

The logo for the Judicial Family Institute features the words "Judicial Family" in a large, white, sans-serif font, with "INSTITUTE" in a smaller, white, sans-serif font below it. The text is centered on a dark blue rectangular background.

JUDICIAL FAMILY ETHICAL SCENARIOS

Questions for Panel Discussions on Judicial Family Ethics

from the Discussion Guide to An Ethics Guide for Judges and Their Families by Cynthia Gray of the American Judicature Society (AJS). The entire An Ethics Guide for Judges and Their Families is available through the AJS Store at <http://www.ajs.org> by clicking on "Judicial Conduct and Ethics."

In planning a panel discussion, select an upbeat experienced moderator and a diverse panel of well-respected judges from various parts of your state, different community sizes, and representative political affiliations to bring perspective to these questions. Canon section numbers and content shown below should be compared to the newest code of judicial conduct for your state or territory. Consult your own judicial ethics advisory committee to learn of any unique interpretations or additional scenarios to include. Judges receive Continuing Education Credit (CLE) for attending and their spouses, other family members, and guests can be invited.

1. 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?

{Nothing. Judges are not allowed to receive or consider information that is not conveyed inside the courtroom and before all the parties or in written documents submitted to all sides in the dispute. However, consider the potential conceptual problem. If the acquaintance should mention to his son or anyone else that he has talked to the judge's wife about the case, does that create the public perception that the judge's wife will have discussed the conversation with the judge? Does that perception require recusal of the judge to avoid the appearance of impropriety? CANON 3(B)(7)}

2. A judge's daughter becomes a lawyer in the community. What should they discuss to avoid conflicts?

{Certainly, the judge's daughter cannot practice before the judge. The real question is whether or not any members of her law firm can practice in the judge's court. CANON 3(E)(1)(d)(ii) The fact that a lawyer in a proceeding is a member of a law firm with which a relative of the judge practices does not of itself disqualify the judge. But there are circumstances that would bring the judge's impartiality in question. Such an example is the circumstance that the judge's decision could substantially affect the daughter's continuing employment with the firm or compensation from the firm. CANON 3(E)(1)(d)(iii) The conflict rises to a higher level of scrutiny if the daughter becomes a partner in the firm. The judge must recuse himself from the case if the daughter has worked on the case in any way. See CANON 3E(1). Prospective clients of the judge's daughter should be screened in advance of consultation to determine if the case is pending in the daughter's father's court.}

3. 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 of solicited funds for that purpose, including holding fund raisers. What advice do you give?

{Yes, but only if persons purchasing tickets to the fund raiser are not parties or attorneys who have or whose interests have come before the judge or are likely to come before her. CANON 2(A)}

4. 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?

{This is probably acceptable, CANON 4(C)(3) although the judge may not personally solicit funds for the organization. CANON 4(C)(3)(b)(i) and (iii) and if the PTA becomes involved in any public controversies, she may not take a public position or comment on any pending court case. The judge could help make policy decisions and plan fund raisers. However, there are limitations on the judge's name appearing on any fund raising material. CANON 4(C)(3)(b) commentary. These restrictions may render the judge an ineffective officer for the organization. The judge's spouse is not limited by the restrictions on the judge. However, the spouse should not solicit funds for the PTA from attorneys or others who regularly appear in his spouse's court. In addition, the spouse should not comment on pending cases involving the organization.}

5. 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?

{The judge can do nothing. A judge may only engage in political activity on behalf of measures to improve the law, the legal system, or the administration of justice. CANON 4(C)(1). The spouse can advocate a position on the issue, but should not mention the judge's name as concurring with her opinion.}

6. 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?

{The judge cannot be involved in the campaign in any visible way. This would include going to a campaign office to do office work for the campaign. A judge is prohibited from publicly endorsing any candidate for public office, including her husband. She may not solicit votes, funds, and other support through speeches or personal contacts. Their home could be used for fund raisers, but the judge's name cannot appear on the invitation and the judge should leave the house during the event. CANON 5(A)(1)(b)-(e).}

7. 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?

{Yes, the fund raiser can be at the home of the judge. BUT, the judge's name should not be included on the invitation to the event, and the judge should not attend the event. Attorneys or others who regularly appear before the judge should not be invited. CANON 4(C)(3)(b)(iv)}

8. The school system where a judge's father is a teacher is a defendant in a case pending before the judge. What questions should the judge ask his father and/or the attorneys in the case to determine if disqualification is necessary? What if his father is the principal or other supervisor?

