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Article 6

Note: Canons of Judicial Ethics - Extra Judicial Activities

NOTES AND COMMENTS

NOTE: CANONS OF JUDICIAL ETHICS – EXTRA JUDICIAL ACTIVITIES

The Preamble[1] to the Canons of Judicial Ethics[2] sets forth the necessity and purpose of the code. It provides that since "declared ethical standards tend to become habits of life"[3] it was deemed advisable to set forth these principles to guide judges and to indicate what the "people have a right to expect from them."[4]

In addition to this, there are other reasons that justify the existence of a code which regulates the activities of judges. Such a code serves as a guide in situations where the proper course of conduct may seem doubtful.[5] It stimulates public interest in the proper standards of judicial conduct and may, thus, generate greater respect for the judicial office.[6]

This note is concerned, almost exclusively, with the pertinent provisions of the Canons that apply to extrajudicial activities.[7] It deals with the ethical implications that arise when a judge performs administrative functions for the executive department, appears on radio and television broadcasts, and makes charitable contributions.

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[1] "In addition to the Canons for Professional Conduct of Lawyers which it has formulated and adopted, the American Bar Association, mindful that the character and conduct of a judge should never be objects of indifference, and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the judiciary in the administration of their office. The Association accordingly adopts the following Canons, the spirit of which it suggest as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them." Preamble, Canons of Judicial Ethics, A.B.A. CANONS OF PROFESSIONAL AND JUDICIAL ETHICS 45 (1957) (hereinafter cited as A.B.A. CANONS).

[2] *Quaere:* Why are there separate canons applicable to judges and lawyers? This is apparently due to the inherent difference in the functions of the bench and bar. The bench acts in an impartial manner; the bar, on the other hand, acts as a protagonist. Jackson, *Comparative Sidelights on the Ethics of the Bench and Bar,* 28 DICTA 81 (1951).

[3] PREAMBLE, *supra* note 1.

[4] *Ibid.* Furthermore "judges who are members of the American Bar Association are expected to observe these canons." Mason, *Judges in Politics,* 28 DICTA 85, 87 (1951).

[5] See 1959 N.Y. REPORT OF COMMITTEE OF ETHICS AND STANDARDS 11.

[6] *Ibid.*

[7] For a discussion of extrajudicial activities of judges from the standpoint of both the common law and the Canons of Judicial Ethics, see 47 IOWA L. REV. 1026 (1962).

Other extra judicial activities to be discussed will include his relations with his former partners, his participation in business, his personal relations and investments, his acceptance of gifts and favors, and membership in religious, educational and societal institutions.

JUDICIAL CANON 24— INCONSISTENT OBLIGATIONS

Administrative Functions

Because there was a scarcity of capable men for public office in the early history of the United States, a need arose to use judges in nonjudicial capacities. Although this practice has been continued,[8] it is now criticized on two grounds, *i.e.*, the impact on the judge himself, and the impact on the public.

If the practice of appointing judges to positions in the executive department becomes widespread, judges might see in such appointments political opportunity, both for themselves and for the Chief Executive.[9] Thus, judges may expect a reward for their service to the Chief Executive.[10] This could take the form of a higher judicial position or else a high position in the executive branch of the government.

If judges perform nonjudicial activities on behalf of the President they expose themselves to political attack.[11] When a judge acts in his judicial capacity he can rely upon the record of facts and the opinion of his colleagues as support. However, when he performs nonjudicial functions these supports are absent.[12] Because a judge cannot defend his actions either in political debate or in any other public manner,[13] he could conceivably be placed in a position which would impair the performance of his judicial duties.

