



2024 Annual Conference

Niagara Falls, New York

Judicial Demeanor & Best Courtroom Practices

Date: Monday, September 23, 2024

Instructors:

Hon. Ronald Meister

Hon. Thomas Sheeran

Hon. Susan Sullivan-Bisceglia

MCLE: 0.5 Ethics, 0.5 Skills

This program has been approved for credit in
New York State for all attorneys
including those who are Newly Admitted
(less than 24 months) and administered by
the Onondaga County Bar Association

Hon. Ronald Meister

Ron Meister is a Town Justice in the Town of Mamaroneck, a former President of the Westchester County Magistrates Association, and a Director of NYSMA. He is a graduate of Yale College and Yale Law School, and a member of the bars of New York State and the District of Columbia, as well as multiple Article I and Article III federal trial and appellate courts. He is Senior Counsel to the New York City law firm Cowan, Liebowitz & Latman, and a member of the New York State Advisory Committee on Judicial Ethics and the New York State Bar Association Committee on Procedures for Judicial Discipline. Ron is a U.S. Navy veteran, having served on active duty in the Judge Advocate General's Corps as a trial and defense counsel and as a military judge. He is Chair of the Board of the National Institute of Military Justice and a Life Member of the American Law Institute. His published articles on law and justice include *The Day The Common Law Stopped*, *Justice Tempered With Murphy*, *An Ensign for the Coffin*, and *The Day I Cross-Examined Santa Claus*. Ron is an amateur actor of limited talent, having appeared in staged readings as Juror Number 8 in *Twelve Angry Men* and Matthew Harrison Brady in *Inherit the Wind*, as well as in recurring roles with the Mighty NYSMA Art Players.

Hon. Thomas J. Sheeran

Hon. Thomas J. Sheeran is Town Justice in the Western New York community of Lewiston. Judge Sheeran is a native of New York City's borough of Queens and grew up in Katonah in Westchester County's Town of Bedford. He received Bachelor's and Master's degrees from Ithaca College, a Master's degree from Niagara University and a doctorate from the State University of New York at Buffalo. Elected Town Justice in 1992, Judge Sheeran has been re-elected every four years and has recently been elected to a ninth term.

A longtime member of the Faculty of Education at Niagara University, Judge Sheeran is the author of dozens of articles, books and monographs, and has presented papers and workshops across the U.S., Canada, and Asia. He is a member or fellow of many professional education and judicial societies and has served in various capacities in the Niagara County Magistrate's Association.

Additionally, Judge Sheeran has served as a member of the senior faculty for the New York State Judicial Institute's Continuing Education program for Town and Village Justices presenting programs in various venues across the State. In 2008, Judge Sheeran was appointed by the Chief Administrative Judge to the Advisory Committee on Judicial Ethics. In that capacity, Sheeran became the first non-attorney to serve on the ACJE. He recently was involved in presenting the mandated Judicial Ethics courses, both in person and by video, to all town and village judges across the State. Additionally, Judge Sheeran has served as a Director and officer of the New York State Magistrate's Association and is currently serving in the role of President-Elect.

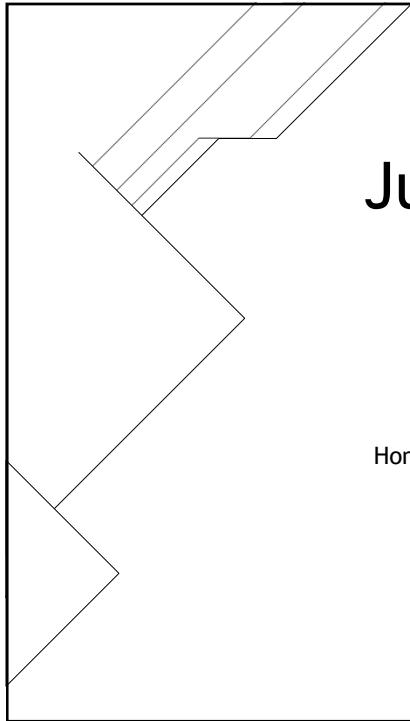
Sheeran has been married to his wife Maureen for fifty-three years, has two children, Meaghan and Brendan and two grand-children, Jack and Rian.



Hon. Susan Sullivan-Bisceglia
Town Justice, LaGrange

Previous City of Poughkeepsie, Towns of Union Vale, Patterson and Pawling Acting Justice, and Associate Village Justice, Wappingers Falls

