

**IDAHO JUDICIAL COUNCIL
SUMMARY OF INFORMAL ETHICS ADVISORY OPINIONS
YEAR 2013**

1.	<p>A judge asks if he can participate in a "Secret Santa" gift giving program in her problem solving court.</p> <p>ANSWER: A judge giving gifts to individuals or entities does raise concern. The primary concern arises from Canon 2 since a judge is prohibited from lending the prestige of his office to advance private interests. For example, it would be improper for a judge to publicly give money to MADD or sponsor a private organization that was involved in litigation. Anonymous gift giving avoids the appearance of impropriety. Here the gift of a small gift to problem solving court participants in an anonymous fashion is permissible.</p>
2.	<p>A judge has received an unsolicited, anonymous letter. Utilizing proper screening techniques, the letter was first reviewed by the judge's clerk who informed the judge that it was anonymous and had to do with a family court issue. The judge calls, wondering what he should do with the letter.</p> <p>ANSWER: The judge was advised not to read the letter because, most likely, it would be a prohibited ex parte communication. He was advised to keep the letter and any others received, in a file marked "letters received but not read". He should make a notation on the envelope that he has not read the letter. By filing the letter and keeping the same, the judge would be able to provide evidence, if the need arises, that the correspondence did not influence him in any fashion. Here the letter did not contain any indication that it was about a crime or involved a dangerous situation.</p>
3.	<p>A judge handled a sentencing wherein there was a plea agreement between prosecution and defense. After the sentencing, the judge became aware that the victim in the case was the husband of a court employee within the district. The judge wonders what he should do about this appearance of impropriety/conflict.</p> <p>ANSWER: The judge was advised to allow the defendant to either withdraw his plea or be re-sentenced in front of another out of district judge. The conflict arises from the fact that the victim in the case is the husband of a courthouse employee and handling cases involving coworkers and or the family of coworkers is impermissible. Additionally the criminal case should be transferred out of district in any event because there is a likelihood there may be upcoming criminal motions such as probation violations, etc. associated with the case that should be handled by an out of district judge.</p>
4.	<p>A senior judge wonders if he can ethically make a presentation on insurance law topics to attorneys in a law firm. The judge has been requested by the law firm members to make the presentation. Is this senior district judge allowed to teach an in-house CLE?</p> <p>ANSWER: Canon 4B allows a judge to speak, write, lecture and teach in an extra judicial capacity concerning the law. Note that the answer would be different if the presentation was only given to prosecutors. Such a presentation may reasonably give rise to a perception that the judge is aligned with prosecution interests. If in doubt, err on the side of caution and invite all members of the bar to attend your presentation.</p>
5.	<p>The judge advises that a private attorney wants to meet and talk with him concerning a potential suit</p>

	<p>that the attorney's client may have against a governmental entity. Can the judge attend this meeting with the attorney?</p> <p>ANSWER: No. Having such a conversation would be an impermissible ex parte contact involving a impending suit. Additionally, the judge would be allowing the prestige of his office to advance the private interests of another. Lastly, the judge may find his statements to the lawyer in the complaint or subject to discovery.</p>
6.	<p>A judge wants to know if he can attend a public forum and assist the presenters in answering legal questions about a federal government program. The judge advises that he is uncomfortable putting himself in a public forum and answering legal questions about issues that may come before the bench.</p> <p>ANSWER: Answering questions in public with respect to public issues is viewed by the public as a form of "pre-judging" the matters. Announcements made by a judge on public issues can impact the judge if a case involving the issue is brought before him. One judge's comments can also impact another judge who may have to decide the matter. Further, one never knows how responses made in a public setting may be construed or may be set forth in a 'letter to the editor'. Both judicial integrity and independence are impaired by public announcements on public issues.</p>
7.	<p>A judge called stating that another judge from another state has called him requesting he speak with the out of state judge concerning a matter that has been transferred out of state and is now pending before the out of state judge. The judge is uncomfortable but not sure exactly why; he is hesitant to return the phone call.</p> <p>ANSWER: Conversations with anyone about the merits or substance of a proceeding are viewed as ex parte communications. While there is an exception to the ex parte communication rule for conversations between judges, 3B(t)(c). The Idaho judge was advised that this telephone conversation should be on the record and the parties to the proceedings should be present when the phone conference occurs. Note: judges may still discuss legal issues amongst themselves but they must avoid disclosing case identifies.</p>
8.	<p>A judge has been asked to be interviewed for a magazine with respect to his college education and attendance at a local university. The judge is hesitant given that he is likely to be asked how the university prepared him for a career in the law and as a judge. He is hesitant because he does not want to be regarded as using his office to endorse the university.</p> <p>ANSWER: A fine line here. Judges must always be aware of lending the prestige of judicial office in support of the private interests. The judge was advised that it is permissible to take part in the interview but that he should be accurate, and not effusive, concerning the quality of his education. Additionally, he should review the article before publication so that he can evaluate whether or not he has lent the prestige of his office to the private entity.</p>
9.	<p>A judge calls advising that he is invited to a fundraiser breakfast for a shelter care facility. Can he attend?</p> <p>ANSWER: The judge can attend the fundraiser, but the judge cannot solicit funds for the organization. Solicitation by judges involve the danger that the person solicited will feel obligated to respond favorably to the solicitor. Further, a judge must not be a speaker, master of ceremony or guest of honor at any fundraising event. Lastly, the fundraiser should not market the event by</p>

