



## **DEFINING FAMILY BOUNDARIES: HAWAII'S 2009 CODE OF JUDICIAL CONDUCT**

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Hawaii has joined five other states in updating its Code of Judicial Conduct to conform to the 2007 American Bar Association Model Code of Judicial Conduct. The other states are Montana, Indiana, Ohio, and Maryland.

The Hawaii revised code becomes effective January 1, 2009 and is intended to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct while providing a basis for regulating their conduct through disciplinary entities. As illustrated by the following examples, Hawaii's code addresses distinctive family issues designed to preserve fair and impartial decision making by establishing important boundaries for judges and their families.

Without question, holding a judicial office is very prestigious. However, judges must avoid misusing the prestige of their office in deciding cases or influencing the outcome of cases. Hawaii's revised code includes Rule 1.3, which precludes a judge from lending the prestige of judicial office for the advancement of the private interests of others. For example, just as a judge should not use his or her office to avoid a traffic citation, a judge must not seek to, or allow a family member to gain an advantage in a civil suit based on the judge's office. See Comment 1b of Rule 1.3.

Rule 2.4 expands on this because it specifically forbids a judge to permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment. The essence of this rule is for a judge to decide a case based on the law and facts without fear of reprisal or because they owe a favor to one of the parties, their attorneys, or someone else associated with the parties. By adhering to this rule, a judge decides a case without regard to what else is going on in his or her personal or social life.

Rule 2.4 deals with a judge's decision making in general, but may a judge decide a case when a family member is one of the parties? Rule 2.11 provides the circumstances under which a judge must decline to decide a case. Understandably a judge should not decide a case when a spouse, family member, or domestic partner appears as a party or is acting as a lawyer. The judge should not decide a case neither when she or he has a *de minimus* interest in the case or could appear as a witness in the case. The importance of this rule is to assure the public that decisions will be made on the merits of a case uninfluenced by any special relationships the judge has with the parties or attorneys. Like a referee in a game, there is no home field advantage.

The rules just described deal with a judge's decision-making. However, may a judge represent themselves or family members in a lawsuit? Rule 3.10 describes when a judge may practice law. As it relates to family members, although a judge is permitted to give free advice to or draft documents for family members, a judge may not represent a family member in any court. If a judge represented their loved one in litigation and won, the public might wonder whether the loved one won because they had the better case or because a fellow judge who was representing the party influenced the judge. Although the judge may have decided the case fairly and impartially, the appearance of favoritism remains.

Rule 3.8 allows judges to act as fiduciaries for family members if doing so will not interfere with the performance of his/her duties. For example, a judge may serve as a personal representative of the estate of a parent or as an appointed guardian for an ill parent. Hawaii departed from the ABA Model Code when it added the right for a judge to serve as a conservator (actions relating to property management) for family members.

While the rules do not permit a judge to represent family members in any forum a judge may represent himself or herself in matters involving the judge's legal or economic interests, or as previously noted when representing a family member in a fiduciary capacity. Judges must be careful, however, not to refer to their position as a judge or use the prestige of their office to influence the outcome of their case.

While deciding a case a judge might learn information that is not public and which may have some commercial or other value to the judge or others, including family members. Rule 3.5 makes it clear that the judge may not disclose the information or use it for any purpose unrelated to the duties of the judicial office. The exception is when such nonpublic information is necessary to protect the health and safety of the judge or anyone else. Interestingly Hawaii expanded the exception beyond what was in the ABA Model Code. The Model Code permits the use of nonpublic information to protect the health and safety of the "judge or member of the judge's family, court personnel, or other judicial officers". Hawaii substituted "anyone else" for "member of the judge's family, court personnel, or other judicial officers".

Regarding other extrajudicial activities, Rule 3.7 describes those activities in educational, religious, charitable, fraternal, or civic organizations, which the judge may engage in without offending judicial independence. In this list of activities, Hawaii adds that a judge may participate in law-related activities that are not conducted for profit, such as, "donating, without attribution of judicial title, services, or goods at fund-raising events". This rule appears to be focused on preventing coercive practices but also has a common sense approach allowing judges to be benevolent, so long as they do not misuse the prestige of their office.

Finally, as it relates to family issues, it is not unusual for the family of a judge to run for political office. Can a judge endorse the candidacy of a loved one? Consistent with the ABA Model Code, Hawaii has answered the question: "no". The Hawaii code states that although a judge's family members can engage in political activity or run for office, there is NO FAMILY EXCEPTION for a judge to endorse a political candidate. A judge must not be involved in or publicly associated with a family member's political activity or campaign. To avoid any misperceptions a judge should urge family members to take reasonable steps.

*This article like all other ethics articles on the Judicial Family Institute (JFI) website should be compared to the code of judicial conduct of your state, commonwealth, or territory.*

*"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.*

***An Ethics Guide for Judges and Their Families*** by Cynthia Gray is available free online through the National Center for State Courts at (<http://www.ncsc.org/Topics/Judicial-Officers/Ethics/Center-for-Judicial-Ethics/CJE-Publications.aspx>)

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