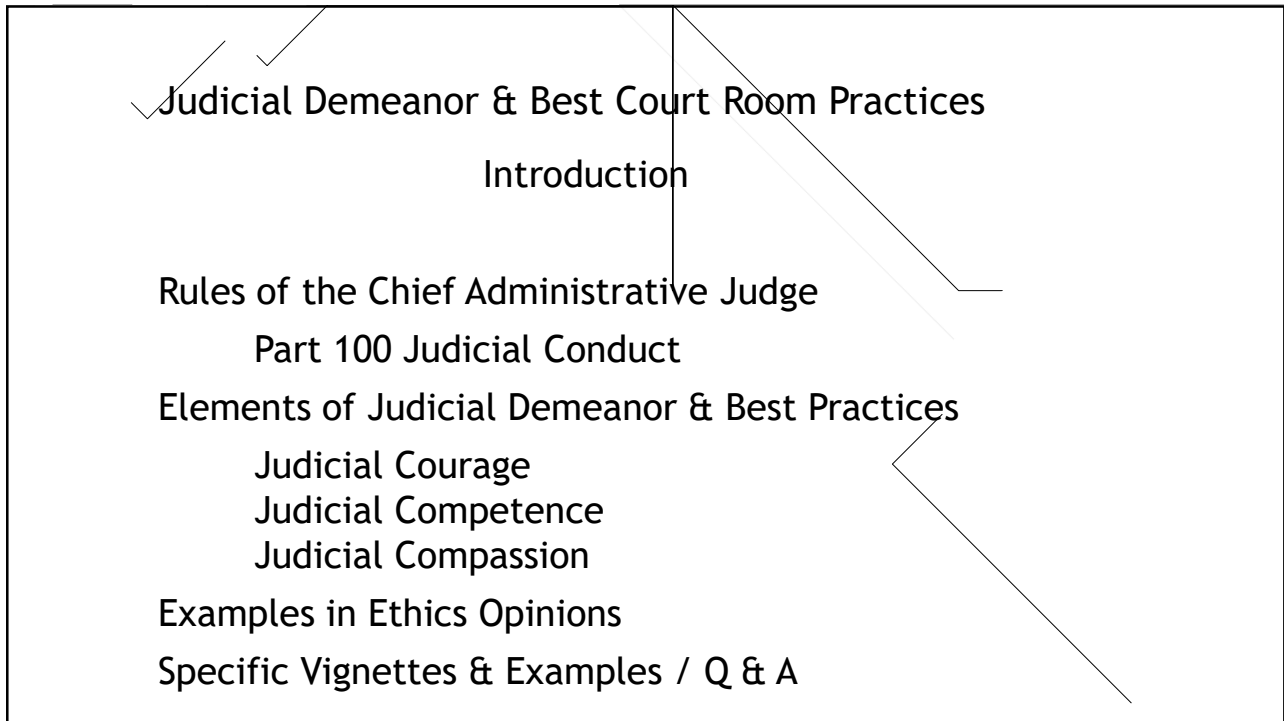
Judge Susan Sullivan-Bisceglia, 1st Woman Judge in her hometown, of LaGrange, provides justice in the Hudson Valley with the highest of integrity and fairness. Having previously served as Acting City of Poughkeepsie, Town of Union Vale, Pawling and Patterson Justice, as well as Associate Justice of the Village of Wappingers Falls, Judge Sullivan-Bisceglia brings over 7 years of experience as a Judge. Elected as 1st Vice President of the New York State Magistrates Association, and President of the Dutchess County Magistrates Association, Judge Sullivan-Bisceglia is the “Judge Who Teaches the Judges”, traveling across New York State providing education to the judiciary. Having a commitment to civic mindedness, Judge Sullivan-Bisceglia frequently welcomes students to her court to participate in mock trials providing them an opportunity to learn about the courts and the administration of justice to the community. She received her Juris Doctorate from New York Law School and is a licensed attorney admitted to practice in NY and CT, the United States Supreme Court, as well as the U.S. District Courts for the Southern and Eastern Districts of New York and maintains her law office at the Hudson Valley Regional Airport. Judge Sullivan-Bisceglia has well over 25 years of combined experience obtained in the courts, major law firms, Fortune 500 companies and the State of New York. Inspired by her family of U.S. Air Force fighter pilots, she is a licensed Commercial Pilot with Instrument and Multi-Engine Ratings and prior Federal Aviation Administration Aviation Safety Counselor. Judge Sullivan-Bisceglia maintains her hometown residence in the beautiful Hudson Valley with her husband Paul and two children Brianna and Brendan.



Judicial Demeanor & Best Court Room Practices

Hon. Thomas Sheeran, NYSMA President Elect
Hon. Susan Sullivan Bisceglia, NYSMA 1st Vice President
Hon. Ronald Meister, NYSMA Director

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Judicial Demeanor & Best Court Room Practices

Introduction

Rules of the Chief Administrative Judge

Part 100 Judicial Conduct

Elements of Judicial Demeanor & Best Practices

Judicial Courage

Judicial Competence

Judicial Compassion

Examples in Ethics Opinions

Specific Vignettes & Examples / Q & A

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✓ ✓
Judicial Demeanor & Best Court Room Practices

Rules of the Chief Administrative Judge
Part 100 Judicial Conduct

Section 100.1 – A judge shall uphold the integrity and independence of the judiciary.

Section 100.2 - A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Section 100.3 - A judge shall perform the duties of judicial office impartially and diligently.

Section 100.6 - Application of the rules of judicial conduct.

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✓ ✓
Judicial Demeanor & Best Court Room Practices

ELEMENTS:

Judicial Courage
Courage to make tough decisions, unpopular but just

Judicial Competence
Ensuring your knowledge of the Law &
Knowing when to seek guidance when needed

Judicial Compassion
Having Compassion as part of Judicial Discretion when needed

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Judicial Courage

Vignette 1A- Courage

A matter has been filed in your court in which the town supervisor's spouse was issued a traffic summons by the New York State Police. The supervisor has contacted you to insure that the ticket will be dismissed. You have indicated to the supervisor that ethically you are not permitted to discuss any issue regarding the potential disposition of cases. The supervisor expressed her displeasure with you and indicated that if you are not willing to "play ball", you can expect "consequences"!

- What is the ethical issue related to the case?
- What are the ethical rules that apply?
- If this matter was brought to your attention, how would you handle it?

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Judicial Courage

Vignette 1B-Courage

A defendant appears in your court for arraignment on a charge of Assault in the second degree, a qualifying offense. The defendant has strong ties to the community, including a home and family, and has a steady job half a mile from the courthouse. He has one prior conviction, for drunk driving three years ago. The local newspaper has run a story about the crime. The District Attorney asks for a \$ 25,000 secured bond or \$ 2500 cash bail. You believe the defendant is not a flight risk.

- What factors do you consider in making a bail decision?
- What weight do you give the DA's recommendation and the notoriety of the case?
- What is your decision on bail, any conditions of release, and what concerns do you have about the consequences of your determination?

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Judicial Courage

• Ethics Opinions:

21-114(A)

19-63 - (1) A town justice may not agree to a private meeting with the town comptroller and town board member(s) for the express purpose of explaining and justifying an apparent decrease in revenue. (2) This prohibition does not preclude the judge from communicating with town officials concerning the amount of fines and fees collected and/or the court's budgetary needs, as permitted by statutes and prior opinions. (3) The judge may also publicly discuss the court's operations, including a decrease or increase in revenue, at a town board meeting or public forum, provided he/she (a) is careful not to cast doubt on his/her integrity, impartiality, and independence in adjudicating matters that could potentially result in revenue for the town and (b) avoids impermissible comment on any identifiable pending or impending case before him/her.

18-57/17-166 - A judge does not violate the Rules Governing Judicial Conduct by fulfilling his/her statutory powers, functions, and duties as a licensing officer in good-faith reliance on statutory authority and administrative guidance on how to exercise that authority. However, the judge must still abide by generally applicable ethical principles, to the extent necessary and appropriate, even when acting as a licensing officer, and thus the judge (1) must not be swayed by public clamor or fear of criticism; (2) must respect and comply with the law, including any due process requirements for such proceedings; and (3) must act in a manner that promotes public confidence in the judiciary's integrity and impartiality.

