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The Illinois Code of Judicial Conduct and the Appearance of Impropriety

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I. INTRODUCTION

In 1987, the Illinois Supreme Court adopted the Illinois Code of Judicial Conduct (Illinois Code or Code) as a standard of professional and ethical conduct for judges throughout the state.[1] The Illinois Code is based upon the Model Code of Judicial Conduct (Model Code) that was promulgated in 1972 by the American Bar Association and that has been adopted by forty-six other states, the District of Columbia, and the federal court system.[2] Like other jurisdictions, Illinois did not adopt the Model Code verbatim.[3] Rather, the Model Code was modified where conditions specific to Illinois so dictated.[4]

The rules in the Illinois Code are both broader and, in some instances, more detailed than the rules governing the professional and ethical behavior of judges found in the Model Code. The Illinois Code consists of seven canons; this Article examines Canon 2, which requires a judge to avoid impropriety and the appearance of impropriety in all activities, as well as sections of other canons that also concern the appearance of impropriety.

II. THE APPEARANCE OF IMPROPRIETY

ILLINOIS CODE OF JUDICIAL CONDUCT

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and

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1. ILLINOIS CODE OF JUDICIAL CONDUCT, ILL. S. CT. R. 61-68, ILL. REV. STAT. ch 110A, paras. 61-68 (1989) [hereinafter ILLINOIS CODE].

2. *See* J. SHAMAN, S. LUBET & J. ALFINI, JUDICIAL CONDUCT AND ETHICS § 1.02, at 3-4 (1990) [hereinafter J. SHAMAN].

3. *Preface* to ILLINOIS CODE, *supra* note 1.

4. *Id.*

should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.[5]

A. Appearances

Canon 2 of the Illinois Code applies to both on-the-bench and off-the-bench behavior, and proscribes conduct that amounts to actual impropriety as well as conduct that gives rise to the appearance of impropriety. Obviously, the language of Canon 2, which states that a judge "should avoid the appearance of impropriety in all his activities," is very general and therefore can be applied to a wide variety of situations. However, other provisions in Canon 2, not to mention other parts of the Code that relate to the appearance of impropriety, provide more specific guidance, as do court decisions interpreting the general and the specific language of the Code.

Whether on or off the bench,[6] conduct that gives rise to an appearance of impropriety often is innocent in intent and unaccompanied by actual impropriety.[7] Conversations, statements, or activities that are innocent in intent may be perceived by others as favoring one particular interest or another. As noted in the commentary to Canon 2, judges should expect to be the subject of constant public scrutiny, and therefore they are required to accept restrictions on their conduct that might be viewed as burdensome by an ordinary citizen.[8]

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5. *Id.* Canon 2.

6. The phrase "on-the-bench conduct" is a metaphor that refers to activity taken as part of the official judicial function. While it is a useful metaphor, it should not be taken literally since some official judicial action can and does take place off the bench. For example, a settlement conference presided over by a judge in chambers is nonetheless part of the official judicial function. Also, if a judge takes a jury to view the scene of a crime, the judge is acting in his or her official capacity. Conversely, "off-the-bench conduct" refers to unofficial activities of a judge. Unofficial judicial conduct usually does not occur while a judge is literally present on the bench, but occasionally it does. *See, e.g.*, *In re* Langley, No. COJ-23 (Ala. Ct. Judiciary Oct. 4, 1988).

7. *See, e.g.*, Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 860-62 (1988); *In re* Fuchsberg, 426 N.Y.S.2d 639, 648-49 (Ct. Judiciary 1978).

8. ILLINOIS CODE, *supra* note 1, Canon 2 commentary.

In re Morgan[9] and *In re Walter*[10] are examples of off-the-bench activity that, although innocent in intent, was held to be inappropriate. In both cases, judges received fees or gratuities for officiating at marriage ceremonies.[11] The Illinois Courts Commission (Commission) found that the judges acted in good faith reliance upon former precedent and longstanding custom and usage.[12] Accordingly, there was no wilful misconduct. Nonetheless, in both cases, the Commission ruled that acceptance of a fee or gratuity for performing a marriage contravened Illinois Supreme Court rules, and therefore amounted to conduct that was prejudicial to the administration of justice and tended to bring the judicial office into disrepute.[13]

