

*An Ethics Guide  
for Judges &  
Their Families*

Discussion Guide



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**American Judicature Society**



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Founded in 1913, the American Judicature Society is an independent, nonprofit organization supported by a national membership of judges, lawyers, and other members of the public. Through research, educational programs, and publications, AJS addresses concerns related to ethics in the courts, judicial selection, the jury, court administration, judicial independence, and public understanding of the justice system.

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# Introduction



As the Judicial Family Institute points out, “Without formal training or materials, many judges’ families have learned public family life skills strictly by trial-and-error.” To encourage judges and their families to share their experiences with others, this discussion guide was developed for *An Ethics Guide for Judges and Their Families*. The discussion guide contains all the materials necessary for a judge’s spouse (or other leader) to plan and present a program on ethics and related topics for a meeting of judges and family members. The materials in the discussion guide present a variety of different techniques and give the planner the flexibility to design a session that reflects the interests, needs, size, and composition of the specific audience and the time limits for the presentation. Different parts of the discussion guide can be used different years to present completely different programs.

## ***The discussion guide includes:***

➔ **Ethics for Judges and Their Families — Talk Outline:** this section outlines a talk on ethics for judges and their families that could be given by any judge, judge’s spouse, lawyer, or educator. There is a general overview of ethical issues and discussion on the topics of nepotism, misuse of

office, disqualification, and political activity, which are the areas in which most questions arise. The outline contains questions the speaker may ask the audience to involve them in the presentation. There is also an introduction to the talk that contains tips for preparing for the presentation and a section with materials that can be used as a hand-out for the presentation.

➔ **Exercises:** this section describes how small group discussions, role plays, experts, and panels can be used to make a useful presentation that allows the audience to participate. Included are a description of ethical situations that can be the basis for effective small group discussion; role play situations that can be the basis for volunteer “actors” to play the roles of judge, family member, reporter, or member of the public; questions appropriate for a moderated discussion among a panel of judges and family members; tips for using experts in presentations; and exercises small groups can engage in to cover judicial family issues.



# Ethics for Judges and Their Families



## Talk instructions

The following outline can be used to make a presentation to a group of judges and/or members of their family about ethics. Using the background in *An Ethics Guide for Judges and Their Families*, any judge, judge's spouse, lawyer, educator, or, in fact, anyone comfortable with speaking in public would be able to make this presentation. The talk begins with a general overview and then expands the discussion on the topics of nepotism, misuse of office, disqualification, and political activity, which are the areas in which most questions arise. Depending on how many questions are asked and the number of cases and advisory opinions you highlight, the presentation would probably last an hour and a half.

### **To prepare for the presentation:**

Review *An Ethics Guide for Judges and their Families* and note the case law and advisory opinions from your state.

You are encouraged to contact the American Judicature Society's Center for Judicial Conduct Organizations for any cases or advisory opinions issued after publication of the *Ethics Guide* that would supplement the coverage of the topic. You can also con-

tact your state's judicial conduct commission or ethics advisory committee to determine if they have recent information that would be helpful to keep the audience up to date. There are links from the AJS web-site to conduct commission and ethics advisory committee web-sites at [www.ajs.org/ethics1.html](http://www.ajs.org/ethics1.html).

➔ This symbol in the outline indicates a topic on which there is some disagreement among the states (or a question for the audience). You should check *An Ethics Guide for Judges and their Families* and your state's code of judicial conduct and advisory opinions before the presentation to give the most specific advice possible to the audience.

The following outline is placed in only one column to allow you to make notes to aid you while giving your presentation.

Arrangements may be made for a talk to be followed by small group discussions or a panel discussion. See those sections of the discussion guide for suggestions.

### **During the presentation:**

For handouts for the presentation, in addition to your state's code of judicial conduct, you can use the materials on pages of this discussion guide, the Q&A sections from *An Ethics Guide for Judges and their Families*,

and a copy of your state's code of judicial conduct. Participants will also find helpful copies of any relevant advisory opinions from your state and a list of resources such as the web-site address of your state judicial ethics committee.

The presentation will be more interesting if you use your own words and anecdotes and do not simply read the outline. It might be effective to start the presentation with some of your personal thoughts on why you think the topic is important. You can also include examples of ethical situations you and your family have faced since you or a family member became a judge or a story told by a friend, particularly if the example is amusing.

➔ This symbol indicates a question you can ask the audience (or a topic on which there is some disagreement among the states). You can ask the audience to elaborate on the whys and why nots of their answer and to comment on each other's response. You can also develop your own questions.

For each section, highlight the case law and advisory opinions (from *An Ethics Guide for Judges and their Families*) in your state and any authority in other states you think would be particularly interesting or relevant to your audience.

After each section, ask the audience if they have any questions or comments.



# *Ethics for Judges and Their Families*



## **I. Talk outline**

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A. Note that the code of judicial conduct does not expressly or directly restrict the behavior of a judges' relatives. The state supreme court (which adopts the code) and the conduct commission (which enforces it) have no authority over judges' family members.

➔ Ask, if the code of judicial conduct does not apply to family members, why do judges' family members need to know the requirements of the code?

In addition to the audience's responses, you can suggest your own answers and the following reasons:

- ⊙ To understand why the judge seems to say “no, I can't do that” all the time.
- ⊙ To avoid asking the judge to do something he or she should not do.
- ⊙ To avoid attracting embarrassing public attention questioning the judge's ethics.

B. In your own words, make the point that family members share a judge's commitment to the integrity and impartiality of the judiciary and might be willing voluntarily to agree to restrict their behavior if they understood the connection.

## **II. The code restricts judges as family members both in their actions as judges and their off-the-bench or extra-judicial activities.**

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A. On the bench, a judge cannot:

1. Act in cases involving family members or their interests.
2. Make hiring or appointment decisions based on family relationships.
3. Give court business to a relative.

B. A judge is required to **encourage** family members:

1. To refrain from conveying that they are in a **special position** because of their relationship to the judge.
2. To adhere to the **same standards of political conduct in support of the judge as a candidate for office** as apply to the judge.
3. To refrain from engaging in **financial dealings that would reasonably appear to exploit the judge's judicial position.**
4. To adhere to the same ethical constraints on accepting **gifts** as apply to the judge

### III. Civic and charitable activities

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A. **Judges and fund-raising.** Although a judge may engage in civic and charitable activities, there are limits to that participation to ensure that the prestige of the judge's office is not used to raise funds for a charity, to ensure that no one feels pressured to donate money because they fear offending the judge with a refusal, and to ensure that no one donates money in hopes of currying the judge's favor.

1. No matter how commendable a charity's work, a judge may not **personally solicit** funds for a charitable organization.
2. A judge is restricted from participating in some of the fund-raising activities traditional for parents or members of a religious organization, but a judge may donate money, attend most fund-raising events, assist in planning fund-raising activities, and participate behind the scenes.

- ➔ Ask, what are specific examples of changes you have made in civic and charitable fund-raising as a result of the code restrictions after you or a member of your family became a judge?
- ➔ Ask, do you think the code should allow judges, as parents, to participate in their children's educational and organizational fund-raising activities if the procedures employed are not coercive and the sums nominal?