In addition to having a deleterious effect upon judges themselves, the performance of nonjudicial work might lower the esteem of the judiciary in the eyes of the public.[14] If we accept the fact that the stability of the court system is dependent upon public respect and confidence,[15] it would appear that a judge's administrative duties must be kept to a minimum. It is not sufficient that judges be honest; they must be beyond reproach in the public eye.[16]

It may be conceded that judges are preeminently qualified to perform these nonjudicial functions and that such activities may be patriotic, desirable or expedient.[17] However, it is inadvisable for judges to engage in such activities because it deters the proper functioning of justice.[18]

JUDICIAL CANON 25[19]— BUSINESS PROMOTIONS AND SOLICITATIONS FOR CHARITY

Radio and Television Broadcasts

Because dramatic television and radio

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[8] *Independence of Judges: Should They Be Used for Non-Judicial Work?*, 33 A.B.A.J. 792, 795 (1947).

[9] *Id.* at 793.

[10] *Id.* at 795. See also 1 WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 120-21 (rev. ed. 1947).

[11] Mason, *Extra-Judicial Work For Judges: The Views of Chief Justice Stone*, 67 HARV. L. REV. 193, 204 (1953).

[12] *Id.* at 203.

[13] *Ibid.*

[14] *Independence of Judges: Should They Be Used for Non-Judicial Work?*, *supra* note 8, at 793.

[15] Preamble, Canons of Professional Ethics, A.B.A. CANONS 1.

[16] JESSUP, THE PROFESSIONAL IDEALS OF THE LAWYER 58 (1925).

[17] 7 J.B.A. KAN. 172-73 (1938).

[18] *Independence of Judges: Should They Be Used for Non-Judicial Work?*, 33 A.B.A.J. 792, 795 (1947).

[19] It has been suggested that this canon is unduly restrictive. See PHILLIPS & MCCOY, CONDUCT OF JUDGES AND LAWYERS 135 (1952).

broadcasts dealing with professional men have attained immense popularity, the issue of whether it is proper for a judge to appear on such programs may be posed. Essentially, the problem may be solved by determining whether the program is commercially sponsored or whether it is of a sustaining, noncommercial type.

The American Bar Association [hereinafter referred to as A.B.A.] has determined that it is improper for a judge to appear on a commercially-sponsored program which simulates a judicial proceeding, on the grounds that it would be an intolerable affront to the dignity of the judicial process.[20] The result of such a program would be to lower the dignity of the judiciary by transforming it into a medium for the entertainment of the public. The prohibition against a judge extends not only to his participation in such a program but also to the use of his name.

The Michigan State Bar Association has considered the issue of whether the program was commercially sponsored as immaterial. Even if it was a sustaining program, it was still of a commercial nature because such programs were broadcast for the purpose of self-advertising by the television or radio station, and also to create a large audience in order to sell it to a commercial sponsor.[21]

However, the A.B.A., in a recent opinion,[22] has refused to follow the lead of those states adhering to the Michigan rule. While the A.B.A. has reaffirmed its prohibition against judges appearing on commercial programs, it now allows judges to appear on a presentation simulating a judicial proceeding, if it is sponsored or assisted by a bar association. However, it must be made clear that the program is only a simulated judicial proceeding and it must conform to the highest standards of both the bench and bar. Judges may also appear on panel discussions or interviews only if such programs are either sponsored or assisted by bar associations or are noncommercial programs. The basis for the A.B.A.'s opinion would appear to be the fact that many bar associations have employed mass media to educate their members and the public.

The question of a judge's appearance in a motion picture has not yet been presented. Movie studios normally publicize the names of the performers in an effort to increase the box-office appeal of the movie. Therefore, in light of Canon 25's admonition to a judge not to use the influence of his name to promote the business interests of others, such appearances would appear to be improper. A judge should not lend himself to the promotion of such "marketplace transactions."[23]

Charitable Contributions

In many instances, a judge, prior to the

[20] Opinion 166 (1936), A.B.A. CANONS 337. This position has been criticized: "Is our traditional suspicion of sponsored programs justified in view of current business practices and production costs? Also, if we assume that the appearances of a judge on such a program is designed to and tends to automatically increase the sponsor's business, aren't we underestimating the intelligence of potential customers and overestimating the 'power and prestige' of the bench?" 16 FED. COM. B.J. 46 n. 2 (1958).