B. Social Relationships

Social relationships between judges and attorneys can present very difficult issues under the Code. On one hand, judges should not have to forgo social relationships as a condition of serving in office. It is clear that judges are entitled to their friendships, including those with attorneys, and should not be forced to isolate themselves socially when they take the bench.[14] On the other hand, when a judge has a social relationship with an attorney, an appearance may be created in the public mind that the attorney will receive favored treatment from the judge. Additionally, a social relationship, especially if it is a close one, between a judge and a lawyer may convey an impression to the public that the lawyer is in a special position to influence the judge.[15]

Canon 2, of course, applies to all judicial behavior, both on and off the bench, and requires judges to avoid the appearance of impropriety in their social activities. In addition, Canon 5 of the Code is relevant to social behavior; it states that a judge may engage in social and recreational activities so long as they do not detract from the dignity of office or interfere with the performance of judicial duties.[16]

It has been suggested that the context in which social relations occur between a judge and a lawyer are significant in determining

9. 2 Ill. Cts. Comm'n 75 (1985).
10. 2 Ill. Cts. Comm'n 83 (1985).
11. *Walter*, 2 Ill. Cts. Comm'n at 84-85; *Morgan*, 2 Ill. Cts. Comm'n at 77.
12. *Walter*, 2 Ill. Cts. Comm'n at 89; *Morgan*, 2 Ill. Cts. Comm'n at 80-81.
13. *Walter*, 2 Ill. Cts. Comm'n at 89-91; *Morgan*, 2 Ill. Cts. Comm'n at 81-83.
14. *See* J. SHAMAN, *supra* note 2, §§ 10.01-.36.
15. *Id.* § 10.03, at 274-75; *id.* §§ 10.11-.12, at 284-85.
16. ILLINOIS CODE, *supra* note 1, Canon 5.

whether the relationship creates an improper appearance or brings disrepute to the judiciary.[17] Accordingly, large group meetings are likely to be more innocent in appearance than one-on-one situations.[18] Further, short conversations between a judge and a lawyer are less suspect than longer ones, and chance encounters are less troublesome than planned ones.[19] In order to avoid giving rise to an appearance of favoritism, some judges try to avoid social contact with attorneys while they have cases pending before the judge. For example, a judge may eschew having lunch with the lawyers who are arguing cases before him or her. While this practice might not be an absolute requirement of the Code, it certainly seems to be the better part of discretion.

When a judge has an extremely close friendship with an attorney, the judge may be disqualified from presiding over any case in which the friend is either a party or an attorney of record. Thus, in *In re Locke*,[20] the Commission ruled that it was improper for a judge to fail to recuse himself from presiding over litigation in which one of the parties was a close personal friend and business associate of the judge. In the Commission's opinion, the failure of the judge to recuse himself in those circumstances created an appearance of impropriety and brought disrepute to the judiciary.[21]

Disrepute to the judiciary or an appearance of impropriety may occur as a result of conduct that transgresses moral standards. There is, however, a question as to whether the Code may be applied to off-the-bench behavior merely because it offends the moral standards of the community. In jurisdictions outside of Illinois, there is a split of authority as to whether a judge may be disciplined for engaging in an extramarital affair. In *In re Dalessandro*,[22] the Supreme Court of Pennsylvania declined to discipline a judge for having an extramarital affair.[23] Noting that adultery and fornication were no longer crimes in Pennsylvania, the court stated that moral beliefs and social norms may be enforced through the ballot box, but not through the judicial disciplinary process.[24] Therefore, the court concluded that an intimate sexual relation-

17. McFadden, *Hors d'Oeuvres and Ethics: Social Relations of Judges and Lawyers*, 77 ILL. B.J. 358, 360 (1989).

18. *Id.*

19. *Id.*

20. 1 Ill. Cts. Comm'n 78 (1975).

21. *Id.* at 85-86.

22. 483 Pa. 431, 397 A.2d 743 (1979).

23. *Id.* at 461, 397 A.2d at 759.