B. **Family members and fund-raising.** The code does not prohibit a judge's spouse or other relative from participating in fund-raising for civic and charitable organizations.

1. A judge should refrain from all participation in the family member's fund-raising activities.
  2. A family member should take care not to identify the judge in any way with the fund-raising activities.
- ➔ Ask the audience, do you think a judge's spouse should use the couple's jointly-owned home to host a fund-raising event for a charitable organization? If yes, what steps should the judge and the judge's spouse take to ensure that the judge is distanced from the fund-raising?

## **IV. Public comment**

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### **A. Controversial issues**

1. Judges are not allowed to get involved or speak their minds on political or social issues other than measures to improve the law, the legal system, or the administration of justice.
  - a) Most controversial issues eventually become lawsuits, and a judge need to avoid making the public think he or she has pre-judged a case.
  - b) A judge may not publicly advocate or oppose, for example, gun control, the death penalty, abortion, "three times and you're out" sentencing, bond issues for schools, or similar proposed or enacted legislation or local government issues.
2. Family members can become involved in such public issues.
  - a) A judge's relative should avoid any implication that the judge agrees with the relative's stance on an issue.

- b) The judge and the relative should discuss how to distance the judge's from the family member's activism.

## **B. Public criticism**

1. Judges are allowed, even encouraged, under the code of judicial conduct to educate the public about how the justice system works and the role of judges in the American government system.
2. Whatever the temptation to respond, judges do not defend their decisions outside the courtroom so they can preserve the integrity of the judicial process and maintain the ideal of impartiality.
  - a) Judges are prohibited from commenting on pending cases even in response to criticism of a decision.
  - b) Cases are considered still "pending" even after a decision as long as there are any undecided issues and even if the case is on appeal because the appellate court may send the case back to the trial judge.
  - c) A judge's debate with critics in the press suggests that the case is being tried outside the courtroom and decided on the basis of evidence and argument in the press.
  - d) The debate is likely to become cantankerous and detract from the dignity of the judiciary.
3. A judge's relatives are also well-advised to resist the temptation to wrangle with the judge's critics.
  - a) A family member's comments about a case in which the judge is presiding will inevitably be attributed to the judge and prompt further criticism about the judge's ability to fairly decide the case.

- b) A judge faced with cases that have created a lot of interest is well-advised to explain to family members both why the judge is refusing to join the trial by media and why it is a good idea for family members to remain silent as well.

### C. Ex parte communications

1. If someone tries to get a family member to pass on to a judge evidence or arguments in a pending case, the family member should make clear that the judge is not open to influence or information about a case even from a member of the judge's family and that the family member will not be having a conversation about the case with the judge.
2. Judges are not allowed to receive or consider information that is not conveyed inside the courtroom and before all the parties in written documents submitted to all sides in the dispute.

## V. Financial activities

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### A. Investments

1. A judge is permitted to hold and manage investments owned solely by the judge, owned solely by a member or members of the judge's family, and owned jointly by the judge and members of the judge's family. The rule specifically allows a judge to hold and manage **real estate investments** of the judge and members of his or her family.
2. Commentary states that a judge "should **discourage** family members from engaging in dealings that would **reasonably appear to exploit the judge's judicial position.**"

➔ Check *An Ethics Guide for Judges and Their Families* and your state sources to see if there are any advisory opinions from your state on whether a member of a judge's family may rent property they own to attorneys who appear in the judge's court.

➔ Ask, can you think of examples of financial dealings that would create the reasonable appearance that a family member is exploiting the judge's judicial position?

**B. A judge participating in a family business.** Many states allow a judge, subject to the requirements of the code, to manage and participate in "a business closely held by the judge or members of the judge's family," or "a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family."

1. This is an **exception** to the general rule that a judge may not participate in a business.

2. A judge **should not** participate in a closely-held family business that frequently appears before the judge's court, demands significant time away from judicial duties, or would exploit the prestige of judicial office.

➔ Check your state's code of judicial conduct to see if it includes the general prohibition on participation in a business and the exception for family business.

## VI. Gifts and loans

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- A. A judge is required to **inform** family members residing in the judge’s household of the constraints upon the judge’s receipt of gifts and loans and **discourage** those family members from violating them.
1. A “gift, bequest, favor or loan to a member of the judge’s family residing in the judge’s household might be viewed as intending to influence the judge” (Commentary to Canon 4D(5)(a)).
  2. A judge cannot “reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge’s household.”
- B. The good news is that few gifts or loans are prohibited under the code. However, a judge must urge family members residing in the judge’s household not to accept any gift, bequest, favor, or loan from a party, attorney, or other person, who **has come or is likely to come before the judge**, or whose interests have come or are likely to come before the judge.



## **VII. Acting as an attorney for family members**

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A. A judge may:

1. give **uncompensated legal advice and counseling** to family members,
2. **draft or review documents** for members of the judge's family so long the judge does so without compensation, and
3. **attend** a deposition or other legal proceeding to offer moral support as a spectator, without directly or indirectly lending advice or assistance, if the judge is likely to remain unknown, and the proceeding is not in a court in which the judge sits.

B. A judge **may not** serve as counsel or function as an **advocate or negotiator** in a legal matter on behalf of a family member **even if**:

1. the representation takes place in a different state,
2. the judge receives no compensation, and
3. the judge's representation requires no courtroom appearance.

## **VIII. When a judge may serve as a fiduciary**

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A. A judge may serve as a fiduciary for a member of the judge's family — in other words, a **spouse, child, grandchild, parent, or grandparent**.

1. That is an **exception** to the general rule prohibiting a judge from serving as a fiduciary.
2. A fiduciary is a relationship such as **executor, administrator, trustee, and guardian**.

- B. That exception, however, is **subject to limitations**:
1. The service must not take so much time it interferes with the **proper performance of judicial duties**.
  2. The judge's service must not force the trust to divest holdings that require the judge to disqualify frequently from cases if the divestiture would **harm the trust**.
  3. It must be unlikely that the judge as a fiduciary will be engaged in **proceedings that would ordinarily come before the judge**.
  4. The estate, trust, or ward must not become involved in **adversary proceedings in the court on which the judge** serves or one under its appellate jurisdiction.
  5. The **same restrictions on financial activities** that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.
  6. The judge must **keep informed** about the judge's fiduciary economic interests.
- C. If a judge may serve as a fiduciary, he or she may be paid a **reasonable fee** for those services that does not exceed what anyone else would be paid.
- D. When an individual is a relative of the judge but is not the judge's spouse, child, grandchild, parent, or grandparent, the judge must have a **close familial relationship** with the relative to be able to serve as a fiduciary. Whether a relationship is a "close familial relationship" depends on such factors as intimacy of address; recognition by others of a close relationship; frequent contact by phone or in person; shared meals, holidays, and family events; assistance with physical, medical, legal or emotional needs; and length of the relationship.

