

**IDAHO JUDICIAL COUNCIL
SUMMARY OF INFORMAL ETHICS ADVISORY OPINIONS
YEAR 2016**

revised: 12/30/16

1.	<p>A judge is married to a person involved in an automobile accident with injuries. The other party received citations and the question is whether the judge has to let the criminal court judge know of the relationship.</p> <p>ANSWER: No. If there is a problem it is for the criminal judge and counsel to solve.</p>
2.	<p>Two years ago a Magistrate was handling a very hotly contested child custody case. Father was pro se, Mother had counsel. After two days the judge gives oral decision and puts it on the record and gives custody to the mother. On Monday the bailiff tells the judge that a parenting counselor whom he knows, needs to talk to him. In front of the bailiff, the counselor tells the judge that he did not have all of the evidence and there is some important information that did not come out. The judge immediately tells her he cannot hear anything and has her ushered out. The judge then calls the prior Executive Director of Idaho Judicial Council who tells him he has to withdraw. The judge calls for an immediate hearing which is recorded and heard by this writer. He advised the parties as to what happened, does not change his ruling and withdraws. The parenting counselor, it turns out, knows the pro se father.</p> <p>Now 2 years later the mother, who gained custody, writes the judge and wants the name of the person making the ex parte statement. What should he do.</p> <p>ANSWER: Nothing. Do not respond and if she writes or calls the judge should direct her to Idaho Judicial Council.</p>
3.	<p>A Magistrate is handling a very contentious divorce with 5 children involved. He has had to make several decisions involving custody and visitation. Both parties have counsel who also seem to be personally involved. Counsel for the wife just filed a motion to disqualify for cause and he wanted some help as to what to do.</p> <p>ANSWER: The answer is easy. Do not disqualify yourself if there is no cause. Rule 3(E) requires disqualification when impartiality is questioned and that does not seem to be the case from the facts divulged.</p>
4.	<p>A judge has been contacted by a legislator who has an interest in putting a provision in I.C. 40-208 dealing with Judicial Review of road decisions. The focal point is when a Board of County Commissioners (BOCC) (or the County) is a party and the judge assigned to the case is a judge resident in that same county. The intended amendment would provide that either party to a proceeding may request in writing that a judge who resides outside the county where the subject road or property is located be appointed to hear the case. Without getting into a long explanation, the party disqualification rules do not adequately cover all the possibilities based upon prior experiences. And of course, a more fundamental question is whether the judge should self DQ.</p> <p>Local BOCC's provide a significant portion of funds to run the local courts and local judges</p>

	<p>frequently have close interactions with BOCCs on any number of matters, including of importance, appearing at annual budget hearings for the District Courts. Some years back, I was present where discussions were had regarding what a local judge should do in circumstances where the local BOCC was a party. I know some judges who believe they should not hear such cases and promptly get out on their own volition. Clearly, in other cases, some judges don't see it the same way. The question is whether the Idaho Judicial Council ever issued either a formal or informal opinion in this respect?</p> <p>ANSWER: At this point, we don't need to discuss this further because the Executive Director already sent the response back to the Legislator. I don't think it is the downside of bringing in the judge from outside the county (except fiscal impact); what we were trying to be sensitive to is IF we already had a Judicial Council opinion that discussed this, it might obviate the need to put something in a statute. After speaking with one of the Justices, there is some concern about the legislature starting to put in statute matters about judge assignments.</p>
5.	<p>A judge has an old client that has named him as Co-Trustee on her and her husband's Trust. The husband has passed away and the Trust is now irrevocable. The wife wants the judge to continue as Trustee. The judge told her that he would love to do that but does not think he is allowed to do that as a judge. Is it permissible?</p> <p>ANSWER: Rule 4(e)(1) prohibits this.</p>
6.	<p>A magistrate judge handles a calendar that is assigned ½ misdemeanor criminal cases and ½ civil child protection cases. The judge had asked the former Executive Director about serving on the Diocesan Review Board for Sexual Abuse of Minors which is a confidential, consultative body which will review complaints of sexual abuse by priests, deacons, employees and volunteers of the Diocese of Boise and make recommendations to the Bishop.</p> <p>The judge was told "there is no direct prohibition on your service under the Code. That said, you would have to be very careful in avoiding any apparent or actual conflicts with parties, witnesses, etc. that are referenced in the church context. Also, you are a mandatory reporter under Idaho law. That will cause to refer every Church related case I would think. This aspect probably should be discussed with them. This is pretty close to the line."</p> <p>In the spring last year, the judge agreed to serve on this board (because she was advised that there was no direct prohibition under the judicial code of ethics). The judge was also mindful of the potential areas that the former Executive Director referred to that the judge may have to deal with. It should be noted that this board and its members are also mandatory reporters and therefore the portion of your opinion regarding that does not present an issue because by the time the board is notified of a potential problem, the church official who received the report has already notified law enforcement per their by-laws, polices and procedures.</p> <p>Also, with regard to the complaints that come before the board, the judge perceived that if a conflict did present itself she could identify it and remove herself from participating on the board for that complaint or disqualify myself from the legal case if necessary. Over the past 9 months or so, there has only been one person that the board was informed about and it did not require the Board to act or respond and it did not involve any legal case assigned to me.</p> <p>The judge is seeking clarification and her questions are: Is participation on this board precluded?</p>