24. *Id.* at 462, 397 A.2d at 758.

ship, even when "open and notorious," may not be the basis for disciplining a judge.[25]

The Supreme Courts of Florida and Ohio take the opposite position.[26] Both state supreme courts have ruled that it violates their respective codes of judicial conduct for a judge to have an extramarital affair, and both courts have disciplined judges for doing so.[27]

Not too long ago in Illinois, the Judicial Inquiry Board filed a complaint against a judge, charging, among other things, that he had violated the Code by having a " 'personal, romantic and sexual relationship' with his judicial secretary."[28] The complaint further charged that the judge had violated the Code by relieving the secretary of her duties and demanding that she resign from her job, in retaliation for her ending the relationship.[29] In ruling on these charges, the Commission did not expressly decide the issue of whether the affair itself was a violation of the Code. It did, however, expressly state that the judge's retaliatory act of terminating the secretary's employment violated Canon 1 of the Code, which requires judges to uphold the integrity of the judiciary, and Canon 2 of the Code, which requires judges to conduct themselves in a manner that promotes public confidence in the integrity of the judiciary.[30]

Although no Illinois decisions address criminal sexual activity by judges, in other jurisdictions where judges have engaged in criminal sexual conduct, such as bigamy, prostitution, or contributing to the delinquency of a minor, state courts uniformly have found violations of their codes of judicial conduct.[31] Similarly, when judges use their position of office to obtain sexual favors, or when judges commit acts of sexual harassment, courts have consistently found ethical violations.[32]

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25. *Id.* at 463, 397 A.2d at 759.

26. *In re* Inquiry Concerning a Judge, 336 So. 2d 1175 (Fla. 1976); Cincinnati Bar Ass'n v. Heitzler, 32 Ohio St. 2d 214, 291 N.E.2d 477 (1972).

27. *Inquiry Concerning a Judge*, 336 So. 2d at 1176-77; *Heitzler*, 32 Ohio St. 2d at 220, 291 N.E.2d at 482.

28. No. 87 CC 3 (Ill. Cts. Comm'n Aug. 17, 1988), *reprinted in* ILL. ST. B. ASS'N BENCH & B., Sept. 1988, at 1 (syllabus) (quoting Judicial Inquiry Board's complaint).

29. *Id.* at 2.

30. *Id.* at 3-4.

31. *See, e.g.*, *In re* Everard, 263 Ind. 435, 443, 333 N.E.2d 765, 768-69 (1975); *In re* Winton, 350 N.W.2d 337, 343 (Minn. 1984); *In re* King, No. COJ-6 (Ala. Ct. Judiciary July 18, 1977); *In re* Mann, No. 50982 (Minn. Bd. Judicial Standards Mar. 4, 1980).

32. *See, e.g.*, *In re* Miera, 426 N.W.2d 850, 858-59 (Minn. 1988); *In re* Seraphim, 97 Wis. 2d 485, 510, 294 N.W.2d 485, 499 (1980); *see also In re* Young, 522 N.E.2d 386 (Ind. 1988).

C. Off-the-Bench Speech

Within certain limits, the Code encourages judges to engage in off-the-bench activities to improve the law, the legal system, and the administration of justice. Indeed, the commentary to Canon 4 of the Illinois Code states that, "As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice."[33] Canon 4 explicitly allows judges to speak, write, lecture, teach, and participate in other law-related activities, provided that in doing so they do not cast doubt on their ability to decide cases impartially.[34] Moreover, Canon 5 expressly allows judges to write, lecture, teach, and speak on non-legal topics, so long as such activities "do not detract from the dignity of office or interfere with the performance of judicial duties."[35] Thus, within the limits set forth by Canons 4 and 5, judges are expressly permitted to speak, write, lecture, or teach about legal as well as non-legal topics.

There are limits, however, placed upon these types of activities. In several Illinois cases, the Commission has found that it violates the Code for judges to make insulting, demeaning, or humiliating comments to individuals in court.[36] These cases, though, deal with statements made by judges from the bench, in chambers, or in a court conference room.[37] However, there are a number of cases from other jurisdictions which hold that out-of-court statements that are racist, sexist, or otherwise offensive violate ethical standards.[38]

Furthermore, it should be kept in mind that extrajudicial speech is subject to the proscription in Canon 2 of the Code, which states that a judge "should not lend the prestige of office to advance the private interests of others." Under this provision, a judge may not, for instance, endorse a product or business.[39]

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33. ILLINOIS CODE, *supra* note 1, Canon 4 commentary.

34. *Id.* Canon 4.

35. *Id.* Canon 5.

36. *In re* Elliot, No. 89 CC 2 (Ill. Cts. Comm'n Dec. 7, 1989), *reprinted in* ILL. ST. B. ASS'N BENCH & B., July 1988, at 2; *In re* Cieslik, 2 Ill. Cts. Comm'n 109, 111-12 (1987); *In re* Butler, 2 Ill. Cts. Comm'n 62, 71-72 (1985).