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Judicial Competence

Vignette 2A – Competence

A newly admitted attorney has appeared in your court having been retained to represent a client. The attorney readily admits that she is both not familiar with the rules of procedure in your court and with the expectations that you may have of attorneys that appear before you. Not wanting to embarrass her in front of her peers and her client, you adjourn her case for a month to allow her time to seek advice from veteran attorneys who are familiar with both process and practices of appearing in town courts.

- If you were the presiding judge on this matter, would you have handled this issue differently?
- Is there an expectation that ALL attorneys who appear before the court are fully competent and qualified to meet all the demands of process and procedure that you require?
- Would you handle this matter differently if the attorney appearing on this matter was a highly experienced litigator but had never appeared before you?

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Judicial Competence

Vignette 2B – Competence

[Focusing on the judge's competence, while 2A focuses on counsel's competence]

1. In a case that has languished as a result of both the DA's and defense counsel's delays, defense counsel at a final pre-trial conference a week before the trial date makes an oral motion to dismiss for lack of a speedy trial, which is permissible under the statute. You have taken scrupulous notes throughout the case regarding the allocation of delays to each party, but have not computed the total time or determined if 30.30 time has been violated.
 - What is the central issue of concern?
 - How should this matter be handled?
 - What options should be considered?

1. During the course of a jury trial, defense counsel makes an evidentiary objection to critical evidence that raises a complex issue of the state of mind exception to the hearsay rule. You have not confronted this issue before.
 - What do you do?

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Judicial Competence

• Ethics Opinions:

21-46 - A judge may accept or reject plea dispositions but, in doing so, may not adopt a broad policy that omits individualized determinations.

20-69 - When misdemeanor-level Vehicle and Traffic Law charges are before a judge on a simplified traffic information, the judge may not ask the prosecuting agency to file a long form information so the judge can sua sponte issue a criminal summons or an arrest warrant for a defendant who failed to appear.

19-47 - A judge may not have a court clerk enter the proposed fine on a motorist's mail plea from a fixed schedule of fines developed by the judge -- even though the judge intends to personally review, confirm, initial and approve the fines entered by the clerk -- where the underlying fixed schedule pre-selects specific fines from the statutory range and therefore is likely to create an appearance that the judge has pre-judged certain categories of cases without individualized consideration of relevant legal factors.

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Judicial Compassion

Vignette 3A – Compassion

A woman appears in your court with a traffic summons for driving on the shoulder of a divided highway. She is clearly upset with the circumstances that has brought her before you. The prosecutor has offered to reduce the ticket and recommend that a fine be imposed. As a seasoned judge, you ask her why she is so upset with what appears to be a reasonably fair disposition. She seems to be both reluctant to explain and intimidated with the entire court experience. Upon prodding, she indicates that she was stuck in a line of cars approaching the exit to the local hospital, and that she had received a phone call indicating that her mother was in the emergency room. She explained that she was driving to the hospital but that the traffic was backed up due to an accident. In attempting to get to the hospital she did drive on the shoulder and was willing to accept the consequences. When she attempted to explain this situation to the arresting officer, he said, “tell it to the judge.”

- If you were the judge on this matter, what would you do?
- Do you have the discretion to alter the prosecutor’s plea offer.
- If you alter the prosecutor's agreement, can you anticipate that,
 - The prosetor will be upset
 - The system will now be in jeopardy of continuous compromise.
 - Should judges have the discretion to think “outside the box” when it comes to issues of fairness and equity?

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Judicial Compassion

Vignette 3B – Compassion

A man appears before you with a traffic ticket for driving while using a cellphone, which he does not deny. In explanation, he says that the call was from his son who is serving with the United States Army in Iraq.

- What do you do?

Suppose the driver is also charged with speeding and making an unsafe lane change while using the cellphone.

- Is your answer the same?

Suppose the driver is also charged with following too closely, which led to an accident, and the accident victim is in the courtroom.

- Is your answer the same?

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Judicial Compassion

- Ethics Opinions:

22-175 - A judge may participate in a not-for-profit entity's "backpack program" which provides a personalized gift to each adoptee and/or adoptive parent following a finalized adoption.

22-147 - Where a judge has made a statutorily required allocation concerning an unrepresented tenant's potential claims and defenses, and the tenant says they do not understand them, there is no ethical impropriety in offering the tenant a document prepared and posted by the Unified Court System for public information, entitled "Common Defenses in a Landlord-Tenant Case." However, the judge should not recommend any particular defense listed.

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Q&A

The slide features a dark grey vertical bar on the left side with the text "Q&A" in white. The main area of the slide is white and contains two overlapping speech bubbles. The top bubble is dark grey with a white question mark, and the bottom bubble is a lighter grey with a white question mark. There are also some faint, light grey geometric shapes and lines in the background.

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Joint Opinion 18-57/17-166

March 29, 2018

Digest: A judge does not violate the Rules Governing Judicial Conduct by fulfilling his/her statutory powers, functions, and duties as a licensing officer in good-faith reliance on statutory authority and administrative guidance on how to exercise that authority. However, the judge must still abide by generally applicable ethical principles, to the extent necessary and appropriate, even when acting as a licensing officer, and thus the judge (1) must not be swayed by public clamor or fear of criticism; (2) must respect and comply with the law, including any due process requirements for such proceedings; and (3) must act in a manner that promotes public confidence in the judiciary's integrity and impartiality.

Rules: Judiciary Law 212(2)(l); 22 NYCRR 100.2; 100.2(A); 100.3(B)(1); Opinions 17-176; 17-110; 16-55.

Opinion:

In Inquiry 18-57, as clarified by discussion with the inquirer, an administrative judge requests reconsideration of Opinion 17-166, which he/she states is premised on a fundamental misunderstanding of the powers, functions and duties conferred by the legislature on judges who serve as licensing officers.

According to the administrative judge, a judge acting as a licensing officer may (or even potentially must) in certain circumstances initiate investigations and/or proceedings concerning possible revocation or suspension of a firearm license. The statute does not necessarily provide for a law enforcement or prosecutorial agency to be notified or involved in the proceeding. Instead, it is a civil/administrative licensing proceeding, albeit one that may potentially have constitutional dimensions.

A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2) and must always act to promote public confidence in the judiciary's integrity and impartiality (*see* 22 NYCRR 100.2[A]). A judge must "respect and comply" with the law (*id.*) and "be faithful to the law and maintain professional competence in it" (22 NYCRR 100.3[B][1]).

As always, we can only comment on a judge's *ethical* obligations under the Rules Governing Judicial Conduct (*see* Judiciary Law 212[2][l]). However, based on the inquiring administrative judge's representations, we hereby rescind our prior Opinion 17-166 and replace it with the present Joint Opinion.