	<p>Has the judge's participation up to this point considered an ethical violation? Should the judge resign from the Diocesan Review Board?</p> <p>ANSWER: The Executive Director cannot find the former Executive Director's response in the past published opinions but he believes the former Executive Director's response was incorrect and believes the safer course is to not serve on the board.</p>
7.	<p>A magistrate judge, during an arraignment, had a defendant indicate that he had retained counsel and that attorney is a member of the Judicial Council. Should the judge recuse himself? Should he at least plan to disclose the association to the prosecutor? The judge's only connect with the attorney is through the Judicial Council.</p> <p>ANSWER: This is a tough question. Either the judge has to recuse himself or the attorney disqualifies the judge. When the attorney appears, a meeting with he and the prosecutor would be in order. It would feel very uncomfortable with the situation otherwise.</p>
8.	<p>A Judge wanted to know what to do about a defendant in his courtroom who served him with a subpoena asking for his malpractice information.</p> <p>ANSWER: The judge was told he has absolute immunity and to quash the subpoena.</p>
9.	<p>A judge was contacted by an organization to become a director. The organization's goal is to provide services and alternatives to at risk youth through an education program, job skills and mentoring activities. Part of the requirements of a director is to solicit funds.</p> <p>ANSWER: There are two references available. The first is Canon 4C (3) which has to be read in it's entirety because it details how far a judge can go to help worthy groups. Summarily however the judge cannot assist in fund raising by use of his official capacity as a judge. If his name is on the letterhead or some similar document he should not put judge by his name. He can give advice as long as it does not involve anyone in the legal system. Also, refer to 2015 informal opinion #30 which somewhat discusses this issue.</p>
10.	<p>Prosecuting Attorney wants to know if he can run for his office again and at the same time declare his candidacy for a judicial position.</p> <p>ANSWER: He cannot. Canon 5 commentary allows him to declare for a judicial office when he is in office. However if he declares for his office in the next election he has to state his party affiliation which makes that job partisan. He would then be vying for a partisan job and a non partisan job i.e. the judicial vacancy at the same time.</p>
11.	<p>Attorney running for ISB commissioner wants to know if she can ask two previous employers who are now senior district court judges to sign her nominating petition.</p> <p>ANSWER: Canon 2 prohibits a judge from using the prestige of his office to advance the interests of others. The commentary allows judges to write recommendations on certain occasions but this is a contested election and the Canon would probably not allow this. Upon further conversation the applicant agreed that she wanted the names for prestige and further agreed she had sufficient names on the petition already. She can ask for their votes. Neither judge inquired of the Council.</p>
12.	<p>A magistrate has a distant relative who has applied for drug court. The magistrate shares drug court</p>

