

March 30, 2011

According to **Connecticut** Judicial Ethics Opinion 2010-34, a judge may not participate in the organization and solicitation of donors for a non-profit charitable blood drive in honor of an attorney who was injured in an accident. Conn. Committee on Judicial Ethics Informal Op. 2010-34.

Tennessee Judge Richard Baumgartner resigned immediately after pleading guilty to official misconduct for buying 10 to 20 prescription pills two to three times a week from a defendant on probation in his court. Judge Baumgartner received a suspended sentence and was placed on judicial diversion.

Former **federal** judge Jack Camp was been sentenced to 30 days in prison and 400 hours of community service after pleading guilty to buying drugs from an undercover FBI agent. The sentencing judge said he could not give a sentence of only probation because Camp breached his oath of office. As a judge, Camp had a reputation as a harsh sentencer who rarely gave breaks to defendants who presented mitigating circumstances. His wife had asked for mercy, saying her husband is a changed man thanks to proper medical treatment for his bipolar disorder and depression.

The **American Judicature Society** offers on-demand judicial ethics webcasts through West LegalEdcenter. Colorado judges may participate without charge. (Check with SCAO's Kent Wagner for passwords, etc.) Colorado CLE credits are likely available. For more information: Available on demand:

- Judicial Disqualification and Friendships with Attorneys (1 hour)
- Ethical Implications of Political Activities by Members of a Judge's Family (1 hour)
- Judicial Disqualification One Year after *Caperton v. Massey Coal* (1 hour)
- Restrictions on Judicial Political Conduct Eight Years after *Republican Party of Minnesota v. White* (1.5 hours)
- Ethical Issues for New Judges: The Transition to the Bench (1.5 hours)
- Ethical Issues for New Judges: Disqualification (1.5 hours)
- What Other States Can Learn from Pennsylvania's "Cash for Kids" Scandal (1 hour)
- Top Judicial Ethics Stories of 2010 (1.5 hours)
- Eyewitness Identification Evidence: Science, Practice, and Trends (1 hour)

The **California Commission on Judicial Performance** admonished Judge Harvey Giss for an insensitive comment about the Ku Klux Klan outside the presence of the defendants. During an 'off the record' discussion with counsel while the defendants were in a holding cell, the judge perceived that counsel wished him to explain the benefits of a plea offer to the defendants, both of whom are African-American.

The judge did not believe he could do so and made a remark to the effect that he guessed the only thing that would make the defendants plead was for the judge to come out in a white sheet and a pointy white hat, which he would not do.

Two days later, the defense requested that the judge recuse on the basis of his remark and the defendants' concern regarding his impartiality. While conceding it was a "bad statement," the judge also remarked: "People don't have a sense of humor anymore." The Commission held that the remark constituted a failure to refrain from speech that would reasonably be perceived as bias or prejudice; a failure to be dignified and courteous to litigants, lawyers and others with whom the judge deals in an official capacity; and a failure to avoid impropriety and the appearance of impropriety, and act at all times in a manner that promotes public confidence in the impartiality of the judiciary.

The admonishment stated that the judge "should have known that his insensitive courtroom reference to a history of violence towards persons of the defendants' ancestry, whether intended to make a valid point regarding his role as a judge or [whether intended] in jest, was offensive and inappropriate. A judge's subjective intent is not at issue...."

(March 16, 2011)

There has been yet another disappointment from one of the most disappointing cases in Wisconsin. After the Wisconsin Supreme Court Justice Gableman approved a misleading judicial campaign ad, after he then refused to recuse himself in a criminal matter in which his impartiality was questioned, and after the Wisconsin Supreme Court split straight down the conservative-liberal divide both in deciding whether to discipline Gableman and in deciding whether to review his failure to recuse himself, we now learn that another Justice (Prosser) called the Chief Justice (Abrahamson) a “total bitch.” He allegedly topped off this statement with a threat: “I will destroy you.” If true, it should be noted that state judges on lower courts are often disciplined for such “intemperate” behavior. (Judicial Ethics Forum).

U.S. Representatives Chris Murphy and Anthony Weiner introduced a bill titled The Supreme Court Transparency and Disclosure Act. If passed into law, it would (1) apply the **Code of Conduct for United States Judges** to the Supreme Court Justices, (2) require Justices to issue reasons for recusing or failing to recuse themselves, and (3) provide a procedure for review whenever Justices deny motions to disqualify. For some critical commentary, where Brookings asserts that similar reform proposals would transgress Article III, § 1, vesting judicial power in “one Supreme Court.” (Judicial Ethics Forum).

Judge Raymond McKoski has again contributed to the *corpus* of judicial ethics scholarship. His thought provoking new work can be downloaded and the abstract follows:

The legitimacy of the judicial branch of government depends on the impartiality of its judges. Nineteenth century lawyers and litigants understood this fact and regarded actual impartiality as the fundamental value of judicial ethics. Today, the emphasis on maintaining judicial legitimacy has shifted from reality to perception.

Modern codes of judicial ethics are designed first and foremost to protect the “appearance” of impartiality by barring any personal, financial, civic, or political activity of a judge that may be perceived as adversely reflecting on judicial objectivity. Insuring impartiality in fact has become a secondary concern.

