



Ohio Board of Professional Conduct



OHIO ETHICS GUIDE **EXTRAJUDICIAL ACTIVITIES**

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NOTE: Ethics Guides address subjects on which the staff of the Ohio Board of Professional Conduct receives frequent inquiries from the Ohio bench and bar. The Ethics Guides provide nonbinding advice from the staff of the Ohio Board of Professional Conduct and do not reflect the views or opinions of the Board of Professional Conduct, commissioners of the Board, or the Supreme Court of Ohio.

Judges are permitted to engage in a variety of extrajudicial activities, including participating in law-related entities or nonprofit organizations sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations. Jud.Cond.R. 3.7(A).

A judge's participation in certain extrajudicial activities serves to better integrate judges into society and their communities, and promotes public understanding and respect for judges, courts, and the judicial system. Jud.Cond.R. 3.7, cmt.[2]. As long as a judge's judicial independence, integrity, and impartiality are not compromised, a judge's participation in extrajudicial activities is encouraged. Jud. Cond.R. 3.1.

However, the Code of Judicial Conduct and Ohio Ethics Law place limits on a judge's participation in extrajudicial activities that are intended to avoid misuse of the public office, maintain public confidence in the judiciary, and ensure that judges will not be unduly distracted by nonjudicial activities. When engaging in extrajudicial activities, judges must always be aware of their obligation to maintain the dignity of the judicial office and avoid both impropriety and the appearance of impropriety in both their professional and personal lives. Jud.Cond.R., *Preamble*.

Extrajudicial Memberships

A judge's official duties take precedence over a judge's other activities. Jud.Cond.R. 2.1. Participation in extrajudicial activities requires judges to carefully consider whether the time commitment to the activity will interfere with their judicial and administrative duties, particularly when joining organizations as an active member, board member, or officer. Jud.Cond.R. 3.1(A). For example, a judge may be invited to serve on the board of an organization that meets weekly during regular business hours coinciding with a day the judge normally has a heavy docket. In such a situation, the judge should take into consideration whether the extrajudicial activity will negatively impact their docket and the

possible effect it may have on other judges, parties, and attorneys.

Judges also need to be mindful that membership or participation in an organization cannot result in the frequent disqualification of the judge due to the regular appearance of the organization in the judge's court. Jud.Cond.R. 3.1(B); 3.7(A)(7)(a). If, for example, the judge serves on the board of a local nonprofit hospital, but many of its debt collection cases are filed in the judge's court, the judge's frequent disqualification due to their membership may have a significant and detrimental impact the judge's ability to perform the duties of office. In such situations, the judge should consider withdrawing from membership in the organization.

Other Considerations of Membership

Once elected or appointed to judicial office, judges may be approached by various organizations seeking their participation as a member, trustee, or board member. Membership in certain organizations that advocate special interests may cause a reasonable person to question a judge's impartiality in a matter involving issues aligned with special interests.

For example, membership in an organization aiding or advocating on behalf of victims of domestic violence, while a worthwhile cause, may signal that the judge is inclined to favor certain outcomes in domestic cases. Similarly, judges should continually monitor changes to the mission or purpose of an organization to ensure that it continues to align with a judge's obligation to uphold the independence, integrity, and impartiality of the judiciary. Lastly, a judge may not be a member of any organization that practices invidious discrimination. Jud.Cond.R. 3.6 (membership in discriminatory organizations). A judge's membership in such an organization raises concerns about the public's confidence in judicial integrity and impartiality. Upon learning that an organization engages in

invidious discrimination, a judge must resign immediately from the organization. Jud. Cond.R. 3.6, cmt.[3].

Fundraising and Solicitation on Behalf of Organizations

As a member or board member of a nonprofit organization, a judge may be expected or approached to assist the organization in its fundraising activities and events. A judge is not permitted to solicit contributions for the organization or entity, unless the solicited person is a member of the judge's family or another judge over whom the judge does not exercise supervisory or appellate authority. Jud. Cond.3.7(A)(2).

The rule prevents a judge from signing a letter asking for monetary contributions from individuals or businesses, personally soliciting contributions, or serving as the chairperson for a fundraising event. Adv. Op. 1987-09 (considering the difficulty of a judge serving as chair of fundraising effort for courthouse restoration.)

Although fundraising is expressly prohibited, a judge may participate in planning a fundraiser or helping to manage or invest the funds the organization raises. A judge also may participate in *de minimis* fundraising activities that are directed at a broad range of the community and performed by both judicial and nonjudicial volunteers. Jud. Cond.R. 3.7(A)(3).

