

**NATIONAL ASSOCIATION OF WOMEN JUDGES
2014 CONFERENCE EDUCATION PROGRAM
San Diego, California**

“International Tea and Ethics”

Thursday, October 17, 2014

2:00 p.m. – 3:15 p.m.

“HOT BUTTON” ETHICS ISSUES

1) Attendance at Educational Program Financed by a Commercial Interest Group

In April 2009, Judge Jane Wright travelled to Northwestern University to attend a seminar entitled the “Criminalization of Corporate Conduct.” The seminar was sponsored by the US Chamber of Commerce, the American Petroleum Institute, ExxonMobil, and 13 other corporations. A speaker at the seminar acknowledged that because there were no prosecutors on the panel, the program could be criticized for not balancing the views of business and prosecutors. Judges who attended the conference were reimbursed for their travel and hotel accommodations by the program sponsors.

At the time of the seminar, Judge Wright was presiding over a high publicity civil trial against a petroleum company, which was being held without a jury, involving billions of dollars of claims arising out of an oil platform explosion and oil spill. Two years after attending the conference, Judge Wright was assigned to a wrongful death case in a suit brought against ExxonMobil and Chevron by the widow of a worker who was exposed to radioactive materials found on the companies’ equipment. Judge Wright dismissed the case.

- Should the judge have attended the seminar while presiding over the oil spill case? (“[A] judge shall not . . . [¶] . . . participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity or impartiality.”) (Rule 3.1(C).)*
- Because she attended the seminar and was reimbursed by the sponsors, including ExxonMobil, should the judge have recused herself from the wrongful death case? (“A judge shall disqualify . . . herself in any proceeding in which the judge’s impartiality might reasonably be questioned . . .”) (Rule 2.11(A).)
- Does attending such a program give rise to an appearance that certain parties or organizations are in a position to influence the judge or other appearance of impropriety? (“A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.”) (Rule 2.4(C).)
- What if the judge attended the seminar, but paid her own expenses? Would this eliminate any ethical concerns? (“A judge shall not accept any gifts, loans, bequests, benefits or other things of value, if acceptance . . . would appear to a reasonable person to undermine the judge’s independence, integrity or impartiality.”) (Rule 3.13(A).)

* All references to rules are to American Bar Association Model Code of Judicial Conduct 2011 Edition.

2) Attempt to Influence Case Disposition

Judge Jane Wright is presiding over a lawsuit seeking damages for soil contamination on properties located next to a petroleum storage facility owned by the city. Judge Wright receives a call from her presiding judge about the case. The presiding judge comments that the case is being closely watched and that there is speculation that the city will have to file for bankruptcy if it is held liable for significant damages. The presiding judge comments that the city's mayor is close friends with the appellate judge who heads the council which selects and promotes judges. The presiding judge is aware that Judge Wright has submitted an application for promotion. The presiding judge closes the conversation by saying that he knows that Judge Wright will "do the right thing."

- Has the presiding judge done anything wrong?
(“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” “A judge shall not make . . . any nonpublic statement that might substantially interfere with a fair trial or hearing.”) (Rules 1.2, 2.10(A).)
- Does this conversation come within the exception to the prohibition on ex parte communications?
(“A judge may consult . . . with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.”) (Rule 2.9(A)(3).)
- What should the trial judge do?
- Does it matter whether the case is being tried to the judge or to a jury?

3) Prolonged Deferral of Case to Protect Non-Citizen

Judge Jane Wright presided over a case in which the defendant was charged with making criminal threats, child abuse causing great bodily harm and assault with a deadly weapon. All of the charges arose from a domestic violence incident. The defendant was not a United States citizen. Conviction of a crime of domestic violence is a basis for deportation. The defendant was subject to deportation to his country of origin once a plea or finding of guilt was made *and* some punishment imposed. Judge Wright had been advised that there was an outstanding death warrant for the defendant in his native country and that deportation would result in torture and likely execution of the defendant.