[21] Opinion 166 (1956) of the Michigan State Bar Association, 38 MICH. ST. B.J. 226 (1959). The Association of the Bar has also adhered to this position. Opinion No. 776 (1952) of The Association of The Bar of The City of New York, OPINIONS ON PROFESSIONAL ETHICS 470 (1956) (hereinafter cited as N.Y.C.B.A. Opinion No. —). See 16 FED. COM. B.J., *supra* note 20, for the decision of the California Judges' Advisory Committee on Judicial Ethics in this area.

[22] Opinion 298, 86 A.B.A. Reports 60 (Appendix) (1961).

[23] Opinion 166, *supra* note 20.

assumption of judicial office, may have been active in civic and charitable organizations and may wish to continue his support of such organizations.[24] However, a judge's activity on behalf of a charity has been absolutely prohibited. For example, he may neither personally solicit,[25] nor permit the use of his name,[26] for charitable contributions. Nor may he permit his employees to make an appeal for such contributions.[27] On the other hand, it is not improper for a judge to attend charitable events, provided that he does not permit his name to be used in connection with such gatherings.[28]

It is obvious that when applied to lawyers, this rule is a salutary one since a lawyer may feel coerced into making a contribution rather than risk the wrath of a judge.[29] However, when a judge solicits from the general public the reason for such a rule would appear to be less obvious. It was thought that the preservation of the public's confidence in the impartiality of judges was so important that it far outweighed whatever benefits might be derived from charitable solicitations by judges.[30]

Relations With Former Partners

When a member of a law firm becomes a judge, it is improper for the law firm to retain his name,[31] even though a new firm is created.[32] The reason for this is obvious. If the judge's name is retained it might suggest that the firm has a position of influence with the judge.[33] Litigants might then seek to employ the firm which retained his name.

Judges in Business

Before a discussion of the propriety of a judge's participation in business is undertaken it may be prudent to introduce some background material. At common law a judge was disqualified from hearing an action in which he had a pecuniary interest.[34] The basis for such disqualification was that no man should be a judge in his own cause.[35]

In contrast to the common law, the Canons of Judicial Ethics discourage a judge from engaging in business activities since he would actually use his name and the prestige of his office to promote the business interests of others. In this connection, the A.B.A. stated that it was improper for a judge to serve as a director of a bank.[36] It asserted that since publicity is normally given by banks to the members of their boards of directors, it would appear that he was promoting the business interests of others.

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[24] N.Y.C.B.A. Opinion No. 800 (1955) 492.

[25] N.Y.C.B.A. Opinion No. 230 (1932) 113; Opinion No. 104 (1917) of The New York County Lawyers' Association, OPINIONS ON PROFESSIONAL ETHICS 571 (1956) (hereinafter cited as N. Y. Cty. Lawyers' Ass'n Opinion No. –).

[26] Opinion No. 230, *supra* note 25; N.Y.C.B.A. Opinion No. 785 (1954) 478; N.Y.C.B.A. Opinion No. 238 (1932) 118.

[27] N.Y.C.B.A. Opinion No. 287 (1933) 152.

[28] Opinion No. 785, *supra* note 26.

[29] See Opinion No. 287, *supra* note 27.

[30] Opinion No. 785, *supra* note 26.

[31] Opinion 143 (1935), A.B.A. CANONS 303; N.Y.C.B.A. Opinion No. 697 (1946) 411; N.Y.C.B.A. Opinion No. 36 (1926) 17; N. Y. Cty. Lawyers' Ass'n Opinion No. 67 (1915) 549. See Opinion 165 (1955) of the Michigan State Bar Association, 38 MICH. ST. B.J. 222 (1959), wherein it was held that a judge cannot pose in a picture with his former associates.

[32] N.Y.C.B.A. Opinion No. 798 (1955) 490.