## IX. Misuse of office

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A. By far the way judges most often get in trouble involving family is when a relative gets in trouble, and the judge gets involved and helps in a way that someone who is not a judge could not.

1. Canon 2B provides:

A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others . . . .

2. Relatives need to understand that a judge-relative is not supposed to exercise judicial power or use the prestige of the office to help a relative out and should refrain from asking the judge-relative to intervene with police, prosecutors, or other judges.

3. A judge is required to **encourage** relatives to refrain from conveying that they are in a **special position** because of their relationship to the judge.

4. Improper judicial involvement can range from presiding in a relative's case; asking for help from a police officer, prosecutor, or presiding judge; and making inquiries that impliedly ask for favors.

B. **Presiding in a family member's case.** 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.

### C. Intervening in relatives' disputes

1. A judge should not ask police officers, prosecutors, and other judges for **favours**, such as dismissing a ticket, on behalf of a relative.
2. A judge should be aware that a telephone call to police about a relative's ticket, for example, even if innocently undertaken, may 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 criminal case in which the defendant is a relative.
3. A judge should not preside in a **civil case** in which a relative is the person asking for damages or in a criminal case in which a relative is the victim.
4. A judge should not ask a police officer or other public officer to take action to resolve a relative's dispute.

### D. Giving family members court business

1. A judge may not order parties in cases to use programs, such as counseling services, that are owned or administered by family members.
2. A program provided by a relative may be on a list of programs from which defendants choose if the judge does not actively participate in the defendant's decision.

## **X. Hiring or appointing relatives**

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- A. The code of judicial conduct requires a judge to “avoid **nepotism** and favoritism” (Canon 3C(4)).
- ➔ Check to determine if your state’s code differs from the model code.
  - ➔ Check to see if your state has an anti-nepotism statute that applies to judicial hiring.
- B. The closer the **relationship** between the judge and the prospective employee, the more rewarding the **position**, and the greater the degree of day-to-day **supervision and contact** between the judge and the employee the more likely the decision to hire the relative would violate the prohibition on nepotism.
1. The decision to hire a relative must be made solely on the basis of the prospective employee’s **merit**.
  2. The position for which the judge is considering hiring a relative must be **announced or advertised** in the same manner other vacancies within the court.
  3. **Other qualified applicants** must be considered.
- C. To provide a less subjective and more uniform and impartial standard to guide judicial appointments, some states have adopted a rule that prohibits the appointment of a relative, regardless of merit, within a certain degree of relationship.
- ➔ Check *An Ethics Guide for Judges and Their Families* to see if your state is one that has adopted this approach (usually in an advisory opinion).
  - ➔ Ask, do you think there should be a rule that prohibits the appointment of a judge’s relative within the court system, regardless of merit, within a cer-

tain degree of relationship? Who do you think should be included in that prohibition? Spouse? Children? Siblings? Parents? Cousins? Aunts and uncles? Grandparents? Grandchildren? Nieces and nephews? Do you think the rule should depend on how closely the person in the position works with the judge? Should it apply to the judge's clerk? Secretary? Bailiff?

- D. Most advice suggests that **continuation of a court employee's employment** is permissible if a court employee's relative becomes a judge or if, through a marriage (either the judge's, the employee's, or a relative of either), the court employee becomes related to a judge.
- E. The nepotism rules prohibits a judge from appointing a relative as **counsel for indigent defendants** in criminal cases.
- F. A judge may not appoint a relative to serve in a position such as **guardian ad litem, receiver, trustee, administrator, referee, master, mediator, commissioner, or pro tem judge**.
- G. A judge may not appoint as defense counsel or fiduciary an **attorney who is affiliated to a relative**, for example, as a law partner.

## **XI. Disqualification**

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A. All states in their code of judicial conduct, statutes, or procedural rules have adopted rules for when a judge is disqualified (also known sometimes as “recused”) and cannot sit in a case.

➔ Check your state’s code of judicial conduct, statutes, and code of civil procedure for the disqualification rules and note any differences between the applicable rules and the model rule, particularly differences that relate to family members.

1. A judge who is neutral and appears to be neutral is a necessary element of justice and an essential prerequisite for public confidence in the decisions issued by the judiciary.
2. Most disqualification rules, like Canon 3E of the model code of judicial conduct, create a general requirement for disqualification whenever a judge’s “impartiality might reasonably be questioned.”
3. Most codes list examples of specific circumstances in which a judge’s impartiality might reasonably be questioned.

B. Some of the specific rules establish the interest or involvement of a member of the judge’s family in the case as the basis for the judge’s disqualification. Under the specific rules of the 1990 model code, disqualification is required:

1. If the judge knows that the **judge’s spouse, parent, or child wherever residing or any member of the judge’s family residing in the judge’s household** has an **economic interest** (Canon 3E(1)(c)):
  - a) in the **subject matter** in controversy, or
  - b) in a **party** to the proceeding.

2. If the **judge, the judge's spouse, or a person within the third degree of relationship** to either of them, or the spouse of such as person:
    - a) is a **party** to the proceeding,
    - b) is an **officer, director, or trustee** of a party,
    - c) is acting as a **lawyer** in the proceeding,
    - d) is likely to be a **material witness** in the proceeding, or
    - e) has a more than **de minimis interest** that could be substantially affected by the proceeding.
  3. Persons within the third degree of relationship are **great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece**.
- ➔ Check to see if what degree of relationship is disqualifying in your jurisdiction and what relatives are included.
  - ➔ Give the participants a couple minutes to jot down a list of people within the third degree of relationship to them by name.
- C. **Remittal or Waiver.** Disqualification based on a family relationship or interest can usually be remitted, in other words, waived by the parties if the judge discloses on the record the basis of the judge's disqualification, and the parties and the lawyers, without participation by the judge, agree that the judge should not be disqualified on the record.
- ➔ Check your state's code of judicial conduct, statutes, and code of civil procedure for the rule on remittal or waiver.



#### D. A lawyer in the family

1. One of the questions that frequently is raised for judges as family members is, if a family member is an attorney in a local **law firm**, may the judge hear cases in which attorneys in the law firm other than the relative appear? The situation is not specifically addressed in most rules.

- a) In some states, if a relative of a judge within the third degree is a partner, associate, or summer associate with a lawyer or law firm, the judge is automatically prohibited, absent waiver, from presiding over cases in which one of the attorneys is affiliated with the family member.
- b) In other states, the mere fact that a judge's relative is a partner, associate, or summer associate with a lawyer or law firm does not require automatic disqualification from cases in which the lawyer or law firm appears.

- ➔ Check *An Ethics Guide for Judges and Their Families* and your state sources to see which of these approaches your state has taken.
- ➔ Ask, do you think there should be a bright-line rule stating that a judge is always disqualified if a firm appears in which a family member is a partner? An associate? Or do you think it is best to evaluate the issue on a case-by-case basis?