For example, activities such as serving as an usher, server, or food preparer are not considered solicitation by a judge, are noncoercive, and do not constitute an abuse of the prestige of office. Jud. Cond.R. 3.7, cmt.[3].

However, judges should avoid efforts by an organization to highlight the judge's involvement in the fundraiser or by holding events with judges serving as a celebrity waiters or bartenders, running in a charity race in a judicial robe, or conducting auctions where the winner will spend "a day with the judge." Jud.

Cond.R. 3.7, cmt. [5]. See Adv. Op. 1995-13 (a judge may not participate in a fundraising telethon). Upon joining an organization, a judge should take steps to inform the organization of the fundraising limitations imposed by the Code of Judicial Conduct.

Name on Organization Letterhead

If a judge is a board member of the organization, the judge may appear on the letterhead, and the judge's title or honorific may be used if comparable designations are displayed for other members of the organization. The same organization letterhead may be used for fundraising or solicitation purposes, but a fundraising letter may not be signed by the member judge. Jud. Cond.R. 3.7, cmt.[4].

Service on Organization Boards Under Contract with Judge's Court

Judges should avoid board membership or other affiliations with organizations that are doing or seeking to do business with their courts. In addition to the Code of Judicial Conduct, judges are subject to the Ohio Ethics Law that prohibits public employees from having an interest in public contracts or an interest in the profits or benefits of a public contract entered into by, or for the use of, the political subdivision or governmental agency or instrumentality with which he is connected. R.C. 2921.42(A); Adv. Op. 2021-01.

An interest may be pecuniary or fiduciary. Officers and board members of a nonprofit corporation have an "interest" in the contracts of the corporation. Ohio Ethics Comm'n Op. 81-005 (1981); Ohio Ethics Comm'n Op. 81-008 (1981); Adv. Op. 2006-07 (a municipal court judge may not serve on the board of trustees of a nonprofit corporation that provides mental health and counseling services that defendants use to fulfill conditions of probation and that contracts with the court.)

An applicable statutory exception to serving on boards under contract with a public agency is found in R.C. 2921.42(C). Application of this exception is best addressed on a case-by-case basis and is thus beyond the scope of this general guide.

Recognition at an Organization Fundraiser or Event

Generally, a judge may accept an invitation to be a guest speaker or a guest of honor, receive an award at an event sponsored by an organization, and permit their title to be used in connection with a non-fundraising event, if the judge's participation does not reflect adversely on the judge's independence, integrity, or impartiality. Jud.Cond.R. 3.7(A)(5).

For example, a judge's recognition at a statewide meeting of county prosecutors for their impact on helping combat drunk driving could create the public perception that the judge would not be impartial in deciding OMVI cases. On the other hand, a judge's receipt of an award at a bar association event for their promotion of pro bono legal services by local lawyers would be permissible because it promotes the administration of justice.

Consequently, a judge should avoid receiving awards or public recognition at events from organizations that advocate on controversial issues that may go before the judge or would suggest that the judge would not be fair or impartial in hearing matters involving the same issue. Similarly, a judge should not accept an invitation to a fundraising event if the judge's attendance will be highlighted by the organization in an effort to attract potential donors. In such a situation, the judge's participation could be viewed as an abuse of the prestige of office prohibited by Jud.Cond.R. 1.3 (prestige of office).

Recommendations to Grant-making Organizations

A judge may, on behalf of their court, seek grants from grant-making entities. The judge may both prepare and sign the grant proposal.

When a court is using the services of an entity such as a drug rehabilitation center, a judge may write a letter in support of a grant application, focusing on the work the center does for the court and how that work aids in the administration of justice, without advocating or speaking on behalf of the center.

If a grant-making entity is concerned with the law, the legal system, or the administration of justice, a judge may make a recommendation to the entity regarding its award of funds. Jud.Cond.R. 3.7(A)(6). For example, a judge may make a recommendation to a bar association foundation that is awarding grants to organizations that will help underprivileged populations gain greater access to courts through the use of technology.

Use of Court Resources and Personnel

When engaging in extrajudicial activities, judges are permitted to make incidental use of court premises, staff, stationery, equipment, and other resources. Jud.Cond.R. 3.1(E). Judges may not use court stationery or letterhead to engage in personal business with third parties.