Judges acting as licensing officers may, of course, undertake the functions, duties, and responsibilities conferred on them by law. We note that these functions, as explained by the inquiring administrative judge, are in some ways inconsistent with the traditional neutral role of a judge, particularly to the extent they may authorize or mandate the judge to investigate *sua sponte* the propriety of a previously granted firearm license and/or to initiate and conduct a firearm license revocation or suspension proceeding without participation of the functional equivalent of a separate quasi-prosecutorial or law enforcement agency.

Nonetheless, we believe a judge does not violate the Rules Governing Judicial Conduct by fulfilling his/her statutory powers, functions, and duties as a licensing officer in good-faith reliance

on statutory authority and administrative guidance on how to exercise that authority (*see generally* 22 NYCRR 100.2[A]; 100.3[B][1]; *cf.* Opinion 16-55 [“a judge who makes a good-faith legal determination based on the apparently controlling statutes and case law (if any) is necessarily acting ethically”]).

Of course, a judge must still abide by generally applicable ethical principles, to the extent necessary and appropriate, even when acting as a licensing officer. For example, the judge (1) must “not be swayed by ... public clamor or fear of criticism” (22 NYCRR 100.3[B][1]); (2) must “respect and comply with the law,” including providing due process for licensees to the extent required by case law and/or statutes (22 NYCRR 100.2[A]);¹ and (3) must act in a manner that promotes public confidence in the judiciary’s integrity and impartiality (*see id.*). It would, for example, be inappropriate for a judge to use his/her powers as a licensing officer to “further the judge’s convenience or personal interests” (Opinion 17-110).

Beyond this, we cannot meaningfully comment at this juncture, as the details of a judge’s statutory functions, powers, and duties raise primarily legal or administrative questions. Indeed, to the extent unsettled, we conclude judges should first consult their supervising and/or administrative judge about the questions presented, before seeking ethical guidance on their activities as licensing officers, so that the appropriate administrative judges can create uniform policies, procedures, and guidelines for judges acting as licensing officers (*cf.* Opinion 17-176).

¹We note that what constitutes due process in the context of any particular firearm revocation or suspension proceeding is a question of law. Again, we emphasize “a judge who makes a good-faith legal determination based on the apparently controlling statutes and case law (if any) is necessarily acting ethically” (Opinion 16-55), even if he/she is reversed on appeal.

Opinion 19-47

June 20, 2019

Digest: A judge may not have a court clerk enter the proposed fine on a motorist's mail plea from a fixed schedule of fines developed by the judge -- even though the judge intends to personally review, confirm, initial and approve the fines entered by the clerk -- where the underlying fixed schedule pre-selects specific fines from the statutory range and therefore is likely to create an appearance that the judge has pre-judged certain categories of cases without individualized consideration of relevant legal factors.

Rules: VTL 1805(f); 22 NYCRR 100.2; 100.2(A); 100.3(B)(7); 100.3(C)(1); 100.3(C)(2); Opinions 15-220; 15-127; 14-137; 09-211; 89-142; 1993 Ann Rep of NY Comm on Jud Conduct at 16.

Opinion:

The inquiring judges have created and approved judicial guidelines in the form of a “fixed schedule” of fines for guilty pleas received by mail pursuant to VTL 1805. For each offense, the first few columns simply track the statute, listing the range of statutory fines, mandatory surcharge, the number of points, and the range of jail time available (if any). The last three columns set forth one number from the statutory range for a first, second, and third offense.¹ The judges ask if they may direct their court clerks to “use [their] ‘fixed schedule’ to write on each defendant’s ticket the fine, then give it to us for review, and once confirmed, initial our approval.” The judges suggest this final step provides a distinction from Opinion 15-127, in which the court clerk would have been directed to impose the fine based on the fixed schedule “without further judicial review” by the judge.

A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2) and must always act to promote public confidence in the judiciary’s integrity and impartiality (*see* 22 NYCRR 100.2[A]). A judge must dispose of all judicial matters promptly, efficiently and fairly (*see* 22 NYCRR 100.3[B][7]); diligently discharge his/her administrative responsibilities (*see* 22 NYCRR 100.3[C][1]); and require staff, court officials and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge (*see* 22 NYCRR 100.3[C][2]). Unless legally authorized, a judge may not delegate “judicial functions” to non-judicial personnel or others (Opinions 15-127; 15-220; 14-137; *see also* Opinions 09-211 [“a judge may not delegate judicial decision-making”]; 89-142 [“the judge is required to discharge his or her own judicial duties”]; 1993 Ann Rep of NY Comm on Jud Conduct at 16 [noting that an impartial and independent judiciary requires “a judge to exercise the powers of office without undue or unauthorized reliance upon non-judges”]).

While the inquiring judges’ proposal would certainly avoid *one* pitfall of improper delegation of judicial duties, by providing for “further judicial review” after the court clerk enters the proposed fine (*cf.* Opinion 15-127), we conclude it would still create an appearance of impropriety on the facts presented.

To start, it remains our view that the imposition or setting of a fine, even if only for a mail plea on an arguably “routine” traffic infraction, is a non-delegable judicial duty to be exercised by the judge on a case-by-case basis, taking into account all relevant legal factors.

We assume for purposes of this opinion that the judges' chart accurately summarizes the statutory ranges, and we acknowledge that each number selected for a first, second, or third offense appears to fall within the permissible range. Nonetheless, the chart does not -- and surely cannot -- reflect all relevant considerations for individualized consideration of each mail plea.

To take one example, with respect to “[VTL] 1180-(d)(1) Speed in Zone - 10 or less mph over,” the judges have apparently chosen \$50 as the fine for a first offense out of the statutory range of \$45-150 (*see supra* fn 1). This pre-selected fine does not appear to account for other potentially relevant factors, such as whether the underlying speed limit was 10 mph or 50 mph, or whether the motorist included a statement or explanation for the judge to consider (*see* VTL 1805[f]).

We see no impropriety in the judges' creating a schedule for ease of reference which tracks the statutory requirements and ranges for each offense, including applicable fine ranges, mandatory surcharge, points, and any potential jail time. Nor is it inappropriate for a judge to think through, in advance, a possible starting point for the imposition of fines on defendants with and without prior convictions for the same offense. Thus far, the public will surely perceive the judge as attempting to ensure a degree of fairness and consistency within statutory requirements.