37. *See, e.g., Butler*, 2 Ill. Cts. Comm'n at 69-72.

38. *See* J. SHAMAN, *supra* note 2, § 10.14, at 286-88.

39. *Cf.* Cincinnati Bar Ass'n v. Heitzler, 32 Ohio St. 2d 214, 223-26, 291 N.E.2d 477, 484-86 (1972) (judge violated canons of judicial ethics by permitting loan company to issue brochures displaying judge's name and picture, and identifying him as judge and as director of company); Ohio Comm. on Legal Ethics and Professional Conduct, Op. 87-42 (judge may not consent to having his or her picture appear on a "wall of fame" in cloth-

As noted above, judges may engage in off-the-bench speech to improve the administration of justice. Under that standard, the Supreme Court of Washington has ruled that a judge may make speeches, organize a committee, and run advertisements in support of transferring the county seat so that government offices and a new judicial center all would be located in the same town.[40] Also applying the same standard, an advisory opinion from Florida takes the position that a judge may speak in favor of a bond issue to build a new courthouse or correctional facility, but may not speak in support of bond issues to build a park, library, road, or firefighting facility.[41] A judge could speak only about the former bond issue, it was said, because it concerned the administration of justice, whereas the other bond issues did not.[42]

A Vermont case, *In re Mandeville*,[43] probably goes further than any other in regulating off-the-bench speech. In that case, a judge was found to have violated the state ethical code when he made the following statement to a reporter: "A plea of guilty shows that the defendant has some kind of repentance for what he did that would not hold true in a trial. In that case he would not be dealt with as leniently."[44] In the opinion of the Vermont Supreme Court, that statement violated the state code because it cast doubt on the judge's ability to apply impartially a defendant's sixth amendment right to a jury trial.[45]

On the other hand, a Florida decision, *In re Gridley*,[46] takes a more lenient position. In *Gridley* it was ruled that a judge did not violate the Florida Code of Judicial Conduct when he published two letters in a local newspaper and an article in a church newsletter, all of which were critical of capital punishment.[47] While remarking that the judge's criticism of the death penalty came "close to the dividing line,"[48] the Florida Supreme Court held that the judge's writings did not violate the state code, especially because the judge had included in his criticism a statement that he recognized his duty to follow the state law of capital punishment despite

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ing store in exchange for free goods; such use of judge's picture would contravene proscription against using prestige of office to advance private interests of others).

40. *In re* Staples, 105 Wash. 2d 905, 910-11, 719 P.2d 558, 562 (1986).
41. Fla. Comm. on Standards of Conduct Governing Judges, Op. 78-14.
42. *Id.*
43. 481 A.2d 1048 (Vt. 1984).
44. *Id.* at 1049 (citations omitted).
45. *Id.*
46. 417 So. 2d 950 (Fla. 1982).
47. *Id.* at 954-55.
48. *Id.* at 954.

his personal opposition to it.[49]

D. Ex Parte Communications

Under Canon 3A(4) of the Illinois Code, a judge "shall not permit *ex parte* or other communications concerning a pending or impending proceeding."[50] The Committee Commentary to this section makes it clear that in Illinois, unlike virtually all other states, there is no exception to the rule against *ex parte* communications that allows a judge to consult with a law professor or other disinterested expert.[51] The Commentary further points out that, while the rule prohibits communications with lawyers, law professors, or other persons who are not participants in a proceeding, it does not preclude a judge from consulting with other judges or court personnel whose function is to assist the judge in carrying out adjudicative responsibilities.[52]

Although *ex parte* conversations can occur quite innocently on the part of a judge, they nevertheless may require recusal of the judge from a case. For instance, in *People v. Bradshaw*,[53] while on the bench, a judge received a note stating that "[a] deputy sheriff would like to see you."[54] A short time later, the judge adjourned the court and met with the deputy sheriff in the judge's chambers.[55] As it turned out, the deputy sheriff, who worked in the same court as the judge, was the mother of the alleged victim in a felony case, over which the judge was then presiding.[56] Upon learning that the deputy sheriff was the mother of the alleged victim, the judge terminated the conversation, although he did not disclose the conversation to counsel until sometime later.[57]

