



22nd National College on Judicial Conduct and Ethics
October 26-28, 2011 – Wyndham Chicago

PROGRAM SCHEDULE

Wednesday October 26

2:00 p.m. to 7:00 p.m. Registration
5:30 p.m. to 7:00 p.m. Reception

Thursday October 27

8:00 a.m. to 5:00 p.m. Registration

8:30 a.m. - 10:00 a.m. Plenary Session

**A Conversation about Judicial Disqualification:
Reasonable People Discuss Impartiality**

Several recent high profile state and federal cases have attracted national attention to the challenges of ensuring the public that judicial decisions are being made by impartial judges, with increasing interest in how a disqualification determination will be made and who will make it. With help from the audience, the panelists for this session will consider a wide range of issues, such as, whether judges should be required to explain their disqualification decisions, whether motions to disqualify should be transferred to another judge, when campaign contributions should result in disqualification, whether there is a duty to sit, and, for purposes of the appearance of impartiality standard, who is a reasonable person and what does he or she know. **Facilitators:** Richard E. Flamm, Law Offices of Richard E. Flamm, Berkeley, California; Author, *Judicial Disqualification: Recusal and Disqualification of Judges* • Peter D. Webster, President, American Judicature Society; Shareholder, Carlton Fields, Tallahassee • Cynthia Gray, Director, American Judicature Society Center for Judicial Ethics

10:00 a.m. – 10:30 a.m. Break

Thursday October 27 10:30 a.m. - 12:00 p.m. Break-out Sessions

Introduction to the Canons for New Members of Judicial Conduct Commissions

This session will give new members of judicial conduct commissions an overview of the ethical standards they will be enforcing and focus on those provisions that result in the most judicial discipline cases. **Facilitators:** James C. Alexander, Executive Director, Wisconsin Judicial Commission • Judge Randall L. Cole, Presiding Circuit Judge for the 9th Judicial Circuit; Member, Alabama Judicial Inquiry Commission

Judges' Personal Relationships: On-Line and Face-to-Face* (Session repeated Friday at 10:30)

There have always been friendships between judges and lawyers, and the redefinition of “friend” as a verb in social media has brought new attention to the ethical implications of those relationships. This program will address at what point a judge’s personal relationship with an attorney requires the judge to disqualify from a case in which the attorney appears, or at least to disclose the relationship, and cover the advice ethics committees have given judges to ensure that their use of new technologies does not conflict with traditional principals of judicial impartiality, integrity, and independence. **Facilitators:** Ruth Bope Dangel, Former Senior Staff Counsel, Ohio Board of Commissioners on Grievances and Discipline • Judge M. Sue Kurita, County Court at Law #6; Member, Texas State Commission on Judicial Conduct

Judicial Ethics in Problem-Solving Courts* (Session repeated Friday at 8:30)

Hundreds of special courts have been established to try a different approach to problems such as drug addiction, domestic violence, mental illness, and child neglect. This session will consider the ethical issues raised for judges when they preside in these courts where the judge’s role differs significantly from the judge’s role in traditional courts. Among the topics to be considered: ex parte communications, demeanor, fund-raising, and relationships with service providers. **Facilitators:** Judge Don Ash, 16th Judicial District; Member, Tennessee Court of the Judiciary • Judge Royal I. Hansen, Associate Presiding Judge, 3rd District Court; Member, Utah Judicial Conduct Commission

12:00 p.m. - 1:15 p.m. College luncheon

* Session will be held twice.