But this particular chart appears to pre-select one specific fine out of the permissible statutory range, based *solely* on the number of prior convictions for the same offense without considering any other potentially relevant factors. At the very least, this aspect of the chart verges on dangerous territory, as it may begin to raise questions about whether the judges are pre-judging the mail pleas without any individualized consideration. The appearance is considerably worsened if the judges then direct their court clerks to use their fixed schedule to enter specific fines on the mail pleas, which the judges will later review and initial.

Under these circumstances, we conclude the judges must not direct the court clerks to enter proposed fines on motorists' mail pleas from the judges' fixed schedule, as it is likely to create an appearance that the judges have pre-judged certain categories of cases without individualized consideration of relevant legal factors. The judges' assurance that they will personally review, confirm, initial and approve the fines entered by their court clerks based on this schedule is not sufficient to dispel the appearance of impropriety.

¹ For example, for “[VTL] 375-2(a)4 No/inadequate plate lamp,” the statutory range of fines is listed as \$0-150 and the surcharge is listed as \$58. Based on the chart, it appears the judges have selected \$25 as the fine for a first offense, \$50 for a second offense, and \$100 for a third offense. In a more complicated example, for “[VTL] 1180-(d)(1) Speed in Zone - 10 or less mph over,” the chart suggests the judges have chosen \$50 as the fine for a first offense (out of the reported statutory range of \$45-150), \$100 as the fine for a second offense (out of a range of \$45-300) and \$150 for a third offense (out of a range of \$45-525).

Opinion 19-63

June 20, 2019

- Digest:
- (1) A town justice may not agree to a private meeting with the town comptroller and town board member(s) for the express purpose of explaining and justifying an apparent decrease in revenue.
 - (2) This prohibition does not preclude the judge from communicating with town officials concerning the amount of fines and fees collected and/or the court's budgetary needs, as permitted by statutes and prior opinions.
 - (3) The judge may also publicly discuss the court's operations, including a decrease or increase in revenue, at a town board meeting or public forum, provided he/she (a) is careful not to cast doubt on his/her integrity, impartiality, and independence in adjudicating matters that could potentially result in revenue for the town and (b) avoids impermissible comment on any identifiable pending or impending case before him/her.

Rules: 22 NYCRR 100.0(S); 100.1; 100.2; 100.2(A)-(C); 100.3(B)(1); 100.3(B)(6) - (8); 100.3(B)(9)(a); Opinions 16-104; 16-85; 16-55; 15-188; 13-124/13-125/13-128/13-129; 07-22; 99-104; 89-129.

Opinion:

The town comptroller has asked to meet privately with the town justices and one or more town board members to discuss an apparent decrease in court revenue over the past year. The inquiring judge asks if he/she may participate in the proposed meeting to discuss and explain why court revenue has decreased.

A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2) and must act to promote public confidence in the judiciary's integrity and impartiality (*see* 22 NYCRR 100.2[A]) and to preserve the judiciary's independence (*see* 22 NYCRR 100.1; *see also* 22 NYCRR 100.0[S] ["An 'independent' judiciary is one free of outside influences or control"]). A judge must "dispose of all judicial matters promptly, efficiently and fairly" (22 NYCRR 100.3[B][7]), must not be "swayed by partisan interests, public clamor or fear of criticism" (22 NYCRR 100.3[B][1]), and must not "make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office" (22 NYCRR 100.3[B][9][a]). A judge must not allow political or other relationships to influence the judge's judicial conduct or judgment (*see* 22 NYCRR 100.2[B]) and must not convey or permit others to convey the impression that they are in a special position to influence the judge (*see* 22 NYCRR 100.2[C]). A judge must also respect and comply with the law (*see* 22 NYCRR 100.2[A]) and be faithful to it (*see* 22 NYCRR 100.3[B][1]).

As we have observed, the "state constitution establishes the state's three branches of government and vests specific bodies with authority to discipline, remove, or impeach judges" (Opinion 16-55 [citations omitted]). In light of this constitutional scheme, we advised "a town judge's voluntary submission to the authority of the town board for discipline and/or removal would raise serious separation-of-powers concerns, and likewise infringe on the judiciary's independence" (*id.*). In Opinion 99-104, we likewise advised that a village justice must not attend "monthly meetings of the village government's department heads which are presided over by the Mayor." As we explained (*id.*):

The judge's attendance at the monthly meetings would, in effect, erroneously identify the judge as a member of the executive branch of the local government serving under the direction of the Mayor. Such a role would not only jeopardize the independence of the judiciary but would also give rise to an appearance of impropriety, contrary to the Rules.

Further, even if other branches of town government imagine the justice court as a revenue center, the Rules Governing Judicial Conduct preclude the justices from acquiescing in that concept of the court (*cf.* Opinion 16-55 [noting the judicial ethics rules are “promulgated pursuant to authority *constitutionally* vested in the very highest levels of the judiciary itself”]). Judges must preside fairly and impartially in every case, applying applicable law to the facts before them (*see generally e.g.* 22 NYCRR 100.2[A]; 100.3[B][1]; 100.3[B][7]; 100.3[B][9][a]). Their judicial role ethically precludes them from adopting or pursuing revenue goals in deciding a defendant's guilt or innocence, in approving guilty pleas, or in assessing fines and penalties where legally appropriate. Indeed, we have recognized that a judge may not even “consider, as a factor in evaluating a particular [proposed plea] agreement, whether the proceeds of an otherwise fair and lawful traffic fine, accrue to the town versus state treasury, assuming either is legally authorized to receive revenue from traffic fines” (Opinion 07-22).

Relatedly, as we explained in Opinion 13-124/13-125/13-128/13-129 (citations omitted):

The Committee has recognized the danger that a judge's impartiality will appear to be compromised when the circumstances of a proposed private meeting with the judge suggest that the meeting is essentially “an attempt to promote a particular agenda in connection with the judge's judicial decision-making in certain matters that will come before the judge” or otherwise to impermissibly “influence the judge's future [judicial] conduct.” Thus, for example, the Committee has advised that a judge who has dismissed a number of parking tickets issued for illegal overnight parking must not meet privately with the Chief of Police and the Commissioner of Public Works for the municipality where he/she presides to discuss those decisions....