2. In states where there is no rule automatically requiring disqualification, a judge should consider:

- a) whether the judge's relative is a partner, shareholder, associate, or of counsel in the firm,
- b) the size of the firm,

- c) whether the fee the firm will receive in the case is based on an hourly fee or is contingent on the client winning the case,
  - d) the nature of the case, in particular, its financial impact on the relative's law firm,
  - e) the prominence of the judge's relative's name in the firm name,
  - f) the size of the court,
  - g) the size of the community, and
  - h) the frequency of the firm's appearance in the judge's court.
3. The smaller the firm, the smaller the court and community, the more often a firm appears before the judge, the more likely the judge will be disqualified when a family member's firm appears particularly in contingency fee cases and particularly if the family member is a partner.

## **XII. Political activity by members of a judge's family**

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- ➔ Have the audience discuss, “Do you think there is an inevitable public belief that the views of a judge’s politically active spouse also indicate the thinking of the judge and the court represented by that judge? Do you think the public can accept the political neutrality of a judge despite the political involvement of the judge’s spouse? Why or why not?”

### **A. Code provisions**

1. Emphasize that nothing in the code of judicial conduct in any state has ever prevented members of a judge’s family from running for political office, supporting others’ candidacy for political office, or being involved publicly in other political activities **as long as they are careful not to suggest their activities reflect the judge’s convictions as well.**

- a) Many judicial family members do refrain from such activities and other community involvement out of concern that their activities may hurt a judge’s re-election chances. Those restrictions, however, are self-imposed and are not required by the code of judicial conduct.

- ➔ Ask the audience for specific examples of ways their participation in political activities changed when they or a member of their family became a judge. Ask relatives whether they refrained from political activities because of concerns about violating the code of judicial conduct, embarrassing the judge, or hurting the judge’s re-election chances.

b) At most, the code has required that a judge **encourage** family members to adhere to the **same standards of political conduct** that applied to the judge.

2. The revised model code, adopted by the ABA in 1990, **eliminates the duty to dissuade**, except with respect to a judge or judicial candidate's own campaign.

➔ Check your state's code of judicial conduct to see what version of this provision is in place.

#### **B. Family members participating in a judge's campaign**

➔ If judges in your state do not run for office, you may omit this section.

1. A judge who is running for re-election or retention in office is required to "encourage members of the candidate's family to adhere to the **same standards of political conduct in support of the candidate as apply to the candidate.**"

2. That duty read together with the restriction on judges campaigning requires a judge to encourage members or his or her family, in general, to "maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary" and to refrain from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office," making "statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court," "knowingly misrepresent[ing] the identity, qualifications, present position or other fact concerning the candidate or an opponent," "personally solicit[ing] or accept[ing]

campaign contributions,” or “personally soliciting publicly stated support.”

- ➔ Check your state’s code of judicial conduct to determine what standards of political conduct apply to judges and judicial candidates in their campaigns.

### C. Participating in a family member’s campaign

1. *Endorsements.* Most state codes of judicial conduct, like the model code, prohibit a judge from publicly endorsing a candidate for public office, including judicial office, even if the candidate is a member of the judge’s family. Therefore, a judge is prohibited from **soliciting votes, funds, or other support** for a family member who is running for public office.

- ➔ Check whether your state’s prohibits a judge from endorsing candidates, including judicial candidates.

- ➔ Check *An Ethics Guide for Judges and Their Families* and your state sources for advisory opinions on this topic from your state.

a) *Public activities.* A judge cannot endorse a family member’s candidacy by giving **speeches**, making personal political appearances or personal contacts by telephone or through the media, driving a car that displays a **bumper sticker**, handing out **campaign literature**, signing **letters**, acting or appearing to act as a **political advisor**, soliciting persons to display campaign signs in their yards, handing out **campaign signs** or posters, or maintaining a relative’s campaign sign in chambers.

b) *Behind the scenes.* A judge cannot endorse a family member’s candidacy by behind-the-scenes campaign activities such as compiling voter or contribution **lists**, stuffing **envelopes**,

**driving** the candidate to events, performing volunteer **manual labor**, delivering or picking up campaign materials from printers or commercial advertisers, and erecting **signs**.

2. *Use of the home.* In most states, a candidate-spouse may use a home jointly owned or occupied with a judge for campaign events such as fund-raisers or campaign strategy meetings.

a) The judge should not **attend or participate**.

b) To **dissociate** himself or herself from the event, the judge should not be identified on invitations to the event; should not assist in any preparations; and should be in another part of the house or leave the house.

➔ Check *An Ethics Guide for Judges and Their Families* and your state sources for advisory opinions on this topic from your state.

3. *Campaign materials.* Factual information about a relative-candidate's background or family should not tie the candidacy to the judge's office. There is a divergence of advice on whether a judge may be referred to in a family member's campaign literature.

a) In some states, a family member's campaign materials cannot use the relative-judge's picture or name and title.

b) In some states, a candidate's judge-relative may be included in a family picture reproduced in campaign literature if the judge is not identified or referred to by name or office.

c) In some states, a family member's campaign materials may use the judge's name or include

the judge in a family photograph but may not identify the judge as a judge.

- d) In some states, a family member's campaign literature may identify the candidate's relative as a judge as long as the judge's office or title are not used or his or her judicial duties discussed, the occupations of other family members are also identified, and the judge is not pictured in robes.

- ➔ Check *An Ethics Guide for Judges and Their Families* and your state sources for advisory opinions on this topic from your state.
- ➔ Ask, how many believe a family member's campaign literature should be able to identify the candidate's relative as a judge as long as the judge's office or title are not used, other family members' occupations are also identified, and the judge is not pictured in robes? Ask for a show of hands, how many believe a family member's campaign materials should not use a relative-judge's picture or name and title? Ask people to explain why or why not.

#### 4. *Accompanying spouse to campaign events.*

Whether a judge can escort his or her spouse to political gatherings when the spouse is a candidate varies from state to state, depending, at least in part, on whether the judge is prohibited by the code from attending political events.

- a) In some states, a judge may accompany a candidate-spouse to political events, including fund-raisers.
- b) In some states, a judge may accompany a candidate-spouse to political events such as campaign rallies and social functions but not fund-raisers.

- c) In some jurisdictions, a judge may not accompany a candidate-spouse to any political event.
  - ➔ Check your state's code to see if a judge is prohibited from attending political events.
  - ➔ Check *An Ethics Guide for Judges and Their Families* to determine if the question whether a judge can escort his or her spouse to political gatherings when the spouse is a candidate has been decided in your state and discuss any relevant opinions.
  - d) Even those states that allow a judge to escort his or her spouse to campaign events note that the judge's appearance must be **discreet and low-profile** and the judge may not be introduced by title or make comments on behalf of the spouse's candidacy
  - e) Even those states that prohibit a judge from escorting his or her candidate-spouse to any political event allow a judge to escort a candidate-spouse to **civic, social, religious, community, cultural, or recreational events** even if the spouse engages in some campaigning as long as the judge would have attended if the spouse were not a candidate.
  - ➔ Ask, how many believe a judge should be able to escort his or her spouse to political gatherings when the spouse is a candidate? Ask people to explain why or why not.
5. *Campaign contributions.* Whether a judge can make a financial contribution to the campaign of a spouse or other family member varies depending on each state's rule regarding political contributions by judges.



