

Judicial Ethics

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Resources

- Officeholding & Ethics Deskbook
- The People's Court self-paced module on TJCTC website
 - Includes OCA handout on Legal Information vs. Legal Advice
- <https://www.txcourts.gov/publications-training/judicial-ethics-bench-books/>
 - Contains links to the Code of Judicial Conduct as well as SCJC ethics opinions

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Do You Have Questions About Ethics Or A Canon?

- Call a State Commission on Judicial Conduct attorney. They can provide information and guidance about ethics and the canons.
- 512-463-5533 – Main Number

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Roadmap

- Ex Parte Communication
- Legal Info vs Legal Advice
- Demeanor
- Independence, Integrity, and Lending Prestige of the Office
- Endorsements & Politics
- Social Media
- Knowing and Following the Law

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Why is Ethics Important?

The legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws.

Public confidence is the cornerstone of the judicial system.

Justices should be diligent to ensure their actions are above reproach and not subject to criticism due to any conflicts, real or perceived.

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Why Ethics?

- Many people in your court just need to be heard, even if they lose their case
- You can give people hope in the justice system by treating them fairly
- Treating people with kindness and dignity upholds the dignity of being a Justice of the Peace

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Ex Parte Communication

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What is “Ex Parte” Communication?

- No one in the court should engage in improper "ex parte communication" with any party or potential party.
- This means that generally, neither a judge or clerk can discuss the substance of a case with one party if the other party isn't there.
- Especially in small towns, judges will often find parties wanting to discuss their current or future cases when they see the person in public.
- Some people will also come to the court and try to talk to the judge or a clerk about their case when they are there. This is not allowed, and if it occurs, the judge may need to recuse themselves from the case.

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Ex Parte Exceptions

- Here are some examples of when a court is allowed to communicate with just one party about a case:
 - Proceedings that are specifically authorized to be "ex parte" under the law (such as writ of re-entry applications).
 - Proceedings where both parties received reasonable notice, one party did not appear, and the court is allowed under the law to move forward in their absence.
 - Determining where jurisdiction of an impending claim or dispute may lie and determining whether it might more appropriately be resolved in some other judicial or non-judicial forum.

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Avoiding Ex Parte and Legal Advice

- What is a way you can tell them you can't have this discussion or provide this information in a way that doesn't sound like you are being unhelpful?
- Please share examples! Having a good, prepared response can be key in avoiding this pitfall!

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Ex Parte Discussion Question

- Criminal defendant wants to explain to the judge why it was necessary for them to speed, and so they should be found not guilty.
- Can this discussion happen before trial?
- At trial?
- After conviction, but before the judge renders punishment?

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Legal Advice vs.
Legal Information

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Do Provide Legal Information

When someone is asking questions, you (or more often, it'll be a clerk) should provide as much legal information as you can and refer the person to resources that may help them.

You can also mention that they may seek the advice of an attorney. Remember that TJCTC's SRL page includes information on finding an attorney, including legal services organizations that provide free or reduced cost services for qualifying applicants.

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Do Not Provide Legal Advice

Do not let yourself cross the line over into giving legal advice. Be careful and watch how you phrase things. Avoid anything that starts with something like "You should..."

If a person continues to press for legal advice, you will just need to end the conversation as politely as possible. It is fine to let them know that you are prohibited by law from giving them legal advice.

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Legal Advice
vs. Legal
Information
Tips -
Phrasing

R i n q / # k h u h # l v # d # y h u | # l q h # d q h # e h w z h h q #
d n j d e # d g y l f h # d q g # d n j d e # q i r u p d w l r q 1

\ r x # f d q # s u r y l g h # d g y l f h / # e x w f d q #
s u r y l g h # q i r u p d w l r q # k d w # h q g v # k s #
k h s l j # k h p # p d n h # d # g h f l v l r q 1

Z k h w k h u # | r x # f d q # d q v z h u # d # t x h w l r q # r u #
q r w # d q g # z k d w # | r x # f d q # d | # v r p h w p h v #
f r p h v # g r z q # r # k r z # l v # s k u d v h g 1