In our view, the proposed private meeting between the town justice and the town comptroller and town board member(s), for the express purpose of explaining and justifying an apparent decrease in revenue, would undermine public confidence in the court's integrity, impartiality, and independence. For example, it would likely create a public impression that the justice court is a town “department” that must either meet certain revenue goals or account for its failure to do so. It could further create an impression that the town comptroller and/or town board are in a position to influence the judge's judicial conduct or judgment in vehicle and traffic matters or other cases where fees or fines may legally be imposed. For all these reasons, the judge must decline to participate in the proposed meeting as described.

We emphasize, however, that judges may meet with town employees and officials in the normal course of their duties, including in the budgeting process (*see e.g.* Opinions 89-129 [town justice may appear before the town board to request additional funds to carry out court functions]; 16-104 [prohibition on a village justice or court clerk attending the mayor's monthly meetings with village “department heads” does not prevent them from attending “an annual budget meeting” or other such occasional meetings “where the judge determines the court's interests need to be represented”]). They may also provide information concerning the court's expenses and revenues to town officials or the general public, as noted in Opinion 16-104:

Nor does [this opinion] prohibit a justice court clerk from complying with applicable statutes (*see e.g.* Opinion 11-92 [noting that a court clerk's duties may include “electronically filing

monthly audit and control reports; and presenting monthly reports to the municipality’s chief fiscal officer”) or the judge from providing status reports to the village government where legally required and/or ethically permitted (*see e.g.* Opinion 15-215 [a justice court “may, subject to all applicable statutory provisions concerning confidential information or sealed records, present a monthly status report to the town or village board at a public board meeting”]).

Thus, the present opinion does not preclude the judge from communicating with town officials concerning the amount of fines and fees collected and/or the court’s budgetary needs, as permitted by statutes and prior opinions. Further, we believe the judge may publicly discuss the court’s operations, including a decrease or increase in revenue, at a town board meeting or public forum, provided he/she (1) is careful not to cast doubt on his/her integrity, impartiality, and independence in adjudicating matters that *could* result in revenue for the town and (2) avoids impermissible comment on “any identifiable pending or impending case before the judge” (Opinion 13-124/13-125/13-128/13-129; *see generally* 22 NYCRR 100.3[B][6] [ex parte communications rule]; 100.3[B][8] [public comment rule]).

With respect to the inquiring judge’s final question, whether he/she may “ever” meet with the town comptroller, we cannot provide meaningful guidance as the question is general in nature and is necessarily subject to multiple factual variations (*see e.g.* Opinions 16-85; 15-188 [last paragraph]).

Opinion 20-69

June 18, 2020

Digest: When misdemeanor-level Vehicle and Traffic Law charges are before a judge on a simplified traffic information, the judge may not ask the prosecuting agency to file a long form information so the judge can sua sponte issue a criminal summons or an arrest warrant for a defendant who failed to appear.

Rules: Vehicle and Traffic Law § 226(3); 22 NYCRR 100.1; 100.2; 100.2(A); Opinions 19-163; 19-159; 16-09; 15-50; 13-183; 13-19; 11-124; 10-177; 10-113; 09-118; 00-95; 96-132.

Opinion:

The inquiring town justice observes that defendant motorists facing misdemeanor-level Vehicle and Traffic Law charges sometimes miss multiple court dates despite proper notice. In such instances, the judge would like to issue either a criminal summons or (where appropriate) an arrest warrant. The judge says he/she cannot do so on a simplified traffic information, but only on a long form information.¹ Where the matter was initially prosecuted through a simplified traffic information, the judge says applicable law allows him/her to request the long form information and further observes that “a form for such requests is present on the UCS courtroom program and is commonly used by courts.” The judge nonetheless wishes to be sure that doing so will not create an appearance of impropriety. Accordingly, the justice asks if he/she ethically may, on his/her own initiative, request a long form information from the police and/or the prosecutor for a VTL misdemeanor and thereafter charge and issue a criminal summons or arrest warrant for defendants who have missed multiple court dates.

A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2), uphold the judiciary’s integrity and independence (*see* 22 NYCRR 100.1), and act in a manner that promotes public confidence in the judiciary’s integrity and impartiality (*see* 22 NYCRR 100.2[A]).

We have noted it is “critically important to protect and preserve both the fact and the appearance of the independence of every judge” (Opinion 11-124). In particular, judges must maintain their independence from prosecutors and not participate or assist in “what is essentially the work of the prosecutor’s office” (Opinion 00-95; *accord e.g.* Opinions 19-163; 10-177; 10-113). We also said a judge must not, in order to collect fines or surcharges he/she imposed on a defendant for parking violations, contact another court to ask that payment be made a condition of any disposition of the defendant’s case in the other court (*see* Opinion 15-50). Nor may a judicial association submit an amicus curiae brief in an Article 78 proceeding against an individual judge, as this would involve taking on the “role of advocate” rather than a neutral judicial role (Opinion 19-159).

Here, too, sua sponte requesting a long form information to permit a broader exercise of the court’s enforcement prerogatives would create an appearance of partiality and suggest that the judge is predisposed toward the defendant’s guilt (*see* Opinions 09-118; 96-132). Likewise, if a judge issues a criminal summons or warrant for arrest after sua sponte requesting a long form information, the court creates the impression that it is assisting the prosecution in its enforcement efforts.² These activities do not comport with the high standards for integrity and impartiality New York’s rules require of its judges.

Therefore, we conclude this judge may not sua sponte request that the police or prosecutor file a long form information in a matter that was initially prosecuted through a simplified traffic information, solely so the judge can sua sponte issue a criminal summons or an arrest warrant for a defendant who failed to appear.

We recognize that the court may have an independent interest in ensuring matters are decided expeditiously on the merits and in ensuring its authority is respected. However, any action the court takes to pursue these interests must still maintain public confidence in judicial independence and impartiality. For example, where governing law permits, we see no reason why a judge may not ethically report defendant motorists to the department of motor vehicles for their licenses to be suspended (*see e.g.* Vehicle and Traffic Law § 226[3]; Opinions 13-19 [certain defendants had been reported “for failing to pay a fine or failing to appear in court”]; 13-183 [certain defendants had “been ‘scoffed’ ... for failure to pay an imposed fine”]). Similarly, where law enforcement or the prosecution provide a long form information and request that the judge issue a criminal summons or arrest warrant, the judge’s decision on that request is a matter of law, rather than ethics.