After the defendants in the felony case were found guilty, the appellate court reversed their convictions and remanded the case for a new trial on the ground that the trial judge erred in failing to recuse himself after engaging in an *ex parte* conversation with the alleged victim's mother.[58] In its opinion, the appellate court pointed out that the judiciary is obliged to maintain a favorable

49. *Id.* at 955.
50. ILLINOIS CODE, *supra* note 1, Canon 3A(4).
51. *Id.* commentary.
52. *Id.*
53. 171 Ill. App. 3d 971, 525 N.E.2d 1098 (1st Dist. 1988).
54. *Id.* at 975, 525 N.E.2d at 1100.
55. *Id.*
56. *Id.* at 974-75, 525 N.E.2d at 1100.
57. *Id.*
58. *Id.* at 975-77, 525 N.E.2d at 1101-02.

public impression that all defendants receive impartial treatment, and this obligation "remains steadfast even though a judge is unequivocally sure that he is not partial to either litigant."[59] Although the appellate court agreed that there was no improper motive on the part of the trial judge, it nevertheless ruled that recusal was necessary in order to avoid the appearance of impropriety.[60]

E. Comments on Pending Cases

Canon 3A(6) of the Illinois Code states, "A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control."[61] The same provision further states that a judge is not prohibited from making public statements in the course of his or her official duties or for explaining the procedures of the court to members of the public.[62] The Committee Commentary to Canon 3A(6) notes that it was the view of the committee that judges should only publicly discuss matters of public record, such as the filing of documents, and should not publicly comment on a controversy that could come before the judge.[63]

In other jurisdictions, judges have been disciplined for making public comments about pending cases.[64] For example, in a case from Maine, *In re Benoit*,[65] a judge was publicly censured for writing letters to the editors of four local newspapers criticizing an appellate court for vacating sentences imposed by the judge.[66] The Supreme Court of Maine described this as a particularly egregious violation of Canon 3A(6), because the statements created the impression that the judge had prejudged the very cases he was assigned to hear upon their remand.[67] The court said that the purpose of Canon 3A(6) was to minimize the risk that judges will

59. *Id.* at 976, 525 N.E.2d at 1101.
60. *Id.*
61. ILLINOIS CODE, *supra* note 1, Canon 3A(6).
62. *Id.*
63. *Id.* commentary.
64. *See, e.g.*, *In re* Corrugated Container Antitrust Litig., 614 F.2d 958, 965-67 (5th Cir. 1980); Cunningham v. Eighth Judicial Dist. Court, 102 Nev. 551, 560-61, 729 P.2d 1328, 1333-34 (1986); Suter v. State, 588 P.2d 578, 580-81 (Okla. Crim. App. 1978); Judicial Inquiry and Review Board v. Fink, 516 Pa. 208, 226-28, 532 A.2d 358, 367-69 (1987).
65. 523 A.2d 1381, 1383-84 (Me. 1987).
66. *Id.* at 1382-84.
67. *Id.* at 1383.

predetermine individuals' rights or create a public impression that litigants are not being treated fairly.[68]

In another case, *In re Sheffield*,[69] the Supreme Court of Alabama held that a judge violated Canon 3A(6) by speaking to a newspaper editor about a contempt of court proceeding that the judge was scheduled to hear the next day.[70] This case arose when a witness in a prior case wrote a letter-to-the-editor in a local newspaper criticizing the judge for his ruling in the case.[71] In response, the judge initiated contempt proceedings against the witness.[72] While the proceedings were still pending, the judge agreed to a newspaper interview during which he said that the letter-to-the-editor written by the witness contained false information and might be libelous.[73] Even though it was later found that the letter did include some incorrect information, the Alabama Supreme Court held that the judge had acted improperly by commenting on a pending case, namely, the contempt proceeding.[74] While it was not improper for the judge to explain the nature of contempt of court proceedings to the editor of the newspaper, the court stated that it was wrong for the judge to make comments about factual matters then pending in court.[75]

F. Disqualification Due to Financial Interests

Canon 3C(1)(d) of the Illinois Code requires disqualification of a judge if the judge, the judge's spouse, or a minor child residing in the judge's household has a substantial financial interest in the subject matter in controversy or in a party to the proceeding.[76] Disqualification also is required for other reasons, but the concern here is with disqualification on the basis of a financial interest. Many jurisdictions require disqualification even when a financial interest is insubstantial, but Illinois is one of several states that has chosen to require disqualification only when the financial interest is substantial.[77] However, at this point, there has been little interpre-