The judge accepted a plea agreement. The terms of the agreement were that sentencing would be postponed indefinitely and the defendant released from custody on the condition that he leave and stay outside of California. Judge Wright made clear to the defendant that he could avoid being sentenced by remaining out of the state. The judge explained that if he did not appear at sentencing, a bench warrant would issue that could be served only in California where the criminal proceedings were pending. The judge then ordered the defendant to cooperate with his lawyer's investigator, who would transport him to the airport. There, he would take a flight to another state, where he had family who had offered to assist him.

The defendant did not appear at the continued sentencing hearing three months later and the judge issued a bench warrant. Judge Wright then continued sentencing from year to year for three years, until the defendant was picked up on the bench warrant after entering California.

- Was there anything wrong with the plea bargain as it was structured?
- Did the judge do anything unethical by accepting the plea bargain? (“A judge shall comply with the law . . .”) (Rule 1.1.)
- If the judge is acting to protect an individual from a greater harm, shouldn’t such good faith absolve the judge of any wrongdoing?

4) **Judge as Blogger**

Judge Jane Wright maintains a blog that does not comment on specific cases but discusses the role of the trial judge, the government (“It’s time to tell the Congress to go to hell.”), other participants in the justice system (the “casual cruelty of correctional bureaucrats” who failed to regularly supply necessary medication to a defendant appearing before the judge), public interest groups who comment on the judiciary (the Center for Public Integrity “would not recognize judicial integrity if it bit them in the ass.”), the attire of women attorneys in court (“Think about the female law clerks. If they are likely to label you, like Jane Curtin, an ignorant slut behind your back, tone it down.”) and even the United States Supreme Court after a controversial decision (“It’s time for the Supreme Court to stfu.”).

- Is blogging inherently unjudicious? (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”) (Rule 1.2.)
- Can a judge say things in a blog that the judge wouldn’t say to a Bar group or to a graduation audience?
- What standards should apply?

5) **Incarceration of the Mentally Ill**

Judge Jane Wright presided over a juvenile delinquency matter involving a 17-year-old minor charged with multiple counts of burglary and grand theft. After the minor was found guilty, the probation department submitted a report that indicated that the minor suffered from bi-polar disorder that was not well controlled by medication. The report also noted two suicide attempts by the minor, at ages 15 and 16. Because the juvenile had a significant history of theft offenses, the prosecution was seeking to have the juvenile placed in a detention facility. The judge ordered the minor to be detained in the county juvenile facility until his 18th birthday.

- Are there any ethical problems posed by the judge ordering a juvenile defendant with a mental health condition detained in a juvenile facility?

6) **Misuse of the Prestige of Office**

Judge Jane Wright was dating a man who had a child with special educational needs. The school district denied the father's request to have the child attend camp in another state, the cost of which was several thousand dollars, instead of attending the district's summer program.

Judge Wright called Superintendent Head, who knows the judge from their past involvement in community activities. Judge Wright informed the superintendent of her boyfriend's desire to place his child in the out-of-state summer program, and asked the superintendent how they could obtain the district's approval and tuition assistance. In response, Superintendent Head offered to communicate with district staff about the child's placement. The superintendent was not usually involved in the placement of students, either those with special needs or otherwise. Nonetheless, the superintendent frequently received similar calls from individuals seeking his assistance, which he handled similarly.

Around the time of their telephone discussion, Judge Wright sent a fax to Superintendent Head. The first page was on her judicial stationery with a note that included the superintendent's name, his contact information and "Thanks." The judge states that because the child will be going to summer programs for another 8 or 9 years, the father "[has] got nothing to lose by litigating. Let me know what you think. Thanks for all your help."

The superintendent communicated with district staff who assured him that the child could be placed in the camp as the father had requested. The superintendent so informed the judge. The district eventually approved the placement and tuition assistance.

- Was it improper for the judge to contact the superintendent on behalf of her boyfriend's son?
("A judge shall not . . . consult with[] an executive or legislative body or official, except . . . [¶] . . . when the judge is acting pro se in a matter involving the judge's legal or economic interests . . .") (Rule 3.2(C).)
- Was the use of judicial stationery improper if the recipient already knew she was a judge?
("A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others . . .") (Rule 1.3.)
- If the judge did not personally know the superintendent, would it have been proper for her to call the superintendent so long as she did not mention that she was a judge?