- ➔ Check your state's code of judicial conduct to determine what the rule is for making contributions to political campaigns.

**D. When a family member is involved in another candidate's campaign.** Members of a judge's family may participate in another individual's campaign for public office as long as the relative takes every precaution to insulate the judge from involvement and to ensure that the family member's participation is not misunderstood as surrogate judicial participation.

1. *Use of the judge's home.* A judge's spouse can probably use their joint home to host political events, but the judge should not encourage, assist, or concur in the events and should take all reasonable measures to dissociate himself or herself from the events

- ➔ Ask, how many believe a spouse should not hold a political event in a home the spouse shares with a judge? Ask people to explain why or why not. Ask, assuming the spouse holds such an event at the home, what should the judge do to dissociate himself or herself from the event?

2. *Campaign signs.* A judge should not permit a sign endorsing a political candidate to be erected on property jointly owned by the judge and the judge's spouse unless the sign indicates it only reflects the spouse's endorsement.

- ➔ Ask, who agrees that a judge should try to dissuade the judge's spouse from posting a political candidate's sign at the marital home? Ask, what arguments would you use and do you think how do you think an attempt would go over with your spouse? Ask, assuming that attempt fails, do you think a judge should post a disclaimer on the sign?

3. *Contributions.* If a judge is prohibited from making political contributions, the judge's spouse should not use the couple's joint funds to make a contribution to a political campaign but may make a contribution from the spouse's separate funds. To ensure that the contribution is perceived as that of the spouse and not the judge, the judge must play no role in the decision to contribute and there must be no reference to the judge's name and position.

➔ Ask the audience, how can a spouse ensure that a contribution makes no reference to the judge's name and position?

#### E. Other political conduct

1. **Party office.** A judge's family member may be a **member or officer of a political party or organization**, such as a local political party's women's club, a political party committee, or a county political organization.
2. **Political events.** A judge **may not accompany** the judge's spouse to political events such as fund-raisers for political candidates, the governor's inaugural ball if it is a fund-raiser, a state political party convention, a dinner honoring the President sponsored by a national political party, or a reception to promote the governor's re-election.

# Ethics for Judges and Their Families



## Handouts

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The rules described in the following handouts apply in most states because the states' codes of judicial conduct are based on the American Bar Association Model Code of Judicial Conduct. However, states often depart from the model in a few respects when adopting a code of judicial conduct and, therefore, the rules may vary from state-to-state. Moreover, sometimes judicial ethics advisory committees in different states have reached different conclusions about the best way to resolve the conflicts between being a judge and being a family member. The handouts indicate areas where states differ, but the code of judicial conduct and ethics advisory opinions in the relevant jurisdiction should be consulted. The handouts are an abridged version of *An Ethics Guide for Judges and Their Families*, available from the American Judicature Society ([www.ajs.org/ethics1.html](http://www.ajs.org/ethics1.html)).

**I. If the code of judicial conduct does not apply to family members, why should they know the requirements of the code?**

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**II. The code restricts judges as family members both in their actions as judges and their off-the-bench or extra-judicial activities.**

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**III. Civic and charitable activities**

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- A. **Judges and fund-raising.** The prohibition on a judge personally soliciting funds prevents a judge from participating in some of the fund-raising traditional for parents or members of a religious organization, but a judge may donate money, attend most fund-raising events, assist in planning fund-raising activities, and assist behind the scenes.
- B. **Family members and fund-raising.** The code does not prohibit a judge's spouse or other family member from participating in

fund-raising for civic and charitable organizations as long as the judge does not participate and is not identified in any way with the solicitation of funds.

#### **IV. Financial activities**

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- A. **Investments.** A judge is permitted to hold and manage investments, including real estate investments, owned solely by the judge, owned solely by a member or members of the judge's family, or owned jointly by the judge and members of the judge's family.
- B. Commentary to the code states that a judge "should discourage family members from engaging in dealings that would reasonably appear to exploit the judge's judicial position." This rule has been interpreted to prohibit members of a judge's family from renting property they own to attorneys who appear in the judge's court.
- C. **Family business.** Many states allow a judge, subject to the requirements of the code, to manage and participate in "a business closely held by the judge or members of the judge's family," or "a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family."

#### **V. Gifts and loans**

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- A. The code requires a judge to inform family members residing in the judge's household of the constraints upon the judge's receipt of gifts and loans and to encourage those family members to follow them.
- B. Although few gifts or loans are prohibited under the code, a judge must urge family members residing in the judge's household not to accept any gift, bequest, favor, or loan from a party, attorney, or other person who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

#### **VI. Acting as an attorney for family members**

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- A. A judge may:
  - 1. give uncompensated legal advice and counseling to family members,
  - 2. draft or review documents for members of the judge's family so long the judge does so without compensation, and
  - 3. attend a deposition or other legal proceeding to offer moral support as a spectator, without directly or indirectly lending advice or assistance, if the judge is likely to remain unknown and the proceeding is in a court in which the judge does not sit.

- B. A judge may not make an appearance as counsel or function as an advocate or negotiator in a legal matter on behalf of a family member even if the judge receives no compensation and the judge’s representation requires no courtroom appearance.

## **VII. When a judge may serve as a fiduciary**

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- A. Usually, a judge may serve as a fiduciary for a member of the judge’s family — in other words, a spouse, child, grandchild, parent, or grandparent.
  1. The service must not take so much time it interferes with the proper performance of judicial duties.
  2. The judge’s service must not force the trust to divest holdings that require the judge to disqualify frequently from cases if the divestiture would harm the trust.
  3. It must be unlikely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge.
  4. The estate, trust, or ward must not become involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
- B. When an individual is a relative of the judge but is not the judge’s spouse, child, grandchild, parent, or grandparent, the

judge must have a close familial relationship to be able to serve as a fiduciary. Whether a relationship is a “close familial relationship” depends on such factors as intimacy of address; recognition by others of a close relationship; frequent contact by phone or in person; shared meals, holidays, and family events; assistance with physical, medical, legal or emotional needs; and length of the relationship.

## **VIII. Misuse of office**

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- A. Canon 2B of the model code of judicial conduct provides:

A judge shall not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others . . . .
- B. A judge is required to encourage family members to refrain from conveying that they are in a special position because of their relationship to the judge.
- C. **Doing favors for family members**
  1. 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.
  2. A judge should not ask police officers, prosecutors, and other judges for favors, such as dismissing a ticket, on behalf of a relative, or even make an inquiry on behalf of a relative.

3. A judge should not preside in a civil case in which a relative is the person asking for damages.
4. A judge should not preside in a criminal case in which a relative is the victim.
5. A judge should not ask a police officer or other public officer to take action to resolve a family member's dispute.

#### D. Giving relatives court business

1. A judge may not order parties in cases to use programs, such as counseling services, that are owned or administered by relatives.
2. A program provided by a relative may be on a list of programs from which defendants choose if the judge does not actively participate in the defendant's decision.