	identifying the judges that will attend.
10.	<p>A judge wonders whether or not it will be permissible to meet with attorneys in a social setting such as a "coffee hour" to foster a better relationship between the bench and Bar.</p> <p>ANSWER: Yes. Judges' attendance at a social event is permitted if all members of the Bar are invited, and there is no discussion of any cases or issues. Note that Canon 4D(5) allows a judge to accept a gift of "ordinary social hospitality". Thus, a judge may properly accept a cup of coffee from an attendee. Canon 3B(7) prohibits judges attending events from discussing pending or impending matters, Canon 3B(9) prohibits a judge from making public comments that may interfere with a fair trial or hearing, Canon 3B(11) prohibits a judge from making non-public information available to others, and Canon 4A requires a judge conduct all the extra-judicial activities in a manner that they do not cast doubt on the judge's capacity to act impartially or interfere with his proper performance of judicial duties. Here the judges complied with these Canons.</p>
11.	<p>A judge has been asked to endorse a grant application for a treatment program in a specialty court. The judge is concerned that any letter he writes would give the appearance of partiality to certain treatment care facilities.</p> <p>ANSWER: The protocol in Idaho with respect to grant applications is to route them to the trial court administrator and not endorse any grant applications personally.</p>
12.	<p>A judge calls wondering if he is biased against an attorney when he holds the attorney in low professional regard because of his poor litigation skills. The judge wonders if he should disqualify himself in future proceedings involving this attorney.</p> <p>ANSWER: Upon discussions with the judge, it was learned that the judge is not prejudiced as he has not formed preconceived notions about the merits of this attorney's cases. It also appears the judge is not biased against the attorney or the individuals he represents. Every day before a judge there will be attorneys with different skill levels and skill sets. This by itself should not raise issues related to bias or prejudice. Rather the judge should focus upon the case merits and facts rather than the style or skill of presentation.</p>
13.	<p>A judge asks if he can sit on a committee having to do with domestic and sexual violence.</p> <p>ANSWER: Such activity would be permitted by Canon 4C(3) if done without casting reasonable doubt upon the judge's ability to act impartially in domestic violence cases. Here, the judge's membership could be seen as implying a commitment to a organization and the principals that it advocates. Upon further inquiry, it was discovered that this particular group is a pro law enforcement advocacy organization. Thus the judge's involvement would unfairly cast him as being a member of the law enforcement community rather than the one who should have no allegiances and is only interested in the impartial application of the law. The judge should not be a member of this particular committee.</p>
14.	<p>A judge has been requested to appear as a "citizen's law academy" and present on "the defense point of view". He wonders if it is permissible for him to attend and present on this issue.</p> <p>ANSWER: A judge should avoid aligning himself with a particular advocacy position such as the defense bar. It was suggested that perhaps a local defense attorney might be a more appropriate speaker at this event.</p>