Appointments to Governmental Positions

A judge's appointment to governmental committees, boards, or other similar positions is governed by Jud.Cond.R. 3.4. The Board adopted a three-part test in Adv. Op. 2002-09 to assist a judge in determining whether an appointment to a governmental position is appropriate:

- *Would a judge's participation cast doubt on the judge's ability to act impartially, demean the judicial office, or interfere with performance of judicial duties?*
- *Is it likely that the governmental entity will be engaged in proceedings that ordinarily would go before the judge or be engaged in adversary proceedings with frequency in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member?*
- *Is the governmental entity concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice?*

If any of the questions can be answered in the affirmative, the judge should decline the governmental appointment.

Examples of permissible governmental appointments include membership on Supreme Court boards, commissions, advisory committees, and task forces. Note: A judge cannot serve on a government hazardous material waste task force (Adv. Op. 1987-013).

Fiduciary Positions

With the exception of immediate family, a judge cannot serve in a fiduciary position, like an executor, administrator, guardian, attorney in fact, or other personal representative. Jud. Cond.R. 3.8. In matters involving immediate family, service as a fiduciary is permissible, if it will not interfere with the performance of their judicial duties or proceedings involving an estate, trust, or ward. A judge cannot serve

as a fiduciary in any case if the matter arises in their court. A judge also cannot practice law in connection with a fiduciary position. Thus, although a judge may serve as an executor of a family member's estate, the judge must hire a lawyer to represent the judge as executor.

Compensation for Extrajudicial Activities

A judge may be compensated for participation in an extrajudicial activity with a nonprofit entity. The compensation received cannot appear to a reasonable person to undermine the judge's independence, integrity, or impartiality and must be commensurate with what nonjudges are paid for the same activity. Jud.Cond.R. 3.12. Adv. Op. 2003-06. In addition, the compensated activities cannot be performed as part of official judicial duties, as such would constitute supplemental compensation prohibited under Ohio Ethics Law. R.C. 2921.43(A)(1). Any compensation for an extrajudicial activity must be reported on a judge's annual financial disclosure statement. Jud.Cond.R. 3.15.

Employment and Financial Activities

Full-time judges may not serve as an officer, director, manager, general partner, advisor, employee, or independent contractor for a business entity. Jud.Cond.R. 3.11. Exceptions are permitted for a judge to participate in a closely held business or an entity engaged in the investment of financial resources of the judge or members of the judge's family. Jud. Cond.R. 3.11(B)(1),(2). "Family" is defined as a spouse, domestic partner, child, grandchild, parent, grandparent or another relative or person with whom the judge maintains a close familial relationship. Jud.Cond.R., *Terminology*.

For example, the Board has opined that a judge may maintain a newspaper delivery business that is closely held by the judge and his family. Adv. Op. 1998-12. When maintaining a family business, a judge must avoid allowing their involvement in the business to interfere with judicial duties, frequent disqualification,

or involve the judge in continuing business relationships or transactions with persons or lawyers going before the court.

As soon as practicable, a judge should divest of financial or business interests that will require frequent disqualification or involve the judge in frequent transactions or business relationships with lawyers or other persons likely to go before the court on which the judge serves. Jud.Cond.R. 3.11(C). An example of a business activity that implicates the rule is the ownership of rental property with lawyer tenants who frequently appear before the judge. Adv. Op. 1991-08. See *Disciplinary Counsel v. Burge*, 157 Ohio St.3d 203, 2019-Ohio-3205.

Speaking, Writing, and Teaching

A judge may engage in extrajudicial activities of speaking, writing or teaching when time permits, and judicial independence, integrity, and impartiality are not compromised. Adv. Op. 2021-11. Judges may teach a CLE or a class at a private or public college or university. A judge is not limited to speaking or teaching on topics pertaining only to the law, the legal system, or the administration of justice.

Judges may be compensated for teaching, but cannot be paid more than someone who is not a judge is paid for the same activity. Jud. Cond.R. 3.12, cmt. [1B]; Adv. Op. 2021-11. The source and amount of the compensation for teaching cannot appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. Judges cannot be compensated for speaking as the compensation constitutes an honorarium prohibited under state law. R.C. 102.01(H); Adv. Op. 2021-11. Judges may be reimbursed for reasonable expenses related to teaching or speaking, such as travel, food, or lodging. Jud.Cond.R. 3.14. Any compensation or reimbursement for expenses must be reported on a judge's annual financial disclosure statement. Jud.Cond.R. 3.15; R.C. 102.02.