## IX. Hiring or appointing relatives

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- A. The code of judicial conduct requires a judge to "avoid nepotism and favoritism" (Canon 3C(4)). Some states also have statutes that prohibit or limit hiring of relatives.
- B. The decision to hire a relative must be made solely on the basis of the prospective employee's merit following the announcement or advertisement of the position in the same manner as other vacancies and the consideration of other qualified applicants.

- C. Some states have adopted a rule that prohibits the appointment of a relative, regardless of merit, within a certain degree of relationship.
- D. If a court employee becomes related to a judge through the marriage of the judge or the employee, the employee can probably retain the employment.
- E. If a new judge is related to a long-time court employee, the employee can probably retain the employment.
- F. A judge may not appoint a family member as counsel for indigent defendants in criminal cases.
- G. A judge may not appoint a relative to serve in a case in a position such as guardian ad litem, receiver, trustee, administrator, referee, master, mediator, commissioner, or pro tem judge.
- H. A judge may not appoint as defense counsel or fiduciary an attorney who is affiliated to a family member, for example, as a law partner.

## **X. Disqualification**

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- A. All states in their code of judicial conduct, statutes, or procedural rules have adopted rules for when a judge is disqualified and cannot sit in a case.
- B. Some of the specific rules establish the interest or involvement of a member of the judge's family in the case as the basis for the judge's disqualification.
- C. Under the specific rules of the 1990 model code, disqualification is required:
  - 1. If the judge knows that the judge's spouse, parent, or child wherever residing or any member of the judge's family residing in the judge's household has an economic interest:
    - a) in the subject matter in controversy, or
    - b) in a party to the proceeding.
  - 2. If the judge, the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such as person:
    - a) is a party to the proceeding,
    - b) is an officer, director, or trustee of a party,
    - c) is acting as a lawyer in the proceeding,
    - d) is likely to be a material witness in the proceeding, or
    - e) has a more than de minimis interest that could be substantially affected by the proceeding.
- D. Persons within the third degree of relationship are great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.
- E. **Remittal or waiver.** Disqualification based on a family relationship or interest can usually be remitted, in other words, waived by the parties if the judge discloses on the record the basis of the judge's disqualification, and the parties and the lawyers, without participation by the judge, agree that the judge can hear the case.
- F. **A lawyer in the family**
  - 1. In some states, if a relative of a judge within the third degree is a partner, associate, or summer associate with a lawyer or law firm, the judge is automatically prohibited, absent waiver, from presiding over cases in which one of the attorneys is affiliated with a family member.
  - 2. In other states, the mere fact that a judge's relative is a partner, associate, or summer associate with a lawyer or law firm does not require automatic disqualification from cases in which the law firm appears. In those states to decide whether to disqualify, a judge should consider:

- a) whether the judge's relative is a partner, shareholder, associate, or of counsel in the firm,
- b) the size of the firm,
- c) whether the fee the firm will receive in the case is based on an hourly fee or is contingent on the client winning the case,
- d) the nature of the case, in particular, its financial impact on the relative's law firm,
- e) the prominence of the judge's relative's name in the firm name,
- f) the size of the court,
- g) the size of the community, and
- h) the frequency of the firm's appearance in the judge's court.

## **XI. Political activity by members of a judge's family**

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### **A. Family members participating in a judge's campaign**

1. A judge who runs for office or retention in office is required to "encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate."
2. That duty read together with the restriction on judge's campaigning requires a judge to encourage members or his or her family, in general, to "maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary" and to refrain from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office," making "statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court," "knowingly misrepresent[ing] the identity, qualifications, present position or other fact concerning the candidate or an opponent," "personally solicit[ing] or accept[ing] campaign contributions," or "personally soliciting publicly stated support."



## B. Participating in a family member's campaign

1. *Endorsements.* Most state codes of judicial conduct, like the model code, prohibit a judge from publicly endorsing a candidate for public office, including judicial office, even if the candidate is a member of the judge's family.

Therefore, a judge is prohibited from soliciting votes, funds, or other support for a family member who is running for public office. That restriction includes both public acts that promote the relative's candidacy (such as giving speeches and handling out campaign literature) and behind-the-scenes support (such as stuffing envelopes and picking up campaign materials).

2. *Use of the home.* In most states, a candidate-spouse may use a home jointly owned or occupied with a judge for campaign events such as fund-raisers or campaign strategy meetings as long as the judge dissociates himself or herself from the event.

3. *Campaign materials.*

a) In some states, a family member's campaign materials cannot use the relative-judge's picture or name and title.

b) In some states, a candidate's judge-relative may be included in a family picture reproduced in campaign literature if the spouse is not identified or referred to by name or office.

c) In some states, a family member's campaign materials may use the judge's name or include the judge in a family photograph but may not identify the judge as a judge.

d) In some states, a family member's campaign literature may identify the candidate's relative as a judge as long as the judge's office or title are not used or his or her judicial duties discussed, the occupations of other family members are also identified, and the judge is not pictured in robes.

4. *Accompanying spouse to campaign events.*

a) In some states, a judge may accompany a candidate-spouse to political events, including fund-raisers.

b) In some states, a judge may accompany a candidate-spouse to political events such as campaign rallies and social functions but not fund-raisers.

c) In some jurisdictions, a judge may not accompany a candidate-spouse to any political event.

5. *Campaign contributions.* Whether a judge can make a financial contribution to the campaign of a spouse or other family member varies depending on each state's rule regarding political contributions by judges.

C. **When a family member is involved in another candidate's campaign.** Members of a judge's family may participate in another individual's campaign for public office as long as the relative insulates the judge from involvement and ensures that the family member's participation is not misunderstood as surrogate judicial participation.

1. *Use of the judge's home.* A judge's spouse can probably use their joint home to host political events, but the judge should not encourage, assist, or concur in the events and should take all reasonable measures to dissociate himself or herself from the events
2. *Campaign signs.* A judge should not permit a sign endorsing a political candidate to be erected on property jointly owned by the judge unless the sign indicates it reflects only the spouse's endorsement.
3. *Contributions.* If a judge is prohibited from making political contributions, the judge's spouse should not use the couple's joint funds to make a contribution to a political campaign but may make a contribution from the spouse's separate funds. To ensure that the contribution is perceived as that of the spouse and not the judge, the judge must play no role in the decision to contribute and there must be no reference to the judge's name and position.

D. **Other political conduct**

1. *Party office.* A judge's family member may be a member or officer of a political party or organization, such as a local political party's women's club, a political party committee, or a county political organization.
2. *Political events.* A judge may not accompany the judge's spouse to political events such as fund-raisers for political candidates, the governor's inaugural ball if it is a fund-raiser, a state political party convention, a dinner honoring the President sponsored by a national political party, or a reception to promote the governor's re-election.

# Exercises



## Small groups

Following a speaker's presentation on ethical issues for judges and their families, small group discussions will give all participants an opportunity to talk about ethical issues raised and share their solutions. In addition, small groups allow for positive "peer pressure," in other words, not just an expert saying this is how to do it, but another judge or family member explaining how they solved a problem or would approach an issue.