¹ “A simplified information is a short form accusatory instrument created ... to streamline the process of charging persons with traffic infractions [and] misdemeanors relating to traffic” and “is legally sufficient ... as the basis for prosecution of the charge contained therein, without any supporting factual allegations” [Report of the Advisory Committee on Local Courts](#) at 66 (Jan. 2003). “In contrast, a defendant charged by ‘long form’ information with a misdemeanor is entitled to an accusatory instrument that includes allegations of fact that provide reasonable cause to believe that the defendant committed the offense charged ... and non-hearsay allegations that establish, if true, every element of the offense charged and the defendant’s commission thereof” (*id.*).

² The 2003 report (*see* fn 1 *supra*) says a “defendant charged by simplified information with a misdemeanor ... can be prosecuted based solely on hearsay allegations,” while a long form information that does not contain sufficient non-hearsay factual allegations “is subject to dismissal as defective.” If so, a judge’s sua sponte request for a long form information may also be seen as impermissibly defense-oriented, in that it could increase the prosecution’s obligations (*cf.* Opinion 16-09 [noting that an “impermissibly defense-oriented” letter could, ironically, “also be seen as impermissibly prosecution-oriented”]).

Opinion 21-114(A)

September 9, 2021

Digest: A judge may disclose the judge’s own preferred gender pronouns in the judge’s email signature block and during a virtual proceeding in which the judge presides.

Rules: 22 NYCRR 100.2; 100.2(A); 100.3(B)(4); Opinions 21-81; 21-09; 09-151; 18-36; 17-179; 17-12.

Opinion:

A full-time judge asks if they may disclose their own preferred gender pronouns in the judge’s email signature block and orally during virtual proceedings in which the judge presides.¹

A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2) and must always act in a manner to promote public confidence in the judiciary’s integrity and impartiality (*see* 22 NYCRR 100.2[A]). A judge must “perform judicial duties without bias or prejudice against or in favor of any person” (*see* 22 NYCRR 100.3[B][4]). For example, a judge must not, “by words or conduct, manifest bias or prejudice, including but not limited to bias and prejudice based upon ... sexual orientation, gender identity [or] gender expression” (*id.*).

Not only are judges ethically prohibited from manifesting bias or prejudice based on sexual orientation, gender identity or gender expression (*see e.g.* Opinion 21-09 [where a party or attorney has advised the court that their preferred gender pronoun is “they,” a judge may not require them to instead use “he” or “she”]), but in many circumstances, judges may affirmatively act to promote diversity and inclusion. For example, a judge may participate in a job fair as a representative of a not-for-profit organization in order to encourage members of the LGBT community to pursue careers as court officers and promote diversity in the court system (*see* Opinion 09-151); may join with officers of an ethnic bar association to meet with a district attorney-elect’s transition team to discuss increasing diversity at the district attorney’s office, provided there is no impermissible political activity and the judge does not recommend specific individuals be hired (*see* Opinion 17-179); and may “promote diversity by encouraging individuals from particular backgrounds to enter the legal profession” (*see* Opinion 17-12). A judge may also promote diversity in courtroom participation by including a statement in their part rules encouraging litigators to give their knowledgeable junior colleagues more speaking and leadership roles in their courtroom (*see* Opinion 18-36). Most recently, we advised a judge may vote on a judicial association’s proposed resolution not to hold the association’s conferences in locations where local laws adversely affect individuals with particular sexual orientations, gender identity, or gender expression, and need not resign from the association merely because the resolution passes (*see* Opinion 21-81).

Here, too, we conclude a judge may disclose the judge’s own preferred gender pronouns in the judge’s email signature block and during a virtual proceeding in which the judge presides.

¹ Our use of “he/she” or singular “they” in an opinion is, as always, independent of the inquiring judge’s choice of pronoun(s).

Opinion 21-46

March 11, 2021

Digest: A judge may accept or reject plea dispositions but, in doing so, may not adopt a broad policy that omits individualized determinations.

Rules: 22 NYCRR 100.2(A); 100.3; Opinions 20-152; 20-01; 19-47; 10-32/10-48; 09-13; 06-174; *People v Argentieri*, 66 AD3d 558 (1st Dept 2009); *People v Mead*, 64 Misc3d 1230(A) (Sullivan County Ct 2019); New York Criminal Practice § 12.09 (2020).

Opinion:

A part-time judge asks if it is ethically permissible to “refuse to accept a disposition to a violation, from a misdemeanor, where the prosecution insists that the matter not be sealed as a condition of the reduction.”

A judge must respect and comply with the law and must always act in a manner that promotes public confidence in the judiciary’s integrity and impartiality (*see* 22 NYCRR 100.2[A]), performing the duties of judicial office impartially (*see* 22 NYCRR 100.3).

To the extent the inquiry implicates any disputed legal issues arising under criminal law and procedure, we cannot comment on them (*see e.g.* Opinions 09-13; 06-174). Nevertheless, we believe a few general principles are relevant to the question presented. First, we understand prosecutors have nearly absolute discretion in determining whether charges are to be preferred, amended or reduced (*see e.g. People v Mead*, 64 Misc3d 1230(A) [Sullivan County Ct 2019]). Second, a judge, as an exercise of discretion, may accept or reject criminal plea dispositions (*see generally People v Argentieri*, 66 AD3d 558 [1st Dept 2009]; New York Criminal Practice § 12.09 [2020]; Opinions 20-152; 10-32/10-48) but is required to make good faith, individualized determinations regarding the law and its application (*see* Opinion 19-47). Third, a judge who makes a good-faith legal determination based on the apparently controlling statutes and/or case law “is necessarily acting ethically” (Opinion 20-01 [citation omitted]). Thus, a judge acting in good faith does not commit an ethical infraction merely because their decision is challenged and reversed on appeal or otherwise found to be legally incorrect.

Applied here, the judge may, where legally appropriate on the facts presented, exercise their discretion to “refuse to accept a [plea] disposition.” However, the judge should not adopt a broad policy that omits individualized determinations.

Opinion 22-147

October 27, 2022

Digest: Where a judge has made a statutorily required allocution concerning an unrepresented tenant's potential claims and defenses, and the tenant says they do not understand them, there is no ethical impropriety in offering the tenant a document prepared and posted by the Unified Court System for public information, entitled "Common Defenses in a Landlord-Tenant Case." However, the judge should not recommend any particular defense listed.

Rules: RPAPL 746(2)(c)(iv); 22 NYCRR 100.2; 100.2(A); 100.2(C); 100.3(B)(12); Opinions 22-15(A); 19-03; 18-114; 14-87; 10-27; 09-02; 04-14; 99-82; 97-76.

