



WHEN A FAMILY MEMBER IS ARRESTED

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Reprint of Judicial Conduct Reporter Spring 2001 23 NO. 1 JCR 1

Originally published as "Use of the Prestige of Office to Benefit Family Members"

(The Judicial Family Institute has removed the names of disciplined judges from this article.)

If an individual with a judge in the family gets in trouble--a traffic ticket or a dispute with a neighbor, for example--it is natural for the relative to turn to the judge for help in dealing with the legal system. And it is natural for the judge to want to help. However, if the judge assists by using power or influence the judge has only by virtue of holding a judicial office, the judge violates the code of judicial conduct. Judges as family members get in trouble if they sit as a judge in a family member's case or ask favors from police officers, prosecutors, and other judges on behalf of a family member.

A judge may not sit as a judge in a family member's criminal case even if the judge does not treat the relative more favorably than other defendants facing similar charges.

The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public's confidence in the impartiality of the judiciary. Any involvement by a judge in such cases or any similar suggestion of favoritism to family members has been and will continue to be viewed as serious misconduct.

In . . . , 490 N.E.2d 502 (New York 1986). (. . . , the judge was removed for disposing of speeding tickets issued to his nephew and his wife's niece by reducing each charge to an equipment violation and for accepting guilty pleas by four different first cousins of his wife.)

There is no "situation more fraught with the threat of partiality as where a judge's child faces criminal charges subject to the authority of the judge's court." In . . . , 715 N.E.2d 402 (Indiana 1999). The Indiana Supreme Court acknowledged that a judge whose child is arrested may have concerns that the child's safety during incarceration would be threatened because his or her parent was a judge. However, the court concluded, such concerns do not excuse violations of the code. In [that situation], the court reprimanded the judge for failing to disqualify from a criminal proceeding against his son and ordering his son's release from jail following his arrest for drug possession.

A judge may not issue warrants against a family member, conduct a bond hearing, take a family member's guilty or not guilty plea, dismiss a family member's case, issue an order of protection against a family member, conduct the trial, or sentence a family member. There are numerous cases in which judges have been disciplined for making rulings in a family member's criminal case. For example, a judge was reprimanded for hearing the probable cause evidence after a petition was filed against the judge's grandson by the mother of the grandson's girlfriend; the judge also signed the arrest warrant for her grandson and conducted his bond hearing. The judge disclosed the family relationship to the girlfriend and the police officer involved, but did not get a waiver. In . . . , 532 S.E.2d 883 (South Carolina 2000).

A judge also misuses the power or prestige of the judicial office if he or she presides in a civil case in which a relative is the person asking for damages or presides in a criminal case in which a relative is the victim or complaining witness. For example, a judge issued an arrest warrant pertaining to a dishonored check given to her husband. Subsequently, the judge presided over the defendant's arraignment, committed the defendant to jail in lieu of bail, failed to appoint counsel, and refused the advice of the district attorney and another judge that she disqualify herself. The judge was removed for this and other misconduct. In . . . , 553 N.E.2d 1316 (New York 1990). In . . . , 419 P.2d 618 (Oregon 1966), a judge was disciplined for (1) signing a default judgment in favor of his wife for a claim for legal services performed and (2) sentencing two defendants who were charged with stealing property belonging to the estate of his father-in-law and of which estate his wife was administratrix.

Asking for favors from police officers, prosecutors, and other judges

If a family member receives a traffic ticket or is charged with criminal conduct, a judge should not intervene and ask for special treatment from police officers, prosecutors, or the judge presiding in the case. Thus, a judge should not convince or try to convince police officers to release a relative who has been arrested, should not reproach or threaten a police officer who ticketed a relative, should not ask an arresting officer and prosecutor if they could help the relative, should not ask prosecutors for special consideration, and should not ask another judge to give a particular sentence to the relative.

For example, a judge asked a magistrate several times to give her step-grandson a suspended sentence for a traffic ticket and engaged in several ex parte communications until the matter was resolved. The judge was suspended without pay for this and other misconduct. In . . . , 875 P.2d 795 (Arizona 1994). Similarly, after his son-in-law was arrested for public intoxication and possession of a controlled substance, a judge asked the arresting officer and prosecutor if they could help his son-in-law, and the charges were dismissed. The judge was admonished. In . . . , 489 S.E.2d 783 (West Virginia 1997).

Moreover, a judge should be aware that a telephone call about a family member's case, even if innocently undertaken, may be assumed to be an implied request for a favor and result in preferential treatment for the family member. Therefore, even if the judge does not expressly request a favor, a judge should not make inquiries into a case in which the defendant is a relative. For example, a judge called the police department about the judge's brother's speeding ticket and expressed surprise that the officer did not recognize that the person he had given the ticket to was the judge's brother. After the call, the officer threw the ticket away. The judge was suspended. In . . . , 674 A.2d 573 (New Hampshire 1996). 23 NO. 1 JCR 1

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*"No judicial conduct commission has jurisdiction over non-judge family members" according to Cynthia Gray, Director of the Center for Judicial Ethics, now part of the National Center for State Courts.*

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