	<p>with another magistrate. The question arises as to what to do with the applicant. There are no other programs available and no other magistrate to take her place.</p> <p>ANSWER: Magistrate was advised to have no ex parte communication with the applicant nor with any member of her family. If a problem arises that requires sanctions it is to be left to the other magistrate with no input whatsoever.</p>
13.	<p>Three judges, who handle child protection cases, have been asked to attend a fundraising event. They need to know if they can attend.</p> <p>ANSWER: This is obviously governed by Canon 4C. The concern is that the invitation suggests that it is a fund raiser and that a judge cannot attend. They cannot list you as a guest of honor either. If you just go and sit ,perhaps there is no problem but when the public sees a judge at an event such as this they often times think differently than they would of the general public.</p>
14.	<p>A senior judge wants to know if he can write a letter of support for a long time friend who is guilty of DUI.</p> <p>ANSWER: Canon 2(B) prohibits a judge, senior or not, from lending the prestige of his office to advance the private interests of others. He can attend the sentencing but must not speak or make his relationship known.</p>
15.	<p>A law clerk for a District Judge says that she has been approached with two opportunities, one which involves pro bono legal work for the Board of Community Guardians - it is her understanding that these appointments usually are made through the Idaho Volunteer Legal Program. The second is volunteering for a citizen review panel - the Keeping Children Safe Panel, through the Idaho Department of Health and Welfare and does not involve legal representation, but may have some overlap with the judicial system. This is a citizen panel that reviews and makes recommendations to the annual Children and Family Services Comprehensive Plan, feedback for Federal Improvement and Regional Improvement Plans, observe and review decision-making for permanency of children in care, and participate in six and twelve month case reviews. The panel also participates in the child fatality review process.</p> <p>This would also lead her to ask whether judicial employees can volunteer for CASA (in Idaho or Washington) as her daughter is adopted from foster care. She wants to know if she can participate in these activities, on her own time, as contemplated by the judicial canons.</p> <p>ANSWER: The answers to your questions are under Canon 4(G). If not please take a minute and do so. As to your first two questions I have to admit I am not familiar with them but they seem to be okay. If potential problems arise call the Judicial Council right away.</p> <p>CASA is a different story however. Unfortunately the court system becomes involved many times and as you know those cases become contentious . I believe for your sake you should refrain for the time being. It doesn't matter which state. It's the perception of having a law clerk for a judge involved in litigation. It then will be using the prestige of his office even though her intentions are the best.</p>
16.	<p>A judge was asked by the Inns of Court to moderate the Idaho Supreme Court forum at the meeting. As the judge recalls from a previous mayor/city council race when he was asked to moderate, he was advised not to do so. Do the same rules apply? Is it best to decline?</p>

	<p>ANSWER: Inns of Court is all lawyers so everyone knows everyone - seems that being a moderator is, in theory, a neutral position but also there are events where moderator can project an appearance of a preference amongst candidates in the questions. Suggest that the judge politely decline just to avoid any possibility arising of showing a preference during the debate. Don't necessarily see that there is an outright absolute ban but better to be cautious.</p>
17.	<p>A newly appointed magistrate is married to a lawyer who is part of a law firm. This county does not have specialized courts, rather cases are assigned on a rotating basis. The magistrate wants to know how to handle this.</p> <p>ANSWER: Canon 3(E) is involved and obviously the answer is that the magistrate has to disqualify when the spouse is involved. The real question involves the lawyers partners and associates. The commentary suggests there does not have to be automatic disqualification. The best course to follow is to let all parties know of the situation and let them make the decision as to what to do. Even if the magistrate believes he or she can be impartial the disclosure should be made.</p>
18.	<p>District Judge wants to know if he can serve as Personal Representative of a close friend's estate.</p> <p>ANSWER: Canon 4(E)(1) specifically prohibits this.</p>
19.	<p>District Judge asks one of our mental health court graduates, while still on probation, got a DUI. The judge had her probation violation a few weeks ago. She admitted the violation. The facts of the DUI were not overly concerning, and the judge kept her on probation. She asked the judge for a letter of recommendation to the magistrate who is assigned to her misdemeanor DUI. Can the District Judge write a letter to that judge, copy both counsel, setting forth the judge's knowledge of this person while in mental health court, setting forth my disposition and why? The judge thinks what she is really hoping for is a withheld which she might be entitled?</p> <p>ANSWER: Any letter is prohibited, especially from a District court judge to a Magistrate. This is an attempt to use the prestige of your office for her benefit.</p>
20.	<p>In past years an attorney has helped facilitate and arrange a tour of the Idaho National Lab (INL) for many community leaders in Eastern Idaho. He has inquired if he could arrange a separate tour for the 7th District's 19 judges and their spouses. Judges and their spouse would meet for a brief orientation, followed by a formal presentation by an INL Tour Guide, and visits to some other site activities. The purpose of the tour is purely educational. They are not aware of any cases pending that involve the INL in the 7th Judicial District, or any of the site contractors. Is there any reason the judges should not accept this invitation to tour the INL?</p> <p>ANSWER: This does not violate the Canons although I'm not sure it does anything to advance the judicial system.</p>
21.	<p>A judge wants to know if he can participate in a wellness challenge from Blue Cross of Idaho that has the following language: "Please note: By signing up for this challenge, you agree to have your name posted on the WellConnected Wellness site if you are a winner."</p> <p>ANSWER: This is the first informal opinion involving the 2007 Code. It appears that Canons 1.3 and 3.1 are at issue. Neither would prohibit the participation as long as the person does not identify himself as a judge.</p>