Following are ethical situations that may be given to the small groups for discussion. Depending on the length of the program and the size of the group, the leader may wish to omit some of the questions, assign each group a different set of questions, or have every group answer the same questions. The session leader or judicial educator may develop additional situations to discuss. To expedite formation of the small groups, the room should be set up so that the participants are sitting at round tables of 8 to 10, with those at each table comprising a group.

The groups should be instructed that they have 15 minutes to discuss the questions assigned. Each group should designate an individual as a reporter who will convey the conclusions of the group back to the larger

audience in a dialogue moderated by the session leader. The small group discussion may also be led by facilitators chosen ahead of time and trained to facilitate the discussion.

After approximately 15 minutes, the small groups should reconvene as one large group, and the leader should moderate the reports from each group about its answers to the questions. For example, the leader may ask one group's reporter for its answer to the first question, ask a second group's reporter if that group agreed, and then ask the second group's answer to the second question, and so on. If an answer seem "wrong" (either unduly restrictive of a family member's conduct or inappropriately permissive), the leader may ask for other opinions to ensure that the "right" answer is given. Follow-up questions about the rationale for answers and exceptions to the rules should also be asked. The leader may wish to take notes on a flip chart or overhead projector sheet during the reporting back to keep track of the responses.

As an alternative to small groups discussions, a panel of experts could give their responses to the questions.

## Ethical issues situations

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1. A judge's daughter becomes a lawyer in the community. What should they discuss to avoid conflicts?
2. A judicial colleague has incurred substantial medical bills to treat her young son's serious illness; not all the bills will be covered by insurance. She mentions that people in the community have kindly offered to make contributions towards the child's care. She asks whether she may accept contributions or solicit funds for that purpose, including holding fund-raisers. What advice do you give?
3. If you are a judge, can you serve on your local parent/teacher's association for the school where your children attend? If yes, what activities may you engage in? What would be prohibited? What if you are the spouse of a judge?
4. The local school board is proposing to require students to wear uniforms, a move your school-age children persuade you is a bad idea. What can you and/or your spouse do to oppose the idea?
5. A judge and her husband sit down to discuss the husband's plans to run for state representative. What guidelines should the two of them develop?
6. A judge's wife is planning a fund-raiser for the local conservation society. Can the fund-raiser be at their home? If yes, what precautions should be taken?
7. The school board for the district where a judge's father is a teacher is a defendant in a case pending before the judge. What questions should the judge ask her father and/or the attorneys in the case to determine if disqualification is necessary? What if her father is a principal or other supervisor?
8. A judge's daughter is having a dispute with her neighbor about a dangerous dog.

May the judge ask the local animal control officer to investigate? If criminal charges are brought against the neighbor, may the judge hear the case? If the daughter sues the neighbor, may the judge sit with her during the trial if another judge is hearing the case?

9. The chair of a fund-raising event for the local art museum calls and asks if a judge and his wife will host the event in their home or be listed as event sponsors on the invitation. What may the judge do under the code of judicial conduct? What should his wife do?

10. May a judge participate in planning a car wash intended to raise funds for the school marching band in which his son plays? To what extent may the judge participate in the car wash itself?

11. How should a judge's husband respond when a reporter asks for his comment on his wife's sentencing decision in a criminal case, which has been the subject of several public demonstrations? What advice should the judge give her family when she

knows a case in which she is involved will be attracting a lot of attention?

12. At a grocery store, an acquaintance tells a judge's wife that the man's daughter-in-law is making up the domestic violence allegations she has made in a case before the judge to get revenge for his son's infidelity. The acquaintance argues the judge should let the son out of jail without bail. What should the judge's wife tell the judge about the conversation?

13. Develop a list of 5-10 ethical guidelines for members of a judge's family.

14. Develop 5-10 additional endings to the sentence, "A judge shall encourage members of the judge's family to . . . ."

15. Develop a list of 5-10 ethical guidelines for lawyers who are members of a judge's family.

## Role plays

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Some judges and some judges' family members may enjoy "role-playing" during a presentation. These actors can be recruited several weeks before the presentation and given the situations they will perform. To make the activity more spontaneous and realistic, the exchanges are not scripted. If one of the actors is a judge in real life and the other is a non-judge, have them switch parts in the role-play so that the judge is playing the family member and the family member is pretending to be a judge. After each scenario, the leader can ask for suggestions and comments about the situation.

The following situations may make good role plays. The actors may also have good ideas for situations to present.

1. One actor plays a new judge, the other plays the judge's spouse. They role play the couple's first post-selection conversation to describe the repercussions of the judge's new job on the family's usual participation in various community activities.
2. One actor plays a judge, the other plays his or her adult son/daughter who has recently joined a law firm. They sit down to discuss how to avoid conflicts between the judge's role and the child's practice.
3. One actor plays a judge, the other plays the judge's spouse who has decided to run for political office. They sit down to discuss the repercussions of that decision.
4. One actor plays a judge's spouse, the other plays an acquaintance. They role play the acquaintance approaching the spouse and saying my best employee is in jail for failing to pay child support. Can the judge help me out? Can you at least recommend an attorney?
5. One actor plays a judge's spouse, the other plays an acquaintance. They role play the acquaintance telling the spouse that the acquaintance's daughter-in-law is making up the domestic violence allegations she has made in a case before the judge to get revenge for his son's infidelity and arguing the judge should let the son out of jail without bail.
6. One actor play a judge, the other plays the judge's grade school child. They role play the child asking the judge to participate in fund-raising for new gym equipment for the school.
7. One actor plays a judge's spouse, the other plays a reporter. They role play the reporter asking for the spouse's comment on the judge's sentencing decision in a criminal case.
8. One actor plays a judge, the other plays the judge's high school age child who comes home from school saying other students are harassing her about a pending case involving a classmate in which the judge is presiding.

## Judicial family issues

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In addition to ethical questions, life with a judge presents other issues for family members. The Judicial Family Institute advises that education programs on a variety of topics might be of interest and assistance to judges and their families. Possible topics include:

- ⊙ Transition to public life
- ⊙ Isolation antidotes
- ⊙ Responses to media and critics of the legal system
- ⊙ Security strategies
- ⊙ Setting priorities and schedules to meet the demands of busy lives
- ⊙ Understanding and handling stress
- ⊙ Preparing children for high-visibility and news controversies
- ⊙ Election campaign survival tactics
- ⊙ Impaired judges' assistance
- ⊙ Community awareness of how laws, lawyers, and judges serve citizens
- ⊙ "Sentencing day blues" pointers
- ⊙ "Custody day tension" relievers
- ⊙ Judicial benefits and insurance
- ⊙ Ideas for living on a lower or fixed income
- ⊙ Retirement planning

Several ways of covering these issues are described below. For hand-outs, presenters may use the essay on judicial family life from *An Ethics Guide for Judges and Their Families*.

## Judicial family panel discussion

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A panel discussion can be an effective way of sharing information and ideas and allows for give-and-take between participants. The panelists can be experienced judges, retired judges, and their spouses or other adult family members. The panel should have a moderator whose role is to ask questions, keep the discussion moving, ensure that no one dominates the discussion but that everyone gets a chance, and call on members of the audience to ask questions or make comments.

