shall not accept a gift from anyone except if the donor *is not* a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge

2012: JE 174

- A judge and the judge's spouse are licensed foster care parents with the State of Kansas
- The judge routinely handles a portion of the Child in Need of Care cases in the judicial district where the judge serves
- Neither inappropriate nor unethical provided cases not in judge's court
- Recusal but not automatic recusal

Can the judge be a member…

SADD, MADD, DADD?

- Interestingly majority found no impropriety in a judge *not* likely to try DWI cases serving on the board of directors of MADD

- Judge should not be a member of the Adam Walsh Child Resource Center, an organization which “actively seeks child protective legislation at every level of government,” because it would detract from the judge’s function as a neutral and detached magistrate

2015: JE 182

- A judge, who regularly presides over protection from abuse cases, may NOT serve as a member of an organization whose purpose is to prevent and eliminate sexual and domestic violence through a statewide network of programs
- 2007 JE157 found participation allowed because all parties represented

Scenario 3

Judge Essie Smart has be asked to teach a class at the Police Academy seminar to police officers who act as prosecutors in certain traffic cases on how to prosecute such cases successfully.

- Is this an ethical violation?
- What code provision?

- Judges may teach on a law-related subject at:
  - Police academy
  - University (even religious university); and
  - Seminar sponsored by the Academy of Trial Lawyers

2010: JE 170

- A judge CANNOT give a presentation on appellate procedure as part of a program entitled "Civil Procedure: A View from the Bench," presented by a for-profit organization that sponsors seminars throughout the United States
- Violation of 3.1

Scenario 4

- Judge Roger Reporter plans to publish a blog called “Hot Off the Bench”
- He will be reporting on cases as they are released by the Supreme Court and the Appellate
- Is this activity allowed?
- What code provision?

- The Code in its commentary makes no distinctions among the activities of speaking, writing, lecturing, or teaching, or the technology used to engage in those activities
- A judge may create and privately maintain a website designed primarily to focus high school students on college or trade school preparation, as long as the judge’s website complies with all provisions of the Code

- Commentary authorizes judges to engage in activities to improve the law, the legal system, and the administration of justice
- The judge may speak, write, lecture, teach and participate in other quasi-judicial activities

2014: JE 180

- A judge may write a short column for a local for-profit newspaper under the heading of "Judge's Corner about legislative changes
- Consistent with JE 170

2008: JE 163

- A judge submitting a letter to the editor of a newspaper discussing issues regarding the criminal code in response to an editorial is in violation of Rule 3(B)9
- No comment on pending or impending cases

Compare

- Judge proposed to contract with a national television production company to tape the judge's arraignments and a subsequent teaching segment by the judge

Compare

- The judge would be paid and would explain the law, sentencing choices, and interview different "players" in the court system
- What could be the problem?

Compare

- Because would be discussing the law and sentencing choices, this could lead to frequent disqualification and could cast reasonable doubt on the judge's capacity to act impartially in cases discussed publicly by the judge

Do you agree with this analysis?

Scenario 5

- Judge Polly Tick is retiring and her son Peter is a candidate for her position.
- She appears in his campaign photo (without robe or judicial title).
- She also signed an endorsement for his campaign?
- Is this a violation?
- What code provision?

2014 JE 179

- Canon 4 expressly prohibits any conduct other than attendance at a political event if child attends or is speaker
- Specifically, the judge may not:

- Carry nomination or petitions
- Contribute money or time
- Place yards signs
- Passing out literature
- Door to door solicitation
- Publicly support candidacy

But see,

2017: JE 185

- A district judge MAY participate in a video to be created and used in a sibling's out-of-state campaign for Congress.
- Consistent with JE 3 in which judge allowed to appear in family photograph in campaign info for campaign outside jurisdiction and not identified as a judge.

- "gives an appearance of impropriety and has an adverse impact on the public perception of the integrity of the court system."

Scenario 6

- Judge Susy Que has written a book
- Her photograph appears on website
- A press release for the book mentions that the author is a judge and a book signing is being held at a local bookstore
- Is this a problem for the judge?

- An "avocational activity" is defined as a subordinate occupation or hobby
- Therefore, writing a book on non-legal subjects, if the writing is otherwise consistent with the requirements of the Code is permissible

- Permissible for a judge to author a book, to give a book to a member of the bar, and to autograph a book purchased by an attorney

- However, advised against the judge selling the book to a member of the bar because it may be perceived to exploit the judge's position or involve the judge in frequent transactions with lawyers likely to appear before the court

- Likewise, a judge may ethically write a crime novel so long as it does not cast reasonable doubt on the judge's capacity to act impartially as a judge;
  - Demean the judicial office
  - Interfere with the proper performance of judicial duties

What activity is not allowed?

- Improper to sell at a Sheriff's fundraiser custom-made knives which were readily identifiable as made by the judge

- No problem with the judge selling these knives at trade shows, by special order, or on the internet

- The selling of the knives at auction was disapproved, not because the product was being sold to the public, but because the prestige of judicial office was being used to promote a fundraiser

Scenario 7

- Judge Ded Aim is a member of a local gun club in order to use its shooting range. The gun club requires proof of membership in the National Rifle Association (NRA) as a condition precedent to membership in the club.
- Is this unethical?
- What code provision?

- Cautioned judges against lending the prestige of the judicial office to further the interests of advocacy groups, and it has specifically opined that judges cannot be personally involved with any lobbying activities for such organizations

- Historically mere membership in an organization which is well-known for its positions on political or controversial issues or promotes a particular legislative agenda not a violation

But…

- Violation for a judge to actively advocate for handgun control, since the Committee saw this as “a political issue not involved in the administration of justice.”

- The commentary requires a judge to "take appropriate action" if the judge receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of the Code

Ethics is knowing the difference between what you have a right to do and what is right to do.
Potter Stewart