[33] Opinion 143, *supra* note 31; Opinion No. 36, *supra* note 31; Opinion No. 697, *supra* note 31.

[34] Frank, *Disqualification of Judges*, 56 YALE L.J. 605, 609 (1947).

[35] In the Matter of Ryers, 72 N. Y. 1, 10 (1878).

[36] Opinion 254 (1943), A.B.A. CANONS 508. This opinion has been criticized on the grounds that judges are performing a public service when they serve as directors and, also, that the A.B.A.'s position "smacks of 'sermonizing.' " Wall St., J., May 2, 1963, p. 17, col. 3.

When the Association of the Bar of the City of New York [hereinafter referred to as the Association of the Bar] was presented with the question of whether it was proper for a judge to serve as a director of a bank or life insurance company, it answered in the negative for two reasons.[37]

The Association of the Bar first decided that because both types of commercial institutions normally publish the names of their directors, the judge would in actuality be promoting the financial interests of the business. As its second reason, the Association of the Bar adopted the common-law approach. It observed that banks and insurance companies were normally involved in a voluminous amount of litigation, especially in the metropolitan area. This, in turn, would increase the number of cases in which the judge might have an interest.

Does a similar rule exist with respect to other corporations, such as utilities and railroads? All public corporations, to a greater or lesser extent, advertise the names of members of their boards. Therefore, a judge would be promoting the business interests of others, a practice frowned upon by the A.B.A. and the Association of the Bar. Also, if the practice of accepting board directorships becomes prevalent, it may shake public confidence in the judiciary. The public may reason that the greater the participation by the judiciary in business interests, the greater the incidence of subconscious favoritism in the conduct of litigation before them.[38]

It has been suggested that there would be no impropriety if a judge serves as a director of a private corporation.[39] Presumably, the basis for this observation is that private corporations do not advertise their director personnel. Nevertheless, the private corporation or corporations of which a judge is a director may be involved in litigation before him. The argument may then be advanced that a judge should disqualify himself because of his pecuniary interest. If judges fail to disqualify themselves there would not be an impartial administration of justice. On the other hand, if judges were to disqualify themselves frequently, the situation would still not be remedied as this would lead to a breakdown of the judicial process.[40] Therefore, the assumption of directorships by judges, whether of a public or private corporation, is to be deprecated.[41]

An additional argument for avoiding involvement in business activities is illustrated by the experiences of Chief Judge Manton of the Second Circuit.[42] Judge Manton had interests in many corporations, either in the role of stockholder or director. When the stock market collapsed in 1929 he plunged heavily into debt. In order to extricate him-

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[37] N.Y.C.B.A. Opinion No. 810 (1956) 500. It is also improper for a judge to function as a chairman of an advisory committee of a corporation. N.Y.C.B.A. Opinion No. 51 (1926-27) 22.

[38] See 72 CONG. REC. 3372-73 (1930) (remarks of Senator Norris).

[39] DRINKER, LEGAL ETHICS 278 n. 16 (1953).

[40] See Frank, *supra* note 34, at 608.

[41] "Judges should be free from every tie which may sway their judgment." VANDERBILT, JUDGES AND JURORS 19 (1956). It has been suggested that judges should, at the very least, place the corporations with which they are associated on a public record. Wall St. J., *supra* note 36, at 17, col. 4. *Quaere:* Is this not a form of indirect advertising of the personnel of a corporation's board of directors since it requires a judge to do what a corporation would ordinarily do on its own? This would also appear to be within the ambit of Canon 25's prohibition against promoting the business interests of others.

[42] See the excellent discussion in Vestal, *A Study in Perfidy*, 35 IND. L.J. 17 (1959).

self from his financial difficulties he accepted gifts and loans from those involved in litigation before him. As a result, he was convicted of conspiracy to obstruct the orderly administration of justice.[43]

In addition to serving as members of boards of directors, judges have also engaged in the sale of real estate and corporate securities. When faced with the implications raised by the sale of real estate, the Association of the Bar was of the opinion that such activity normally involved the practice of law, and as such, constituted a question of law which it would not answer.[44] It conceded, however, that there is no inherent limitation upon a judge participating in any dignified business provided that it in no way affects his ability to function effectively as a judge.