Thursday October 27 1:30 p.m. - 3:00 p.m. Break-out Sessions

Big Money and Judicial Elections

The U.S. Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission* *Citizens*, which lifted limits on corporate and third-party campaign spending, is already having an effect in judicial elections, particularly retention elections. This session will discuss the threat to judicial independence posed by campaign attacks funded by third-party interests and consider the interplay between *Citizens United*, the decision on disqualification in *Caperton v. A.T. Massey Coal Co.*, and the challenges to restrictions on judicial candidates following *Republican Party of Minnesota v. White*. Participants will share and develop tools judicial candidates, campaign oversight committees, and others can use to ethically and effectively respond to third-party efforts to unseat judges. **Facilitators:** Marla N. Greenstein, Executive Director, Alaska Commission on Judicial Conduct • Robert P. Cummins, The Cummins Law Firm P.C.; Chair, Illinois Supreme/Appellate Court Election Campaign Tone and Conduct

Determining the Appropriate Sanction* (Session repeated on Friday at 10:30)

Examining recent judicial discipline cases, this session will review the criteria for imposing sanctions and discuss issues such as the relevance of a judge's failure to express remorse and when removal is appropriate. Participants will "vote" on what sanctions they would have imposed in actual judicial discipline cases. **Facilitators:** Steven Scheckman, Schiff, Scheckman & White LLP; General Counsel, Ethics Review Board of the City of New Orleans • Judge James R. Wolf, First District Court of Appeal; Member, Florida Judicial Qualifications Commission

Investigating "Judge Judy:" A Judicial Discipline Case Study* (Session repeated Friday at 8:30)

In 2010, based on a recommendation by the State Commission on Judicial Conduct, the Washington Supreme Court suspended Judge Judith Eiler for five days without pay for deriding the intelligence of pro se litigants who appeared before her and rudely and impatiently interrupting them. This session will describe how the case got there -- from the initial complaints against the judge in 2004, through an agreed disposition in 2005, to renewed complaints about her conduct beginning in 2006, followed by the Commission's investigation, hearing, and findings, and then the Court's review. Procedural variations among the state commissions will be identified. **Facilitators:** Kurt Twitty, Senior Investigative Counsel, Washington State Commission on Judicial Conduct • Victoria Henley, Director-Chief Counsel, California Commission on Judicial Performance

3:00 p.m. – 3:30 p.m. Break

* Session will be held twice.

Thursday October 27 3:30 p.m. - 5:00 p.m. Break-out Sessions

The Appearance of Impropriety* (Session repeated Friday at 8:30)

This session will review the use and possible misuse of the appearance of impropriety standard in judicial ethics advisory opinions and judicial discipline decisions and debate whether the rule is unfairly vague or necessary and appropriate. **Facilitators:** Raymond J. McKoski, Retired Judge, 19th Judicial Circuit Court; Member, Illinois Judicial Ethics Committee • Robert H. Tembeckjian, Administrator and Counsel, New York State Commission on Judicial Conduct

The Line Between Legal Error and Judicial Misconduct* (Session repeated Friday at 10:30)

Although mere legal error or abuse of discretion by a judge does not constitute misconduct, “something more” can transform legal error into judicial misconduct and subject a judge to discipline for a decision that may also be subject to appeal. This session will review cases in which a finding of misconduct was based on legal error and cases in which legal error was not sanctioned to draw the line and describe the exceptions. **Facilitators:** Randall D. Roybal, Executive Director, New Mexico Judicial Standards Commission • Cynthia Gray, Director, American Judicature Society Center for Judicial Ethics

The Role of Public Members

Participants will share their experiences as public members of judicial conduct commissions and discuss what impact their perspective has on deliberations, training, and the perception of the commissions by the public and judges. **Facilitators:** Rosemary J. Corley, Member, Massachusetts Commission on Judicial Conduct; Dr. Daryl Yost, Former Member, Indiana Commission on Judicial Qualifications.

Friday October 28

Friday October 28 8:30 a.m. - 10:00 a.m. Break-out Sessions

- **The Appearance of Impropriety*** (See description Thursday at 3:30)
- **Investigating “Judge Judy:” A Judicial Discipline Case Study*** (See description Thursday at 1:30)
- **Judicial Ethics in Problem-Solving Courts*** (See description Thursday at 10:30)

10:00 a.m. – 10:30 a.m. Break

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Friday October 28 10:30 a.m. - 12:00 p.m. Break-out Sessions

- **Judges' Personal Relationships: On-Line and Face-to-Face*** (See description Thursday at 10:30)
- **Determining the Appropriate Sanction*** (See description Thursday at 1:30)
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