The career of nineteenth century judge David Davis illustrates that actual judicial impartiality, not the appearance of impartiality, sustains public faith in the judiciary. Davis was universally recognized as an impartial judge even though his off-bench alliances, especially with Abraham Lincoln, shouted out partiality and favoritism. After establishing Judge Davis’s unimpeachable reputation for courtroom fairness, the Article evaluates his off-bench activities under modern rules of judicial conduct.

Next, the Article traces the transition from actual impartiality as the measure of a judge’s worth in Davis’s time to today’s emphasis on appearances. Finally, modest reforms in judicial selection, evaluation, education, and discipline are offered as a means of reestablishing actual impartiality as the fundamental value of judicial ethics.

The **Judicial Council of the 10th Circuit Court of Appeals** publicly reprimanded Judge Ronald White of the Eastern District of Oklahoma for (1) using his office to appoint friends to serve as adjunct settlement judges, even though they were not qualified, and ordering certain counsel and parties to pay them fees for their services, contrary to a local court rule; and (2) making inappropriate oral, written, and non-verbal comments in orders and during court proceedings. The order does not contain any additional details of his conduct. The judge acknowledged and apologized for his conduct, assured the Council that he will not engage in this or any other inappropriate conduct in the future, and agreed to waive his right to seek review. (March 22, 2011)

Following a hearing at which it heard from 26 witnesses, the **New Mexico Judicial Standards Commission** filed a petition for discipline recommending that Judge Sam Sanchez be suspended for 30 days without pay and given a formal public reprimand for failing to provide due process for 32 people he had ordered arrested following a courtroom disturbance. At a hearing on a motion to reconsider a sentence on charges of criminal sexual penetration, approximately 6 persons were present in support of

the 12-old-victim, and 40 in support of the defendant. The judge denied the request to reduce the sentence, and declared a recess. The bailiff ordered everyone to **rise**.

Approximately 12 seconds after this command, the defendant began yelling that the hearing had been “one sided” and state’s evidence showed that the victim was not a virgin. The judge ordered the defendant removed from the courtroom. Some of the defendant’s supporters began to “speak out/yell out.” No one left the seating area, approached the bench, or approached the victim’s family (although they did engage in a limited exchange of words and hand gestures with the family). The judge ordered defendant’s supporters to **sit down** and be quiet 3 times in very quick succession. The judge warned that they could be held in contempt and sent to jail if they did not quiet down. At least one person, never identified, yelled “Go ahead, take us to all to jail.” The judge held all of defendant’s supporters in contempt for failing to follow his orders. No individual findings of accountability were made. The judge ordered the defendant’s supporters held without a definite term of imprisonment.

At the Commission hearing, the judge testified that he believed that the situation was rapidly accelerating and would become dangerous and result in an attack on the victim’s family or on him and that, if allowed to continue, it would have been a “disaster.” The Commission found that the judge never used his gavel or any less restrictive measures to control the crowd, other than warnings, and that, after he asked the people to be seated, they calmed down.

The **New Jersey Supreme Court** ordered former judge Steven Perskie to show cause in response to a presentment by the **Advisory Committee on Judicial Conduct**. The Committee found that the judge should have recused from a case in which he would have had to evaluate the credibility and conduct of a person with whom he had a long-standing business and personal relationship and failed to fully inform the parties of extent of his connections with the witness; after belatedly recusing himself from the case, twice sat in another judge’s courtroom during the trial; and, while testifying under oath, failed to be forthcoming to the Senate Judiciary Committee about his conduct in the case. The Committee recommends censure.

A federal judge presiding over the trial of former judge Bridget McCafferty for lying to an FBI agent, denied a defense motion to exclude evidence that she violated the **Code of Judicial Conduct**, and the related testimony of an expert witness from the **Ohio Supreme Court Office of Disciplinary Counsel**. (March 22, 2011).

A Florida legislative proposal to open the records of the **Florida Judicial Qualifications Commission** is one of the few that has bipartisan support. The proposal is in response to the Commission’s practice of meeting privately with judges and urging them to resign rather than filing charges that would become public. The Commission argues that it is an expedient and inexpensive way to rid the courts of judges who misuse their power, noting that a hearing can cost \$150,000. Legislators also questioned why judges should be treated differently from other elected officials. Records of the Ethics Commission, which investigates complaints against county commissioners, legislators, and the governor, become public after an investigation is complete even if no wrongdoing is found.

A **Texas** jury found Justice of the Peace Mary Alice Palacios guilty of official oppression for jailing teens charged with truancy and absenteeism without informing them of their right to an attorney or alternatives such as community service and payment plans.

Victims in Luzerne County juvenile cases that were dismissed due to the kids-for-cash scandal could be eligible for restitution from a \$500,000 fund created by the General Assembly. The **Pennsylvania Supreme Court** expunged the records of thousands of juveniles who appeared before former judge Mark Ciavarella in 2005-2008, ruling he failed to fully inform juveniles of their right to counsel.

The **Arkansas Judicial Discipline and Disability Commission** publicly admonished part-time Judge Joseph Boeckmann for two phone calls he made to police and helping return stolen goods that were taken by an employee of his family’s business. A confrontation between an individual and the police resulted in a phone conversation between the judge and the police department in which, the Commission found, it was unclear whether the judge was acting as an attorney, a friend, or a judge, which made it difficult for others to determine his role and authority. The Commission noted that the judge’s willingness

to admit he made some errors, his agreement to make changes, and his cooperation with the investigation were considered in the stipulated admonishment.
(March 18, 2011)