It would appear that a most important concept in its reasoning is the word "dignified." While the sale of a car or refrigerator by an individual is dignified because it is honest labor, it is difficult to imagine a judge entering the arena of common commercial transactions. There does not appear to be any definite standard by which it can be determined what is "dignified." Therefore, the question should be left for a judge to decide on an *ad hoc* basis, bearing in mind what impact his decision will have upon public opinion.

Clearly, the sale of corporate securities by a judge is improper because it tends "to detract from public confidence in the judicial office."[45] If a judge sells corporate securities the public would tend to identify him with the particular corporation and, in the public's eye, he could not be impartial if that corporation was involved in litigation before him. Furthermore, if a judge sold stock the public might assume that because the judge's prestige was associated with the corporation, purchase of its securities would be a sound investment.

Therefore, a judge should avoid directorships as well as other business activities which may promote the business interests of others. With regard to businesses that are "dignified" a judge should remember that he occupies an exalted position in the community and that what is "dignified" for the general public may not be "dignified" for a judge.[46]

JUDICIAL CANON 26
PERSONAL INVESTMENTS AND RELATIONS

Personal Relations

The opinions which have considered Canon 26 have dealt primarily with a judge's personal relations, rather than with his personal investments. Essentially, there are two questions to be considered. The first deals with the propriety of a judge's hearing an action in which he is related to one of the trial counsels, while the second arises when a former employer of a judge is representing one of the parties to the action.

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[43] United States v. Manton, 107 F. 2d 834 (2d Cir. 1938), *cert. denied,* 309 U. S. 664 (1939). With regard to this nefarious episode, it has been observed: "This unfortunate case emphasizes a distinct moral which has long been recognized, that the members of the judiciary should not concern themselves with the active conduct of business, directly or indirectly.... Active conduct of business affairs must inevitably give rise to injurious comment which may reflect on the honor of the Bench." Editorial, 25 A.B.A.J. 576, 577 (1939).

[44] N.Y.C.B.A. Opinion No. 36 (1926) 17.

[45] N.Y. Cty. Lawyers' Ass'n Opinion No. 133 (1917) 587. It is also improper for a judge to engage in the organization, promotion or financing of a corporation. *Ibid.*

[46] See *Independence of Judges: Should They Be Used for Non-Judicial Work?,* 33 A.B.A.J. 792, 794 (1947).

When asked to decide whether or not it was proper for a judge to hear a case in which a close relative was involved as a trial counsel, the A.B.A. indicated that it was not.[47] It conceded that although there was nothing in the Canon which would expressly preclude[48] a judge from presiding over such a case, it would be more prudent if he did not. Similarly, the Association of the Bar has declared such action to be judicially improper.[49] Moreover, it has expressed disfavor when a judge hears a case in which a near relative is in the employ of one of the trial counsel.[50] In such a situation a judge should refuse to hear the action unless his removal from the case would result in long delay or considerable expense.

Likewise, where the judge was formerly in the employ of one of the trial counsel, it would be improper for him to preside. If he desires to sit he must first disclose his former employment and his willingness to have another judge hear the case.[51]

Personal Investments

Judicial Canon 26 deters a judge from making personal investments in enterprises which are likely to be involved in litigation. It also cautions that, while a judge does not have to suffer a loss, he should attempt to dispose of such investments.

