



A Sub-Committee of the Conference of Chief Justices. JFI website hosted by the National Center for State Courts

Family Jobs Top Ethical Questions

Judges' decisions must be rooted in fairness and impartiality. The Center for Judicial Ethics (CJE) of the National Center for State Courts keeps the Judicial Family Institute advised of recent discipline of judges across the nation tied to their family activities. CJE also reports published Ethics Advisory Opinions issued at the request of trial and appellate judges who are trying to avoid errors leading to their being disciplined or removed from office. Unpublished replies to inquiries are often given privately to judges as well. Ethics Advisory Opinions are also initiated in some states by committees or ethics staff to address recurring issues. To insure public confidence in a fair judiciary, it is vitally important for those in judicial households and extended family to be aware of their judge's applicable Code of Judicial Conduct. Table talk at home about ethics can make a difference.

Questions from appellate judges' spouses from many states about ethical conflicts of interests with their judge in their own jobs, charitable fundraising, politics, gifts, and investments had gotten the Judicial Family Institute mission of sharing best practices started in 1987. We learned that each state and territory has its own Code of Judicial Conduct and various ways of enforcing discipline or helping prevent problems. The American Bar Association (ABA) offers a Model Code of Judicial Conduct as an example.

Nine out of ten published family-related questions from judges by the June 27, 2023 update were about whether family jobs might be in ethical conflict with the judges' work or present an appearance of impropriety. Political party involvement was the other issue. Actual discipline of judges because of different personal family matters prevented one former judge from ever serving as a judge again in New Jersey, and another in New York was censured. Summaries follow:

Advisory Opinion Summaries by the Center for Judicial Ethics:

[Florida Advisory Opinion 2023-5](#)

A judge may preside over cases that involve the police agency for which their spouse works as long as the judge does not preside over any case where their spouse is involved, including approving search warrants and arrest warrants originating from the agency and presiding over first appearance hearings involving the agency and is not required to automatically disclose the judge's relationship.

[Massachusetts Advisory Opinion 2023-1](#)

A judge is not per se disqualified when a litigant appearing before them is employed by the same government department that employs the judge's child, but the judge should conduct a subjective analysis by consulting their "own emotions and conscience" and if they conclude that they can hear the case impartially, should then conduct a fact-intensive assessment under an objective standard, considering whether the department's interests are likely to be affected by the proceeding, and, if so, to what degree; whether their child's interests are likely to be affected by the proceeding, and, if so, to what degree; whether they know any party to the proceeding by virtue of the party's relationship or association with their child and, if so, the nature of that relationship or association; whether the judge is independently aware of any information that would be relevant to the proceeding as a result of their associations with the department; and whether any party to the proceeding has direct or indirect supervisory authority over their child.

[New York Advisory Opinion 2022-179](#)

A judge whose attorney spouse has sent a preservation letter to law enforcement agency is not disqualified from an unrelated Article 78 proceeding in which a media outlet seeks to compel the same agency to disclose information about an inmate pursuant to the Freedom of Information Law.

[New York Advisory Opinion 2022-162](#)

After a judge's first-degree non-lawyer relative, a college student, accepts an internship with a private law firm, the judge must disclose the relationship when the firm appears before the judge and determine whether the relative has or had any involvement with the case. If the relative is or was involved in the case, the judge is disqualified, subject to remittal if the relative will never be in the courtroom. If the relative had no involvement, the judge may preside after disclosure, provided the judge can be fair and impartial. If the law firm demonstrates to the judge's satisfaction that it has taken steps to ensure their relative is and will be completely insulated from all of the firm's cases before the judge, the judge must still disclose the relationship when the firm's lawyers appear, but may otherwise rely on the firm's screen or wall and need not inquire in each instance about the relative's involvement. Although the judge may not direct the law firm to assign cases in a particular way, the judge may advise the law firm about the possibility of insulating the judge's relative. The judge's obligations with respect to the law firm end when the relative's temporary employment relationship with the firm completely terminates.

[New York Advisory Opinion 2022-186](#)

A town justice is disqualified from presiding over matters in which the town is represented by a law firm that employs their first-degree relative as an associate.

[New York Advisory Opinion 2023-5](#)

If a judge's spouse's law firm is retained to represent a defendant the judge previously arraigned, the judge is disqualified from the matter; the disqualification is subject to remittal unless their spouse personally undertakes the representation or is likely to appear in the courtroom. A judge is disqualified from any matter in which a judge participated as a lawyer in any way, even minimally, and that disqualification does not expire and is not subject to remittal. A judge is disqualified from matters involving their former law firm colleagues or the firm for 2 years after all business and financial connections completely terminate, but if the judge has a continuing social relationship with a specific former colleague, the judge should assess that relationship when the attorney appears and, if the relationship is beyond that of an "acquaintance," may be required to disclose or disqualify depending on the totality of the circumstances based on a number of factors.

[New York Advisory Opinion 2023-38](#)

A town justice whose spouse is employed by a local not-for-profit parochial school may display in front of the judge's home a sign advertising the name of the school, grade levels, and a phone number.

[New York Advisory Opinion 2023-46](#)

A judge whose spouse is the corporation counsel and head of an agency and/or attorney of record for the office must disqualify from any case involving the corporation counsel's office, and from civil or criminal matters involving a subpoena for records of a city office or for testimony of a city employee (including the city police) if any attorney from the corporation counsel's office appears, subject to remittal after full disclosure on the record, provided there is never present in the courtroom. The judge may preside over criminal cases if the corporation counsel's office is not prosecuting or otherwise appearing in the case, even if the arrest was made by a city employee. When a part-time assistant corporation counsel appears as a privately retained attorney, the judge should disclose the relationship but is not required to disqualify provided their spouse has no involvement or interest in the matter.

[Ohio Advisory Opinion 2023-5](#)

Whether a judge is disqualified when a lawyer employed by, associated with, or in partnership with the judge's spouse appears before them should be determined on a case-by-case basis based on the spouse's position at the firm and whether the fee in the case is a contingency fee or an hourly fee. The judge should disclose to the parties the spouse's employment with the law firm even if there may be no basis for disqualification.

[West Virginia Advisory Opinion 2023-14](#)

A judge should not be a member of the county Republican Club. A judge's wife should not be a member of the county Republican Club.

Discipline Case Summaries by the Center for Judicial Ethics – Abbreviated:

[*In the Matter of Mullen*](#), Order (New Jersey Supreme Court March 8, 2023)

The New Jersey Supreme Court removed a former judge from office and permanently barred her from holding judicial office in the State for her behavior at the school attended by her children that led to her conviction on a charge of defiant trespass, giving untruthful testimony at her criminal trial, and failing to appear for a court-ordered deposition in her husband's lawsuit against the school.

[*In the Matter of Olcott*](#), Determination (New York State Commission on Judicial Conduct May 16, 2023)

(<https://cjc.ny.gov/Determinations/O/Olcott.Richard.F.2023.05.16.DET.pdf>)

Accepting an agreed statement of facts and recommendation, the New York State Commission on Judicial Conduct publicly censured a non-lawyer judge for (1) dismissing a traffic ticket issued to his son and (2) failing to mechanically record all vehicle and traffic proceedings as required by court rules and an administrative order.