15.	<p>A judge made the statement on the record that one set of parents were "bad parents". Is this an ethical violation?</p> <p>ANSWER: Canon 3B requires that a judge be patient, dignified and courteous to all parties, witnesses and spectators in a courtroom. A judge should be efficient and businesslike while at the same time being patient, deliberative and dignified. Yes, the comment (label) appears to be uncalled for and shows a lack of courtesy to the parents.</p>
16.	<p>A private corporation was awarded a contract to administer one of the State of Idaho's governmental programs. This private corporation created an advisory board to provide representation and feedback to corporate staff on how the program operates. Can a judge participate?</p> <p>ANSWER: The advisory board is actually a private corporate board. Canon 4D(3) prevents judicial involvement in this situation. Canon 4D(3) contains a flat out prohibition against judges acting as officers, directors, managers, advisers, employees of any private business entity save those closely connected to the judge's family. This is one of the few, per se, prescriptions on off the bench activities in the Code. Note that no consideration is given whatsoever to the scope of the judge's involvement, the nature of the enterprise, the form of its organization, or even the location that might be well beyond the judge's jurisdiction.</p>
17.	<p>A judge has been asked to moderate a "candidate forum" at the high school. Can the judge help out in this way?</p> <p>ANSWER: No. Four Canons restrict such political involvement by the judiciary. See, Canon 4B, 4C, 5A and 5D.</p>
18.	<p>A magistrate position has opened and one of the candidates wants to be able to list the judge as a reference and has requested that the judge write a letter of recommendation to the Commission. Is the judge allowed to do this?</p> <p>ANSWER: Yes, the judge is allowed to write the letter if he has known the applicant a sufficient length of time and is knowledgeable concerning his abilities. This letter can be written on judicial letterhead but must state that it is a "confidential recommendation". Use of judicial letterhead has been restricted in the past with respect to letters of reference or support. After review, the Idaho Judicial Council has decided to allow judicial letterhead.</p>
19.	<p>A judge asks if it is proper for him to write to request a grant for his drug court in which he presides. Noting that a judge cannot "endorse" other types of grants or community grants, the judge asks can he endorse a grant for his drug court?</p> <p>ANSWER: One can always lend to the prestige of judicial office to your own court, but not outside public or private interests. Again, the ADJ should handle the grant request.</p>
20.	<p>A judge wants to write a party invitation for a fundraiser on behalf of the problem-solving court. Is this permissible?</p> <p>ANSWER: No. Canon 4C(3) states a judge shall not personally participate in solicitation of funds. A letter from the judge is a personal solicitation.</p>

21.	<p>A judge is being called by the newspaper regarding an old case that he once presided over. Can he talk to the newspaper about the old case?</p> <p>ANSWER: Guardedly yes. This does not appear to be a situation involving improper ex parte contact; the old case is neither pending nor impending. The judge is always able to make a public statement about his official duties and to explain public information and procedures used in court. Obviously any statements made should not cast doubt on the judge's capacity to act impartially. The judge must be very cautious in any conversations with news media about his old cases.</p>
22.	<p>A judge asks if he is always required to disqualify himself with respect to his personal attorney who represented him in a matter some years previously.</p> <p>ANSWER: The safest and best answer is "yes". Any other artificial distinctions such as the number of years previously the attorney represented the judge, the type of case that the attorney represented the judge on, the frequency upon which the attorney appears in front of the judge, etc. offer only abstract issues for analysis. The key is the appearance of impropriety. One would think that a judge, having selected this attorney based upon the attorney's skill and trustworthiness, should not preside in any cases where the attorney ever may appear since he is biased in favor of this lawyer.</p>
23.	<p>Can a district court staff attorney or law clerk undertake paid legal research on a writing project for a private attorney firm?</p> <p>ANSWER: No. The Idaho Code of Judicial Conduct prohibits every judicial employee, including law clerks, from practicing law except for themselves/family or in a pro bono capacity. Please see Canon 4G. The concept is that a law clerk must only have one employer. By having one employer, all the conflicts that might come from performing outside legal work are prevented.</p>
24.	<p>A group called "Relatives Being Parents" asked if there is a magistrate judge who would be willing to sit on a panel and discuss the legal rights of rights of relatives who serve as parents. Is this permissible?</p> <p>ANSWER: Yes. A judge is always able to speak to the public or to groups on legal issues. The only restrictions on this approval relate to: (a) the exclusion of certain members of the public and (b) the alignment of the judicial officer with advocacy groups. Judges should always avoid voicing personal opinions on controversial or political topics. They should focus strictly on legal requirements. It would not be good to see an inflammatory quote from a judge (taken out of context), on the front page of the paper.</p>
25.	<p>A judge's wife receives a letter from a law firm offering the judge's wife a position with the firm. The next week the law firm appears in front of the judge on a major piece of litigation. What should the judge do?</p> <p>ANSWER: In order to avoid all appearance of impropriety, the judge should disclose the fact that his wife received an employment solicitation from the law firm. In this instance, it is proper to allow both sides to voice an opinion on whether the judge should recuse himself. Obviously in the event the judge's wife accepted employment with the firm, the judge would be disqualified from cases in which any firm members appeared.</p>
26.	<p>A judge has an ex-client who contacted the judge and asked if the judge would act as the personal</p>