{The judge should inquire as to whether the outcome of the case might have a substantial effect on his father's salary, employment status, or other interest; is the father likely to be a material witness? Conversations with counsel for the school system should be in the presence of counsel for the other side of the case. If the judge has talked to his father about any disputed evidentiary facts, he should recuse himself from the case. If the father is a principal or other supervisor, the level of scrutiny should be higher and the appearance of impropriety is greater. CANON 3(E)(1)(d)}

9. 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?

{No, No, and probably not. A judge should not ask police officers, prosecutors, or governmental officials in any capacity (including a fellow judge) to act on behalf of a relative or even make an inquiry on behalf of a relative.

CANON 2(B)

The judge cannot hear any criminal case against the neighbor because

- (1) he has personal knowledge of the facts of the case, and
- (2) his daughter will probably be a material witness in the case or be considered the victim.

CANON 3(E)(d)(iv).

- (3) Sitting with a relative in court while the case is heard by another judge may be fact sensitive. Misuse of office is the concern. If the presiding judge at the trial knows the parent judge, then the parent judge should not attend the trial. If the case is in a jurisdiction that is geographically removed or large enough that the presiding judge will not know who the parent judge is, it is probably OK to attend the trial as a spectator. }

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

{A judge may not personally solicit funds for civic or charitable organizations. Therefore, the judge should not ask a hardware store to contribute buckets, sponges, or detergent for the car wash or invite attorneys and others at the courthouse or other people she meets to the event. She should not stand by the entrance to the car wash and encourage drivers to enter or act as the cashier for the event. However, the judge may help plan the car wash by setting the date, finding a location, set up committees, make signs, buy supplies, and wash cars – and the judge can have her car washed. CANON 4(C)(3)(b)(i). }

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?

{It is not a good idea for the judge's husband to respond at all to the reporter. No rule prohibits such comment, but common sense suggests that the comment will not help but hurt the judge by adding fuel to the controversy. Before a judge begins a high-profile case, the judge should talk with the family about making comments or reacting to comments made to them. The judge should explain to the family that comments could require that the judge recuse herself from the case because of perceptions arising from the family's actions or statements. }

12. May a judge order domestic violence offenders to attend a counseling program owned and operated by the judge's wife?

{No. A judge may not order people appearing before the judge to obtain required services from a business owned or operated by a family member. However, the wife's program might be allowed to appear on a list of programs from which defendants can choose if the judge does not actively participate in the defendant's decision. Ask the judicial disciplinary officer before doing this to clarify whether or not it is allowed in your state. CANON 3(C)(4). }

13. May a judge whose husband is a chemist for the state's department of environmental regulation preside in cases involving that department?

{Yes, unless the husband's work is specifically involved. If a non-lawyer family member is employed by a political subdivision or government agency, the judge is not automatically disqualified from a proceeding involving the subdivision or agency unless the family member is directly involved or interested. The spouse cannot be a witness in the case nor have more than a 'de minimis' interest in the case. CANON 3(E)(1)(d)(iii) }

14. May a judge's wife accept a baby shower gift from an attorney who frequently appears before the judge?

{Maybe; maybe not. CANON 4(D)(5) requires a judge to urge family members to not accept a gift, bequest, favor, or loan from anyone. There are some specified exceptions. The risk is that the gift will be viewed as intended to influence the judge. However, (5)(c) is an exception that allows gifts that are ordinary social hospitality. Therefore, the answer is fact sensitive. If the attorney giving the gift is a social friend of the family, the gift is OK. If it is from an attorney that frequently practices in the judge's court and is not a friend of the family, the acceptance of the gift is more questionable. The value of the gift would come into play as well. A baby blanket would be an acceptable gift by an attorney; furniture for the nursery would not be acceptable. }

15. May the judge's husband put a sign on the lawn of their home for the candidate he is supporting for the state senate?

{No. The perception will be that the judge supports the candidate as well. If the spouse insists on putting up the sign, the sign should make clear that it does not reflect the judge's endorsement – an awkward situation. The worse case scenario is when the judge's spouse is the candidate and cannot put his own sign in his own yard without a disclaimer attached. CANON 5(A)(1)(b). An earlier scenario was concerned with matters that a judge and spouse should discuss if the spouse is planning to run for public office. Clarification of matters such as the sign in the yard are best discussed in advance. }