68. *Id.*
69. 465 So. 2d 350 (Ala. 1984).
70. *Id.* at 355.
71. *Id.* at 352-53.
72. *Id.*
73. *Id.* at 353.
74. *Id.* at 352, 355.
75. *Id.* at 355. The Alabama Supreme Court also ruled that while the judge's initiation of contempt charges against the witness was erroneous as a matter of law, it did not amount to an ethical violation because it was not done in bad faith. *Id.* at 357-59.
76. ILLINOIS CODE, *supra* note 1, Canon 3C(1)(D).
77. *See* J. SHAMAN, *supra* note 2, § 5.20, at 137-38.

tation in Illinois or elsewhere as to what amounts to a "substantial" interest.

One of the few cases that addresses this problem is *In re Virginia Electric & Power Co.*,[78] in which a trial judge was a customer of a utility company that was a plaintiff to a lawsuit before the judge.[79] If the utility company were successful in its suit seeking $160 million in damages, it could have led to a general reduction in its rates, which in turn could personally have benefitted the judge in the amount of approximately $100. On appeal, the court held that given the context of the case, this was a de minimis amount that did not compel disqualification.[80] While the appellate court admitted that $100 on its face is not insubstantial, it was insubstantial here, because it would be spread over a forty-year period and recovery was speculative. Thus, the appellate court did not require recusal of the trial judge.[81]

Canon 3D of the Illinois Code allows remittal of certain kinds of disqualification.[82] Disqualification due to a financial interest is one type of disqualification that may be remitted under Canon 3D. It should be emphasized, though, that under Canon 3D remittal of disqualification is valid only after full disclosure by a judge, and the remittal must be documented in a writing, made independently of the judge's participation, and signed by both the parties and lawyers to the proceeding.[83] Oral waiver by attorneys of a judge's disqualification is not sufficient.[84] If a judge, a judge's spouse, or a judge's child has an interest that the judge deems to be too insubstantial to warrant disqualification, Canon 3D still requires the judge to disclose the interest to the parties and then allows the judge to choose to participate in the proceeding or to state an intent to do so, in the absence of a written objection by any party.

G. Attendance at Functions of Legal Organizations

Canon 4C of the Illinois Code states that a judge may serve as a member, officer, or director of an organization or government agency devoted to improvement of the law, the legal system, or the

78. 539 F.2d 357 (4th Cir. 1976).
79. *Id.* at 360.
80. *Id.* at 368-69.
81. *Id.*
82. ILLINOIS CODE, *supra* note 1, Canon 3D.
83. *Id.*
84. *See* Woods v. Durkin, 183 Ill. App. 3d 870, 875, 539 N.E.2d 920, 922 (3d Dist. 1989).

administration of justice.[85] It follows that if a judge is permitted to be a member of such an organization, he or she may attend its functions or meetings. However, if a particular legal organization is regularly engaged in litigation, affiliation with it may require frequent recusal on the part of a judge, which is a practice that should be avoided.[86] Also, if a particular legal organization is closely associated with a strong ideological point of view, a judge's affiliation with the organization may cast doubt on the judge's ability to decide cases impartially.

Under Canon 5C(4)(a) of the Illinois Code, a judge and a judge's spouse may accept invitations to attend bar-related functions or activities devoted to improvement of the law, the legal system, or the administration of justice. The Illinois State Bar Association (ISBA) has concluded from this provision that a bar association may bear the costs of judges' attendance at bar association functions.[87] This practice, according to the ISBA, should be permitted because it encourages the exchange of views between bench and bar, which benefits the legal system in general.[88] It has been pointed out that even at bar functions that are recreational, such as golf matches or dinner dances, it is inevitable that judges and lawyers will discuss legal matters, and therefore even recreational bar functions will be the occasion for the exchange of ideas between bench and bar.[89]

However, the ISBA has taken the position that it is improper for a law firm to invite judges to a golf event at which clients of the firm will be present.[90] This situation, as one commentator notes,[91] places a judge in the untoward position of lending the prestige of office to advance the private interests of others, or of conveying or permitting others to convey the impression that they are in a special position to influence the judge.

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85. ILLINOIS CODE, *supra* note 1, Canon 4C.

86. *See id.* Canon 5B(1).