The panel members should meet at least once several weeks before the panel presentation to discuss both the way the panel will work and what topics will be covered. The "meeting" can take place via a conference call moderated by the person who will be the moderator for the panel. If possible, the panel members should also meet the day before or just before the panel presentation to make sure everyone has the same idea of what will be happening.

Following are a list of questions for a panel discussion. The moderator and panelists should also come up with their own questions. Not all need to be or could be used for any one panel presentation. Some of the questions may need to be modified depending on who the panel members are. Time should be given either periodically throughout the panel discussion or at the end for questions and comments from the audience.

## Panel discussion questions

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1. What surprised you most about being a judge? About being married to a judge?
2. What ethical situations have you faced since you or your family member became a judge?
3. Is being a judge less stressful than law practice? Why or why not? Does your spouse seem less stressed than when practicing law?
4. If a friend came to you and said “my spouse is considering become a judge,” what advice would you give them?
5. What do you like best about judicial family life?
6. Describe a specific challenge you faced in judicial family life and how you solved the challenge.
7. If there were one thing you could change to make life better for judicial families, what would it be?
8. When you became a judge, what did you tell your spouse to prepare him or her for the changes? Your adult children? Your small children? Your adult relatives? Or what do you wish you had told them?
9. What steps should a judge take to help the judge’s spouse and children deal with the media and other public attention?

## Experts

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Educational programs that involve local experts on issues such as ethics, stress, security, substance abuse, financial affairs, media relations, and family counseling might be of interest to judges and their families. The experts should be asked to prepare handouts for the session. Depending on time and interest, the experts can appear singly and speak for an hour or appear together as part of a panel; if the experts will be on a panel, there should be a moderator and at least one conference call to discuss the presentation.

The experts should be asked:

- ⊙ to discuss the issue (for example, stress) in general,
- ⊙ to relate the issue specifically to judges and family members (for example, what are the special circumstances in judicial family life that can give rise to stress),
- ⊙ to give practical advice on identifying and coping with the problems,
- ⊙ to ask the audience for their advice and experience coping with the problems,
- ⊙ to list publications and local resources that judges and their families can use, and
- ⊙ to ask for questions and comments from the audience.



## Small groups

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Following a panel of judicial family members or a talk by experts, small group discussions will give all participants an opportunity to talk about the issues raised and share their solutions. Following are ideas that may be given to the small groups for discussion. Depending on the length of the program and the size of the group, the leader may wish to omit some of the ideas, assign each group a different set, or have every group cover the same ideas. The session leader or judicial educator may develop additional topics to discuss.

The groups should be instructed that they have 15 minutes. Each group should choose a reporter who will report back to the larger audience in a dialogue moderated by the session leader. The small group discussion may also be led by facilitators chosen ahead of time and trained to facilitate the discussion.

After approximately 15 minutes, the small groups should reconvene as one large group, and the leader should moderate the reports from each group about their discussion. The leader may wish to take notes on a flip chart or overhead projector sheet during the reporting back to keep track of the responses and prepare a master list.

## Small group exercises

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1. Give each group all or part of the list of securities strategies from *An Ethics Guide for Judges and Their Families*. Have them discuss the list. What suggestions would they add? What ideas do they think are impractical or ineffective?
2. Have each group list:
  - ⊙ Five things they wished they had known about being a judge or being related to a judge before they began that role.
  - ⊙ Five good things about being a member of a judge's family.
  - ⊙ Five sources for stress for a judge and/or judge's family.
  - ⊙ Five ideas for dealing with stress.
  - ⊙ Five ideas for dealing with the problems of stress during campaigns.
  - ⊙ Five activities a family can engage in to keep a perspective on the importance of judges.
  - ⊙ Five things that surprised them most about being a judge.
  - ⊙ Five things that surprised them about being married to a judge.
  - ⊙ Five tips they would give a friend who is about to become a judge or whose spouse is about to become a judge.



# Additional Resources



## About ethics

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The American Judicature Society web-site has a directory of judicial conduct commissions and links to their web-sites at [www.ajs.org/ethics1.html](http://www.ajs.org/ethics1.html). Commission web-sites frequently include the state code of judicial conduct and other helpful information. The AJS web-site also has links to the judicial ethics advisory committees in those states that have them. Judges can ask the committees for advice regarding future action, and many of the committees have put their opinions on-line.

AJS publications with information on judicial ethics that may be of interest to judges and their families include:

*Judicial Conduct Reporter* (a quarterly newsletter)

*Ethical Standards for Judges* (AJS 1999) by Cynthia Gray

*Communicating with Voters: Ethics and Judicial Election Campaigns* (AJS 2000) by Cynthia Gray

*When Judges Speak Up: Ethics, the Public, and the Media* (AJS 1998) by Cynthia Gray

*An Ethics Guide for Part-Time Lawyer Judges* (AJS 1999) by Cynthia Gray

*Judicial Disqualification under Canon 3C of the Code of Judicial Conduct* (AJS 1992) by Leslie W. Abramson

*Judicial Ethics and the Administration of Justice* (a videotaped instruction program)

*Key Issues in Judicial Ethics* by Cynthia Gray (1996)

Information about ordering AJS publications is available on the AJS web-site at [www.ajs.org/pubs1.html](http://www.ajs.org/pubs1.html) or by contacting [rwilson@ajs.org](mailto:rwilson@ajs.org) or 312-558-6900 ext. 147.

## Additional resources on ethics

*The Development of the ABA Judicial Code* (ABA 1992) by Lisa L. Milord

*California Judicial Conduct Handbook* (California Judges Association 1990) by David M. Rothman

*Judicial Conduct and Ethics* (Lexis 2000) by Shaman, Lubet, & Alfini

## About stress and other judicial family issues

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*Judicial Wellness: A Stress Management Guide For and By Judges* (National Judicial College 1996, 800-25-JUDGE)

“The Loneliness of Command: One Perspective on Judicial Isolation” by Kathryn Fahnestock, *The Judges’ Journal* (Spring 1991).

*The Judge’s Book* (2nd ed. National Conference of State Trial Judges of the Judicial Administration Division of the American Bar Association and the National Judicial College; NJC, 800-25-JUDGE)

### ***About security away from the courthouse***

*Personal Security Handbook* (Unified Judicial System of South Dakota; contact State Court Administrator, 605-773 3474).

*Personal Security Handbook: How You and Your Family Can Minimize Risks to Personal Safety* (U.S. Department of Justice U.S. Marshals Service).

*Protective Intelligence and Threat Assessment Investigations* (National Institute of Justice <http://www.ojp.usdoj.gov/nij> electronic version or 800-851-3420 printed version).

*The Gift of Fear: Survival Signals That Protect Us From Violence* by Gavin DeBecker (on-line and in bookstores, printed, and audio versions).

*Protecting the Gift: Keeping Children and Teenagers Safe (And Parents Sane)* by Gavin DeBecker (on-line and in bookstores, printed, and audio versions).

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