22.	<p>A magistrate's spouse is applying for a job as a public defender. The question is when disqualification is required.</p> <p>ANSWER: Obviously when the spouse is scheduled to appear before the magistrate disqualification must take place. What about other members of the public defender office? This is covered under Canon 2.11 of the 2007 Code and the commentary. Disqualification is not mandatory but everyone must be aware of the potential for problems. Situations such as perhaps the magistrate and the attorney involved are very close personal friends. When potential problems arise the magistrate should let all parties know and let them make the decision.</p>
23.	<p>The judge asked if it was appropriate to hear a preliminary hearing on a local attorney who had received a DUI or should the judge disqualify.</p> <p>(JPH) ANSWER: Discussed Code of Judicial Conduct Canons 2.11 and 2.2 and the fact that the judge does not know the attorney charged with DUI personally and that the attorney has only appeared before the judge once in his tenure as a magistrate. Came to the conclusion that the judge has no actual bias for or against this attorney and that the judge's impartiality cannot reasonably be questioned given the circumstances. Given these facts disqualification is not required.</p>
24.	<p>Can the judge write a letter of recommendation for a judicial candidate on his court letterhead?</p> <p>(TR) ANSWER: Canon 1.3 of the new Code allows this but cautioned the use of recommendations for attorneys that regularly appear before the judge as the recommendation may require disclosure.</p>
25.	<p>Judge's question is whether he can write a letter in support of an application to the Idaho Supreme Court by a person who narrowly flunked the bar exam. Apparently, the bar has a mechanism by which an appeal can be made to ISC. This person was a limited license public defender that frequently appeared before the judge.</p> <p>(TR) ANSWER: Advised the judge that I found Comment (3) to Canon 1, 1.3 allows reference letters based upon the judge's personal knowledge. My opinion expressed to him was that it was okay to write this letter. Since it goes to ISC, I don't see this as an attempt to exert pressure upon that body of justices. Only to give them information relevant to there consideration of the appeal.</p>
26.	<p>The judge has been asked to be on a three judge panel at one of the law college's dessert contest for charity to taste and score the dessert entries. The proceeds of the event will be given to charity, most likely Soundstart. And to also possibly attempt to recruit a couple of other judges to join. Can the judge accept the invitation to judge the desserts?</p> <p>ANSWER: Advised the judge to decline. While basically harmless it just doesn't seem like an event that comports with the canons.</p>
27.	<p>Can a judge give letter of recommendation to a former law clerk who wants a legal position in another county?</p> <p>ANSWER: Yes. the 2007 Canons answers this very popular question in Canon 1.3 comment 3. You may in most cases use your letterhead.</p>

28.	<p>The question is about name and position on a letterhead seeking attendance and gift giving for a new building. The letter concerns a class reunion. The question involves Canon 3.7 and commentary. No problem seeking attendance.</p> <p>ANSWER: The real issue is the request for donations for a new building. While not crystal clear on this problem it is not a good idea. Requests for help in seeking donations is a question that has come to the council quite often. Most often the request is made to take advantage of the judge's position. Requests of this sort should be thought through and a careful reading of Canon 3.7 and it's commentary can usually provide the answer. If it does not ask for guidance.</p>
29.	<p>Can a judge sit on a panel to interview applicants for a Deputy Prosecutor position?</p> <p>ANSWER: The 2007 Canons do not prohibit sitting on the panel.</p>
30.	<p>A judge who had taken a matter under advisement and was prepared to render a decision orally on the record with the parties and their attorneys. However, at the hearing, the attorneys submitted new affidavits for consideration. The judge was concerned that he signed a salary affidavit over 30 days after he originally announced he was taking the matter under advisement, but less than 30 days after the new submissions. The judge was concerned that he did not formally state for the record he was taking the matter under advisement as of the date of the new submissions.</p> <p>(TR) ANSWER: When the new submissions were submitted that clearly is when the time begins for taking the matter under advisement. There is no formal requirement that it be so stated on the record, although it is probably a good practice.</p>
31.	<p>A judge wondered whether a self-report was needed for a circumstance in which the judge announced on the record that a matter was being taken under advisement when the record also reflected that there were still some submissions due from the attorneys. The question was whether the 30 days ran from the date the judge stated it was taken under advisement or from the date that the additional submissions were submitted.</p> <p>(TR) ANSWER: The 30 day period begins when all submissions are in. The language of the salary affidavit states "there is not in my hands any matter in controversy not decided by me which has finally been submitted for my consideration".</p>