87. Ill. State Bar Ass'n Comm. on Professional Ethics, Op. 86-18, *reprinted in* 76 ILL. B.J. 758 (1987).

88. *Id.*

89. Scott, *Reconciling Conflicts in Illinois Judicial Ethics*, 19 LOY. U. CHI. L.J. 1067, 1070 (1988).

90. Ill. State Bar Ass'n Comm. on Professional Ethics, Op. 86-18, *reprinted in* 76 ILL. B.J. 758 (1987).

91. Scott, *supra* note 89, at 1071.

H. Speaking at Functions of Legal Organizations[92]

For a judge to speak at a function of a legal organization would seem to be the sort of law-related activity encouraged by Canon 4 of the Illinois Code to improve the law, the legal system, and the administration of justice. Of course, Canon 4 goes on to say that a judge may engage in such activities only if the judge does not cast doubt upon his or her ability to decide cases impartially.[93] Consideration also should be given to whether the purpose of the function is to raise funds. Under Canon 5, a judge may attend fund-raising events for educational, religious, charitable, fraternal, or civic organizations, but he or she may not be the speaker or guest of honor at such events.[94] However, speaking at an event of a legal organization would be governed by Canon 4, which contains no express prohibition against speaking or being the guest of honor at an event devoted to the law, the legal system, or the administration of justice. According to Canon 4C, a judge "may assist [a legal] organization in raising funds," but should not "personally participate in public fund-raising activities." Therefore, Canon 4C seems to permit more leeway to assist a legal organization in fund-raising than would be permitted under Canon 5 for other kinds of organizations. Still, personal participation in public fund-raising even for a legal organization is prohibited.

I. Writing Books, Articles, or Book Reviews

It is a time-honored tradition for judges to write books and articles, especially on the law.[95] Many judges have written books and articles on legal and other subjects. In fact, there is scarcely a law review that at one time or another has not published an article written by a judge. It seems unlikely that it would ever be a violation of the Code for a judge to write a book or article; there are no cases that a judge who has been disciplined for that sort of extrajudicial activity.

If a judge writes a favorable review of a book authored by another person, it is possible that the author or publisher might use the review to promote sales of the book. It has been argued that this amounts to using the prestige of office to advance the private interests of others, which is prohibited by Canon 2 of the Code.

92. The previous discussion of off-the-bench speech is relevant here and should be reconsidered at this point. *See supra* text accompanying notes 33-49.

93. ILLINOIS CODE, *supra* note 1, Canon 4.

94. *Id.* Canon 5B.

95. *See* J. SHAMAN, *supra* note 2, § 9.02, at 255-56.

However, the intent of the judge in writing a book review, whether favorable or not, ordinarily is to advance knowledge and not to promote the private interests of others. Canons 4 and 5 encourage judges to speak, write, and teach, and writing a book review would seem more in the nature of an activity allowed or even encouraged by these canons rather than an activity that misuses the prestige of office.

J. Endorsements

For a judge to endorse a book written by another person is a more questionable practice than writing a book review. Endorsing a book comes closer to using the prestige of office to advance the private interests of others, which contravenes Canon 2. Still, it might be asserted that endorsing a book about the law or a legal topic goes to improving the law or legal system, and hence, is a permissible activity for a judge. If, however, an endorsement is viewed as being more in the nature of using the prestige of office to advance private interests, it would be considered improper behavior for a judge.

Endorsing a product or company is a business activity that the Code would seem to prohibit. In an Ohio case, *Cincinnati Bar Association v. Heitzler*,[96] the court found it to be improper for a judge to allow a business with which he was associated to use his position for promotional purposes. The judge was on the board of directors of a loan company (which in itself is improper in most jurisdictions), and the company published a brochure that contained the judge's picture and identified him as being both a judge and a director of the business. In finding this conduct to be improper, the court stated that the judge had an obligation to insure that his name and position were not used in this way.[97]

K. Receiving Favors, Gifts, or Loans

For a judge to engage in the practice of trading favors may amount to misconduct in several ways. Certainly, it is a gross impropriety for a judge to rule a certain way or to perform a judicial act in exchange for a favor.[98] This is illustrated by *In re Damron*, in which a judge told a prisoner that he would reduce her sentence if she wrote a favorable testimonial about the judge for a local

96. 32 Ohio St. 2d 214, 291 N.E.2d 477 (1972).
97. *Id.* at 226, 291 N.E.2d at 485.
98. *In re* Damron, 487 So. 2d 1 (Fla. 1985).