The position of Canon 26 has been criticized on the ground that it is the wise investments made by the practicing attorney that enable him to accept a judicial office.[52] Before an attempt to answer this criticism of Canon 26 can be undertaken the reason for its existence must be understood. At common law, a judge was disqualified from presiding over a trial in which he had any financial interest that was direct and immediate.[53] As long as his interest remained direct and immediate he would be disqualified even if the amount involved was small.[54] The only means through which he could avoid disqualification was to sell his interest in the corporation before the commencement of the action.[55]

Is this criticism of Canon 26 justified? It should be noted that Canon 26 warns against investments which are "apt to be involved in litigation." This criticism would be proper if it warned against *all* investments; but, the Canon does not go this far. It was apparently on this ground that the Association of the Bar decided that it was proper for a judge to have a financial interest in a coal company.[56] While it is true that coal companies

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[47] N.Y.C.B.A. Opinion No. 200 (1931) 97.

[48] Canon 26 handles this problem in general terms: "It is desirable that he a judge should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties."

[49] N.Y.C.B.A. Opinion No. 456 (1938) 245.

[50] *Ibid.*

[51] N.Y.C.B.A. Opinion No. 491 (1939) 268.

[52] PHILLIPS & MCCOY, CONDUCT OF JUDGES AND LAWYERS 134 (1952).

[53] Andes v. Ely, 158 U. S. 312, 323-24 (1895); See Blakeman v. Harwell, 198 Ga. App. 165, 173, 31 S.E. 2d 50, 54-55 (1944). A judge was disqualified if he was a stockholder in a corporation which was interested in the property involved in the controversy even though the corporation was not a formal party to the action. Adams v. Minor, 121 Cal. 372, 53 Pac. 815 (1898).

[54] State *ex rel.* First Am. Bank & Trust Co. v. Chillingworth, 95 Fla. 699, 705, 116 So. 633, 635 (1928). Ownership of stock in a corporation disqualifies a judge and the consent of the parties will not confer jurisdiction. Queens-Nassau Mortgage Co. v. Graham, 157 App. Div. 489, 142 N. Y. Supp. 589 (2d Dep't 1913).

[55] *E.g.*, Andes v. Ely, *supra* note 53; Palmer v. Lawrence, 5 N. Y. 389 (1851). See also Henderson v. Tillamook Hotel Co., 76 Ore. 379, 384, 148 Pac. 57, 59 (1915).

[56] N.Y.C.B.A. Opinion No. 51 (1926-27) 22.

might be involved in litigation,[57] it is not the type of investment against which Canon 26 warns.

What, then, is a general rule that a judge might apply when the opportunity for personal investment is presented. Although no general rule has been expressly laid down, an analogy to Canon 25 and the directorship problem may be drawn.

In the discussion of that Canon, it was held that a judge should not be a director of a bank or insurance company because such enterprises were usually involved in voluminous litigation. Applying this rule to the stockholding situation, a judge should avoid making investments in banking, insurance or allied stocks.

With respect to divesting himself of personal investments, this rule would also appear to be applicable. It may be conceded that, on occasion, this will work a hardship, but it is to be remembered that when a judge assumes the privileges that are coexistent with judicial office he also assumes the burdens of such office.[58]

JUDICIAL CANON 32
GIFTS AND FAVORS

Thou shalt not accept person nor gifts; for gifts blind the eyes of the wise, and change the words of the just. Deuteronomy 16:19.

Adopting the spirit of this maxim, Canon 32 would make it improper for a judge to accept a gift from a litigant, one who practices before him or those who are likely to be involved in litigation before him. There are three grounds for this prohibition.