	<p>representative of her will when she passes. The judge feels obligated to assist as she has been a good friend for almost 30 years. He further advises that it may be a contested proceeding and that he wrote the will. He advises that it is unlikely that acting as the personal representative would interfere with any other case he would be handling.</p> <p>ANSWER: No. The Canons restrict any judge from acting as a lawyer with respect to any non-family individual. With respect to voluntarily agreeing to become involved in a contested will proceeding . . . not a good decision.</p>
27.	<p>A judge advises that he is going to be "arrested" and taken to "jail" where he is to call friends and family and fellow citizens to solicit funds to enable to get his release. The judge asks if he decides to leave town and avoid the "subpoena", will he get in trouble with the Judicial Council?</p> <p>ANSWER: No, please leave town. As always, a judge may not personally participate in fundraising or lend his name or title to the effort. The judge was advised to contact the organizers and advise them that he cannot participate.</p>
28.	<p>A judge wonders whether it would be permissible to appear before the school district trustees regarding school programs that affect his son.</p> <p>ANSWER: The appearance and public testimony are approved activities under the Canons if, (1) the comments made will not "cast responsible doubt" on the judge's capacity to act impartially as a judge; (2) the judge avoids using his title so as not to "lend the prestige of judicial office to a private matter", and (3) he advises those in attendance that he is there solely in a personal capacity as a father of a child within the school district.</p>
29.	<p>A judge wonders whether he can participate in and accept a stipend for advisory work in conjunction with serving as an advisory member of a private foundation.</p> <p>ANSWER: Upon inquiry it appears that performance of work related to the association will not cast doubt on the judge's capacity to act impartially or interfere with the performance of his judicial duties. The association is not an advocacy group and has not been in any court proceedings. Secondly, the foundation is not a governmental entity. Therefore the restrictions of Canon 4C(1-2) do not apply. Canon 4C(3) allows a judge to serve as a non-legal advisor to an educational organization such as this association. With respect to the stipend, Canon 4H is applicable and allows the judge to accept the money. Finally, the compensation is reasonable since the expense reimbursement is limited to the actual cost of travel, food and lodging.</p>
30.	<p>An ADJ calls asking whether his court administrative orders with respect to misdemeanor probation are "department policies". Idaho Code 31-878 requires that the Board of County Commissioners provide for misdemeanor probation services and perform such functions as prescribed by the administrative district judge in each judicial district. It is permissible for the ADJ to set policy for another governmental entity?</p> <p>ANSWER: Yes. The Canons allow a judge to do anything is "allowed by statute". The statute seems to state that setting policy is implicit in determining the "function" of the misdemeanor probation officers.</p>
31.	<p>A judge's law clerk has entered private employment. The law clerk, while in private employment, then appears in front of the judge she previously worked for. What should the judge do?</p>

	<p>ANSWER: A reasonable person knowing of the situation would see a conflict because of the trust the judge placed in that law clerk during her employment. A reasonable person would think that the judge would be biased in favor of his former law clerk. The judge should disqualify.</p>
32.	<p>A judge has been subpoenaed by a criminal defense attorney regarding the judge's reasoning in granting a particular search warrant. What should the judge do?</p> <p>ANSWER: A number of valid reasons are advanced for disallowing judges from becoming witnesses. There is a risk of prejudice to the non-calling party, and Idaho Rule of Evidence 403 precludes admission of evidence that might be prejudicial. <i>See, Fuller v. Walters</i>, 119 Idaho 415(1991). That aside, the deliberative process privilege will prevent a judge from being examined upon in his mental reasoning in reaching a decision. The decision of whether or not to grant a search warrant falls directly within this ambit. Any judge served with a subpoena should immediately contact Michael Henderson who will arrange representation from the Attorney General's Office. As is usual in these cases, a motion to quash will be filed by the AG's office.</p>
33.	<p>A judge wonders if he can hire a campaign manager who is also a high-ranking partisan political campaign employee.</p> <p>ANSWER: No. The Canons restrict judicial candidates from being involved in partisan politics, from taking any action that suggests their candidacy is endorsed by a political party or suggests that the judicial candidate has access to resources of the political party.</p>
34.	<p>A judge calls and asks if it is permissible to hire an attorney to be his campaign manager.</p> <p>ANSWER: Yes, but be prepared to disqualify on all the attorney's cases for the rest of your judicial career.</p>
35.	<p>A senior judge wonders if he can accept employment as a hearing officer for a state agency?</p> <p>ANSWER: No. Idaho Code § 1-2005(7) prohibits a senior judge from being employed by any other branch of government other than the judicial branch.</p>