newspaper.[99] Given that the judge was running for re-election, the court found that he was soliciting a political favor in exchange for judicial action, conduct that clearly violates the Code.[100]

Extrajudicial activity in exchange for a favor also may violate the Code if it amounts to a misuse of the prestige of office to advance the private interests of others, compromises a judge's integrity or impartiality, or gives rise to an appearance of impropriety. For instance, in *In re Klein*, a judge introduced an acquaintance to several other judges in order to enhance the acquaintance's opportunity to obtain receivership appointments.[101] In return, the acquaintance, who was also a travel agent, arranged for reduced travel costs for the judge and his family, and paid the judge's hotel bill for a vacation.[102] It was found in this case that the judge's behavior created an appearance of impropriety and amounted to an improper acceptance of a gift from a person having business with the courts.[103]

Canon 5C(4) of the Illinois Code provides that, subject to certain exceptions, neither a judge nor a member of the judge's family residing in the judge's household should accept any gift, bequest, favor, or loan.[104] In *In re Corboy*, the Illinois Supreme Court stated that if an attorney is likely to be involved in a court proceeding, he or she should be prohibited from making a gift to any judge who sits on the court where the case may be heard—whether circuit, appellate, or supreme court.[105] Moreover, the court said that the same prohibition applies even though the lawyer is not involved in the case, but is associated with other lawyers who are handling the case.[106]

Unless it falls into one of the exceptions enumerated in Canon 5C(4), any gift of value, especially one from an attorney, may be improper. In *In re Murphy*, the Commission found that Canon 5C(4) was violated by a judge who accepted the free use of rental cars paid for by an attorney.[107] The fact that neither the attorney nor members of his law firm had ever appeared before the judge was held not to be exculpatory, since the law firm did appear in the

99. *Id.* at 2.
100. *Id.* at 7.
101. *In re* Klein, slip op. at 3 (N.Y. Comm'n Judicial Conduct July 6, 1981).
102. *Id.*
103. *Id.* at 6.
104. ILLINOIS CODE, *supra* note 1, Canon 5C(4).
105. *In re* Corboy, 124 Ill. 2d 29, 44-45, 528 N.E.2d 694, 700-01 (1988).
106. *Id.* at 45, 528 N.E.2d at 701.
107. *In re* Murphy, No. 89 CC 1 (Ill. Cts. Comm'n Feb. 9, 1990), *reprinted in* ILL. ST. B. ASS'N BENCH & B., Apr. 1990, at 1.

division of the circuit court where the judge sat.[108] The Commission further ruled that by accepting the use of the cars, the judge violated Canon 2 by creating an appearance of impropriety.[109] This appearance of impropriety was exacerbated by the judge's further behavior of acting as a conduit for requests from the same law firm to have its employees and clients excused from jury duty. In the opinion of the Commission, this behavior, coupled with the judge's acceptance of the use of the cars, gave rise to the appearance of a quid pro quo.[110]

As noted above, there are certain exceptions to the Canon 5C(4) prohibition on the acceptance of gifts or loans. One of the exceptions allows judges and members of their families to accept ordinary social hospitality, such as wedding or engagement gifts.[111] Another exception allows judges and family members to receive loans from lending institutions in the regular course of business if the loans are made on the same terms generally available to other persons.[112] Judges and family members also may receive scholarships or fellowships awarded on the same terms applied to other persons.[113]

In obtaining a loan, though, it is improper to make false statements on the loan application. In *In re Sklodowski*,[114] a judge was charged with falsely claiming on a mortgage application that a $15,000 down payment had been made on a condominium. The judge admitted that this action violated several provisions of the Code, and he was reprimanded for his behavior.

III. CONCLUSION

The cases discussed here have formed a core body of law interpreting those provisions in the Illinois Code of Judicial Conduct that concern the appearance of impropriety. This core of law, however, is but a beginning, and considerably more needs to be added to define and explicate the professional and ethical standards that require judges to avoid the appearance of impropriety.

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108. *Id.* at 3-4.
109. *Id.* at 4.
110. *Id.*
111. ILLINOIS CODE, *supra* note 1, Canon 5C(4)(b).
112. *Id.*
113. *Id.*
114. No. 87 CC 4 (Ill. Cts. Comm'n Apr. 15, 1988), *reprinted in* ILL. ST. B. ASS'N BENCH & B., June 1988, at 1.