First, the practice of judges accepting gifts would most probably promote unjust decisions by members of the judiciary.[59] Secondly, even if the judge accepted the gift in perfect good faith, the possibility is very great that he might subconsciously favor the donor.[60] Finally, there is the threat of public scandal. If a judge accepted a gift and it became a matter of public knowledge, the public would, most likely, suspect his integrity and impartiality.[61]

Canon 32 distinguishes between three classes of donors. The A.B.A. has ruled it improper for a judge to accept a sum of money from one who normally practices before him in exchange for a worthless mortgage on the judge's home.[62] In In re *Harriss,*[63] a judge had sentenced a defendant to prison. Because he believed her to be innocent, however, he interceded on her behalf when she petitioned for parole and, for

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[57] Of course, if the coal company became involved in litigation, the judge who holds stock in it cannot perform any act requiring judicial discretion. Opinion 170 (1937), A.B.A. CANONS 343. See also Washington Ins. Co. v. Price, 1 Hopk. Ch. 1 (N.Y. 1823); King v. Thompson, 59 Ga. 380 (1877). A co-operative is akin to a commercial corporation in the sense that it declares dividends or, perhaps, provides services in the community, such as the supply of electricity. Hence, a member of a co-operative is similar to a stockholder in a commercial corporation. This is the ground upon which a judge is disqualified from presiding over a case where a co-operative, of which he is a member, is involved in litigation. Pahl v. Whitt, 304 S.W.2d 250, 252 (Tex. Civ. App. 1957). If a judge is a member of a co-operative which is normally involved in a great deal of litigation it would appear that a judge should terminate his membership therein. However, if a judge is a member of a non-profit mutual co-operative he would not be disqualified from hearing a case involving such a co-operative because no pecuniary advantage could accrue to him. Fehr v. Hadden, 134 Colo. 102, 300 P.2d 533 (1956).

[58] Opinion 142 (1935), A.B.A. CANONS 300.

[59] DAVIS, THE MORAL OBLIGATIONS OF CATHOLIC CIVIL JUDGES 41 (1953).

[60] *Ibid.*

[61] See *id.* at 41-42.

[62] Opinion 89 (1932), A.B.A. CANONS 199.

[63] 364 Ill. App. 290, 4 N.E.2d 387 (1936).

his efforts, he received two hundred dollars. As a result of these activities the judge was censured. While the prisoner was no longer a litigant before the judge, the parole proceeding was so closely related to the decision rendered by the judge that the acceptance of the money would be subject to misunderstanding and misinterpretation.[64] If it is improper for a judge to accept a gift under such circumstances, a fortiori, when an individual is actually a litigant, the acceptance of a gift is improper.

The third class of donors, those whose interests are likely to be submitted to him for judgment, is particularly interesting. In the case of In re *Stolen*,[65] a judge accepted loans of money from criminals in exchange for his unsecured promissory notes and then presided over controversies involving his creditors. This conduct was deemed to be improper because a "judge who voluntarily places himself under obligation to the criminal element of his judicial district . . . and who sits in judgment upon the case of his debtor [creditor?], shocks the public confidence in his court. . . ."[66] While Judge Stolen did actually preside over a proceeding in which his creditors were involved, nevertheless, the tenor of the decision is such that even the receipt of the money was deemed improper. Thus, a judge should avoid accepting gifts from individuals who are likely to be involved in litigation before him.

There is also the possibility that corporations might endeavor to present a gift to a judge. When this occurs, the standard previously enunciated with respect to directorships may be applied. If a bank or insurance company attempts to offer a gift a judge should refuse the same. Again, the fact that such enterprises are normally involved in an immense amount of litigation serves as a basis for this holding. With regard to other corporations, individual prudence should dictate the propriety of acceptance of such gifts.

A discussion of the value of a proposed gift may also be fruitful. Clearly, there is no justification for the receipt of a valuable gift by a judge. Where small gifts are involved, however, the dangers of an unjust decision or subconscious favoritism do not appear to be dominant. Nevertheless, the public may misinterpret such gifts and suspect the judge of dishonesty.[67]

It has been suggested that the only circumstance when a judge could accept a gift would be when personal friendship was involved, the litigation was terminated and the gift had no connection with the decision.[68] This suggestion, however, may be criticized on two grounds. If a litigant happens to be a personal friend of a judge, the prudent course of action would seem to lie in a judge disqualifying himself. This observation is buttressed by Canon 33: "He should . . . in pending . . . litigation . . . be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his . . . friendships constitute an element in influencing his judicial conduct." Furthermore, the acceptance of a gift after a final determination in which a friend is involved, would lead to the loss of public trust. In all probability, the public would conclude that the gift was agreed upon before the judge's decision and that his acceptance of the gift afterwards was merely a subterfuge.