Opinion:

The inquiring town justice, who presides in landlord/tenant cases, is aware of RPAPL 746(2)(c)(iv), which states:

"No stipulation required to be on the record by subdivision one of this section may be approved by the court unless the court first conducts an allocution on the record that ... (c) shall further find: ... (iv) that the unrepresented party is aware of and understands claims or defenses he or she may have in the proceeding and is aware of the available options in light of those claims or defenses, especially where the stipulation provides for a surrender of the dwelling unit or the conversion of a nonpayment proceeding into a holdover proceeding."

Accordingly, the judge plans to inquire about claims and defenses as required by the statute. If an unrepresented respondent/tenant says they do not understand their potential claims and defenses, the judge asks if it is ethically permissible to offer the tenant a document entitled "Common Defenses in a Landlord-Tenant Case," which is posted on the court system's public CourtHelp website (<https://nycourts.gov/courthelp/Homes/LTdefenses.shtml>).¹ The judge notes this document is "readily available" on the court's website, and that it "explains ... the defenses to a Nonpayment Case as well as a Holdover Case."

A judge must always avoid even the appearance of impropriety (see 22 NYCRR 100.2), must always act to promote public confidence in the judiciary's integrity and impartiality (see 22 NYCRR 100.2[A]), and must "respect and comply with the law" (id.). A judge must not lend the prestige of judicial office to advance private interests (see 22 NYCRR 100.2[C]), but may "make reasonable efforts to facilitate the ability of unrepresented litigants to have their matters fairly heard" (22 NYCRR 100.3[B][12]).

While the present inquiry presents a novel question, our prior opinions have permitted judges to make available certain kinds of information to litigants, where doing so does not create an appearance of impropriety.

For example, we have advised that judges may inform litigants of all their legal options, as long as they do not suggest or recommend any specific action (see Opinion 99-82). Similarly, judges

may inform unrepresented litigants about certain basic procedural obligations (see Opinion 19-03 [while judge must not email government agencies to obtain evidence in a matter involving an unrepresented tenant, the judge may "alert the tenant that certain evidence must be obtained by subpoena, or explain the content and form of a valid subpoena, or assist the litigant in determining the address to which the subpoena may be sent"], citing 22 NYCRR 100.3[B][12]).

We have also said judges may make available educational pamphlets or brochures in the courtroom, where doing so does not impermissibly promote private interests, make recommendations, improperly take on the role of an advocate or legal advisor, or otherwise create an appearance of impropriety (compare e.g. Opinions 97-76 [county-prepared pamphlet "describing the work of the Surrogate's Court"]; 04-14 [brochures promoting a not-for-profit mediation organization's services] with Opinion 10-27 [judge "may not endorse or promote education programs offered by a particular company"]). Similarly, a judge may make available in their courtroom "a list of domestic violence organizations which provide legal services to victims of domestic violence," provided the judge makes clear it is not "an official recommendation of the court" and does not recommend any particular organization (Opinion 09-02; see also Opinions 18-114 ["list of attorneys who are on the assigned counsel panel and are willing to represent litigants on a sliding fee scale," with appropriate disclaimer]; 14-87 [list of resources for help with alcohol and drug addiction]).

Clearly, if a statute requires a judge to conduct an allocution of an unrepresented respondent/tenant's potential claims and defenses, the judge may do so (see e.g. Opinion 22-15[A] ["a judge who makes a good-faith legal determination based on apparently controlling legal authority is necessarily acting ethically"]). In the event that an unrepresented tenant states that they do not understand their potential claims and defenses, we see no ethical impropriety in the judge's proposal to offer the tenant a document prepared and posted by the Unified Court System for public information, entitled "Common Defenses in a Landlord-Tenant Case." We note that this particular document says it offers "examples of defenses in a landlord-tenant case" and instructs the reader to "[r]ead the explanations carefully to see if any of them apply to you." In providing this list of common defenses, however, the judge should not recommend any particular defense listed.

¹ The CourtHelp home page is directed specifically to unrepresented litigants, offering to "help you when you don't have a lawyer" and explaining that it is "constantly being updated to reflect changes in the law" (nycourts.gov/courthelp). Relatedly, we note that the judge may consult with the Access to Justice office for more information (ww2.nycourts.gov/ip/nya2j).

Opinion 22-175

December 15, 2022

Digest: A judge may participate in a not-for-profit entity’s “backpack program” which provides a personalized gift to each adoptee and/or adoptive parent following a finalized adoption.

Rules: 22 NYCRR 100.2; 100.2(A); 100.2(C); 100.4(C)(3)(b)(i), (iv); Opinions 08-177; 02-77.

Opinion:

The inquiring judge asks whether their court may participate in a not-for-profit foundation’s “backpack program” for adoptions. As described, for each adoption that is finalized, the program will provide: (1) a backpack customized with the adoptee’s initials and bearing the foundation’s name and logo, (2) a stuffed toy animal with the same inscription, and (3) a fleece blanket. The foundation may also provide a tote bag for the adopting parent(s) with the same inscription. The court’s participation in this program would not be used for fund-raising or for commercial purposes, and none of the gift items bears the logo of any commercial entity.

A judge must always avoid any appearance of impropriety (*see* 22 NYCRR 100.2) and must always act in a manner to promote public confidence in the judiciary’s integrity and impartiality (*see* 22 NYCRR 100.2[A]). A judge must not lend the prestige of judicial office to advance private interests (*see* 22 NYCRR 100.2[C]). Therefore, a judge must not personally participate in the solicitation of funds or other fund-raising activities (*see* 22 NYCRR 100.4[C][3][b][i]) or permit the use of the prestige of judicial office for fund-raising (*see* 22 NYCRR 100.4[C][3][b][iv]).

We have said that a judge may offer nominal gifts as rewards to participants in a problem-solving court when those items do not advance a commercial interest (*see* Opinion 08-177 [a judge may distribute novelty items that do not bear the distributor’s name]; *cf.* Opinion 02-77 [a judge may not distribute gifts from commercial enterprises such as movie tickets or coupons for a fast-food restaurant]). The inscriptions on the items in the “backpack program” are those of the foundation, not a business entity, alleviating any concern that the court could be seen as lending judicial prestige to advance private commercial interests. Further, as proposed, no gifts or benefits would be provided to the judge or to court staff, as the court would act simply as an intermediary for the not-for-profit foundation’s gift to the adoptees and adoptive parents. Since the program does not involve any impermissible commercial, fund-raising, or political activity, and is unlikely to create any appearance of impropriety, the judge’s participation is ethically permissible.