Practice of Law

A full-time judge may not practice law, but may act *pro se* in personal legal matters. Jud.Cond.R. 3.10. Without compensation, a judge also may give legal advice and draft or review legal documents for a member of the judge's family. A judge may not appear in any legal forum on behalf of family.

Participation in a Documentary Film

A judge's participation in a documentary film is a permissible extrajudicial activity under certain circumstances. Adv. Op. 2021-08. A judge's official duties must take precedence and the judge must avoid any appearance that they are devoting a significant amount of time unrelated to their judicial responsibilities while participating in the documentary film. Jud. Cond.R. 2.1.

The judge must always uphold the integrity of the judiciary during filming and not engage in conduct that would call into question whether the proceedings or the judge's official actions are provided for the benefit of the documentary or are not being conducted in the regular course of court business.

During the filming of the documentary, a judge should continue to carry out the regular and ordinary functions of their judicial office and may not publicly comment on pending or impending matters in their court. Jud. Cond.R. 2.10(A). In order to avoid an abuse of the prestige of office to advance the economic interest of another, judges should only consider participation in nonprofit documentaries. Jud. Cond.R. 1.3.

Lastly, judges cannot accept compensation for participation in a documentary film. Additional compensation to the judge for performing official duties constitutes supplemental income prohibited by R.C. 2921.43. The statutory prohibition against the receipt of supplemental income also applies to court personnel.

Use of Social Media

Judges may engage in the use of social media in their personal or professional capacities subject to their obligations in the Code of Judicial Conduct. It is generally permissible for judges to like, friend, or follow other users of social media platforms.

However, a judge should be cognizant of the fact that their comments and posts on social media can be viewed by a multitude of persons both known and unknown to the judge. Whether or not a judge reveals through a social media platform that they are a judicial officer, the judge should proceed under the assumption that others may be able to identify them as a judicial officer. A judge should always be aware of the contents of their social media page or profile, be familiar with the platform's policies and privacy controls, and be prudent in all interactions with others on a social media platform. Adv. Op. 2010-07; *Disciplinary Counsel v. Berry*, 2021-Ohio-3864.

All social media applications permit the user to communicate publicly or privately (through direct messaging) with other users. When making public comment on another user's social media post or page and even when direct messaging a user, a judge should always be mindful of the obligation to uphold the public's confidence in the judiciary and maintain the independence, integrity, and impartiality of the judiciary.

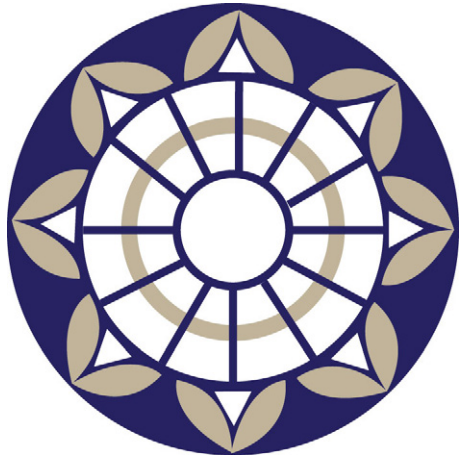
Moreover, a judge should refrain from engaging in *ex parte* communications with lawyers and parties or discuss pending or impending cases through social media. Jud. Cond.R. 2.9 (*ex parte* communications), *Disciplinary Counsel v. Winters*, Slip Opinion No. 2021-Ohio-2753. A judge also must refrain from reviewing the social media accounts of parties and witnesses appearing in pending cases. Jud. Cond.R. 2.9(C); Adv. Op. 2010-07.

Expressing Views on Political Issues

A judge may make statements or announcements concerning their personal views on legal, political, or other issues, but must avoid making pledges, promises, or commitments or making statements that would impair the fairness of a pending matter in any court in the United States or its territories. Jud. Cond.R. 4.1(A)(5)-(6), cmt.[10].

A judge's personal views cannot interfere with official judicial duties, lead to frequent disqualification, or undermine a judge's independence, integrity, or impartiality. For example, the Board has opined that a judge may publicly comment on a merit selection plan for judges since the issue relates to the law, the legal system, and the administration of justice. Adv. Op. 87-044.

In support of opposition of such a measure, a judge may engage in a broad range of methods of communicating their views, including letters to the editor, radio and television talk show appearances, panel presentations, meeting with executive and legislative branch officials, and contributing personal funds to coalitions seeking or opposing adoption of the proposed legislation. Adv. Op. 2002-03.





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