

Top 10 Recent Judicial Ethics Cases

American Judges Association Annual Educational Conference

Cynthia Gray, Director
Center for Judicial Ethics, American Judicature Society
www.ajs.org/ethics



Disqualification

1. Reversing the decision of the West Virginia Supreme Court of Appeals, the U.S. Supreme Court held in a 5-4 decision that the campaign efforts of the principal officer of one of the parties on behalf of Chief Justice Benjamin “had a significant and disproportionate influence in placing Justice Benjamin on the case” and, therefore, required Benjamin’s recusal under the Due Process Clause of the U.S. Constitution. *Caperton v. A. T. Massey Coal Co.* (June 8, 2009). The court stated:

The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules. Otherwise there may be no adequate protection against a judge who simply misreads or misapprehends the real motives at work in deciding the case. The judge’s own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, or on appellate review of the judge’s determination respecting actual bias, the Due Process Clause has been implemented by objective standards that do not require proof of actual bias.

2. The Wisconsin Supreme Court reprimanded a supreme court justice for presiding, when she was a circuit judge, over 11 cases in which a bank was a party while her husband was a director of the bank. *In the Matter of Ziegler*, 750 N.W.2d 710 (Wisconsin 2008). She had not disclosed the relationship. Noting that, if a judge complies with the rule requiring disqualification when the judge’s spouse is a director of a party, “no question will ever arise about a

judge's favoritism," the court stated: "The harm caused by a violation of this Code provision exists even though the judge reaches the correct decision in the particular case and the judge does not receive any personal benefit from the decision in the case."

Ex parte communications

3. The Ohio Supreme Court publicly reprimanded a judge for ex parte communications in which the judge asked the assistant prosecutor to prepare a sentencing order in a capital murder case. *Disciplinary Counsel v. Stuard*, 901 N.E.2d 788 (Ohio 2009). The assistant prosecutor was also publicly reprimanded. In the appeal of the sentence, the court had held that the judge committed prejudicial error by delegating responsibility for the content and analysis of his sentencing opinion and vacated the death sentence, remanding with instructions for the judge to personally review and evaluate the appropriateness of the death penalty.

4. The Indiana Commission on Judicial Qualifications publicly admonished a judge for entertaining and granting an ex parte petition for temporary custody without prior notice to the custodial parent or an opportunity for her to be heard. *Public Admonition of Banina* (Indiana Commission on Judicial Qualifications January 20, 2009) (www.in.gov/judiciary/jud-qual/docs/admonitions/banina-1-20-09.pdf). The Commission stated: "In the Commission's view, there is perhaps no greater injustice than to strip a parent of custodial rights without an opportunity to be heard and in the absence of an emergency." The attorney who filed the ex parte petition was publicly reprimanded by the attorney discipline commission.

5. The North Carolina Judicial Standards Commission publicly reprimanded a judge for having ex parte communications on Facebook with counsel for a party in a matter being tried before him and being influenced by information he independently gathered by viewing a party's web-site. *Public Reprimand of Terry* (North Carolina Judicial Standards Commission April 1, 2009) (www.nccourts.org/Courts/CRS/Councils/JudicialStandards/PublicReprimands.asp).

Ticket-fixing

6. The New Mexico Supreme Court removed a judge from office for adjudicating 24 traffic cases in the defendants' favor *ex parte* and without a hearing or taking evidence. The cases involved family members, friends, and family members of friends and staff. He usually adjudicated the cases before their scheduled arraignment dates, either deferring or continuing them for 90 days with the requirement that no further traffic violations occur within that time. *Inquiry Concerning Griego*, 181 P.3d 690 (New Mexico 2008).

Judicial discord

7. The Florida Supreme Court publicly reprimanded an appellate judge for a concurring opinion in which he accused a fellow appellate judge of corruption based on unverified facts from outside the record and motivated by his dislike of the other judge. *Inquiry Concerning Allen*, 998 So. 2d 557 (Florida 2008). Stating "while judicial independence is critical to the functioning of the judiciary, it is not unlimited," the court rejected the judge's argument that "to question by threat of sanction the reason for, the wisdom of, or the motive behind a decision constitutes a gross intrusion into judicial independence and will have a chilling effect on judges carrying out their duties."

Generally, appellate judges are free to write almost anything in their opinions regarding the decision of the case or the facts and law involved in the case. However, the discussion must be germane to the case at bar and the facts that are within the record of the case An appellate judge cannot use his opinion-writing power to inappropriately personally attack another appellate judge by accusing him of a crime.

Demeanor

8. The New York Court of Appeals removed a judge for revoking the recognizance release of 46 defendants when no one took responsibility for a ringing cell phone and for his unsettling comments during the incident. *In the Matter of Restaino*, 890 N.E.2d 224 (New York 2008). The court held:

By indiscriminately committing into custody 46 defendants, petitioner deprived them of their liberty without due process, exhibited insensitivity, indifference and a callousness so reproachable that his continued presence on the Bench cannot be tolerated. . . . We have serious doubts that this breach in trust is reparable given petitioner's conduct. . . .

Significantly, petitioner had more than 46 chances to correct himself and failed to do so.

9. The Maryland Court of Appeals suspended a judge for 30 days without pay for a pattern of inappropriate demeanor and comments. *In re Lamdin*, 948 A.2d 54 (Maryland 2008). In 14 cases, the judge demonstrated a lack of courtesy to defendants, used vulgar and profane language, criticized judicial colleagues, and disparaged the division of corrections. The court held:

Criticism of judicial colleagues, particularly from the bench in the courtroom, hardly leads to trust and confidence by the public in the Judiciary. . . . The language used by respondent was unacceptable for a judge in a judicial proceeding. . . . No matter how frustrated or stressed a judge may be, a judge should not use vulgar or offensive language in the courtroom or in the performance of judicial duties.

Judicial Diligence

10. The Indiana Supreme Court suspended a judge from office for 60 days without pay for excessive delays in issuing rulings on prisoners' petitions for post-conviction relief, which in 1 case resulted in a prisoner's incarceration being unnecessarily prolonged by nearly 2 years. *In the Matter of Hawkins*, 902 N.E.2d 231 (Indiana 2009). The court concluded that, although a court commissioner was primarily responsible for the inexcusable delays, as a judge with supervisory authority over the commissioner, Judge Hawkins violated his duty to take reasonable measures to assure the prompt disposition of matters before judicial officers he supervised and thus bears ultimate responsibility for the commissioner's delays. The court noted that "it is essential for all judicial officers to have in place procedures to ensure not only that the judge makes a timely decision, but also that the order is correctly and promptly processed by the personnel responsible for the task."