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[64] *Id.* at 292, 4 N.E.2d at 388.
[65] 193 Wis. 602, 214 N.W. 379 (1927).
[66] *Id.* at 614, 214 N.W. at 386.
[67] DAVIS, *op. cit. supra* note 59, at 42.
[68] *Id.* at 44.

In summary, the acceptance of a gift, whether valuable or not, should be avoided. Furthermore, the time and circumstances under which the gift is offered as well as the relationship of the donor to the donee are also irrelevant.

JUDICIAL CANON 33 SOCIAL RELATIONS

Religious, Educational and Societal Institutions

Prior to becoming a judge, an individual may have been active in religious, educational and societal institutions. Since a judge is absolutely prohibited from engaging in activity in behalf of a charitable organization, the extent to which he may be associated with the above-named institutions may be appropriate for investigation.

A judge is not per se disqualified from presiding over a case in which a church or society, of which he is a member, is involved.[69] However, if such an institution is involved in litigation, the result of which would affect it financially, he would then be disqualified.[70] For example, an educational institution which is affiliated with a particular religion, might become a litigant when some of its students object to conforming with its religion-oriented standards of conduct.[71] If a judge were a member of the board of trustees of such institution, or even a faculty member,[72] he would not be disqualified since he would not have a financial interest.

While it is true that a judge, in the above hypothetical would not have to withdraw, nevertheless, he should consider the effect that non-disqualification would have upon the public. Since the public could reasonably conclude that the judge was not impartial, he should consider disqualifying himself because not only must he be impartial, but he must also appear to be impartial.

CONCLUSION

It has been suggested that more precise rules concerning the activities of judges should be promulgated.[73] This contention appears to have merit, especially with respect to directorships and to the performance of services for the executive branch of the government.

Further clarification is needed in the area of corporate directorships because it is not clear whether it is proper for a judge to be a director of a public corporation, other than a bank or insurance company. Nor is it clear whether it is proper for a judge to serve on the board of directors of a private corporation.

Since one of the express purposes of the Code of Judicial Ethics is to serve "as a proper guide and reminder to judges,"[74] the Code will not be fulfilling its function if it does not provide more precise standards for judges in these problem areas.

Although it is a code which regulates the activities of judges, it cannot expressly provide for all the particular situations with

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[69] Blakeman v. Harwell, 198 Ga. 165, 174, 31 S.E.2d 50, 55 (1944).

[70] Appeal of Askounes, 144 Pa. Super. 293, 298, 19 A.2d 846, 848 (1941).

[71] See the factual situation presented in Carr v. St. John's University, 12 N.Y.2d 802, 187 N.E.2d 18, 235 N.Y.S.2d 834 (1963).

[72] It has been held that a judge was not disqualified from acting as the presiding judge in a condemnation proceeding for the benefit of a university, even though he was also a faculty member of the university. Board of Educ. v. Getz, 321 Mich. 676, 33 N.W.2d 113 (1948).

[73] Wall St. J., May 2, 1963, p. 17, vol. 4.

[74] Preamble, Canons of Judicial Ethics, A.B.A. CANONS 45.

which a judge may be presented.[75] What, then, is a judge to do when the Canons of Judicial Ethics do not expressly provide the answer?

A judge should then be guided by Judicial Canon 4 which contains the very heart of the Canons of Judicial Ethics. "[H]is personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach." Thus, in those borderline situations which may arise, a judge should strive to reach this goal since "the future of the Republic . . . depends upon our maintenance of justice pure and unsullied."[76]

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[75] Preamble, Canons of Professional Ethics, A.B.A. CANONS 1.

[76] *Ibid.*