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Legal Advice vs.
Legal
Information
Tips –
General
Requests

- If they say “I’ve been locked out, what should I do?”, you can’t advise them, because there are several possible options (writ of re-entry; sue the landlord for money; terminate the lease).
 - *You could instead direct them to the Property Code, and TJCTC has a SRL packet on Tenant Rights available.*

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Legal Advice vs. Legal Information Tips – Magic Words

- If, on the other hand, they say “I’ve been locked out and need to get back in”, you can explain what a writ of re-entry is and provide an application. They told you what they are trying to do, even if they don’t know the words.

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Legal Advice vs. Legal Information Tips – Semantics Matter!

- If someone says “I don’t think they should be able to sue me in this county.”
- It’s OK to say “We can only transfer the case if a motion to transfer venue is filed. You can take a look at Rule 502.4 and decide if you want to file one. If you still aren’t sure, you could discuss with a lawyer, there is lawyer referral info at tjctc.org/SRL.”
- It’s not OK to say “You need to file a motion to transfer venue.”

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Demeanor

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Demeanor – Canon 1

- Canon 1 – “An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved.”
- What does this mean to you?

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Demeanor – Public Perception

- How do you think the public perceives the attitude and demeanor of a judge?
- How do you **wish** the public would perceive these?

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Demeanor – Group Discussion

- Think of a time when you feel your demeanor wasn't where you would like it to be.
- Discuss the reasons why it was that way, and how you would do it differently given another chance.

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Demeanor – Tips & Tactics

- Pick your battles
- Business, not personal
- De-escalate, rather than escalate (how?)
- Self-care
- What else?

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Independence,
Integrity,
and Lending Prestige
of the Office

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Other Behavioral Issues

- Beyond judicial demeanor on the bench, a judge must always be sure to:
 - Always remain independent, unbiased, and neutral, both in actions and perception
 - Avoid any behavior that brings discredit to the judiciary
 - Avoid lending the prestige of the office to private interests of the judge or any other party

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Disqualification & Recusal

- When is a judge disqualified? What if a disqualified judge renders judgment?
- Why would a judge recuse themselves even if they weren't disqualified?
 - Remember earlier discussion on ex parte communication
 - Perception is reality in many cases
 - Could I officiate a Texas Tech football game? What if I promise to try my best to be fair?

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Independence – Discussion Questions

- Can a justice of the peace maintain an active peace officer certification? Why or why not?
- What are some possible sources of perceived bias or lack of independence that judges should be aware of?

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Integrity

- You are responsible for public perception of the judiciary and must act that way at all times.
- If you know another judge violates the Canons, what are you supposed to do?

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Integrity – Discussion Questions

- Can a JP be the subject of a fund-raising roast?
 - Why or why not?
- Can a JP be a paid legal consultant for TV or movies?
- Can a JP provide brochures that refer people to county bar lawyer referral service?

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Integrity – Discussion Questions

- Can a judge:
 - Attend a holiday party at a law firm that is open to public?
 - Accept a lower interest rate on car loan because you are a JP?
 - Be a speaker or guest of honor at an organization's fund-raising event?

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Canon 4

- You can speak, write, and participate in activities that have to do with the legal system
- You can also be involved in and serve on a board for organizations, government agencies, civic groups or charitable activities that raise money, so long as you do not fundraise personally
- Refrain from financial activities that reflect adversely to impartiality or interfere with job duties

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Canon 4 - Gifts

- Generally, you or household family cannot accept outside gifts
 - Exceptions apply:
 - Incidental to public honor
 - Invitation to a judge and spouse to attend a bar-related function
 - Ordinary social hospitality from friend or relative
 - Must be commensurate with occasion and relationship
 - Do not take anything from a party whose interest have come or are likely to come before you as a judge

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Canon 4 – Mediation and Practice

- A full-time judge may not act as arbitrator or mediator for pay
 - Can encourage people to go to mediation
- Non-attorney JP's cannot practice law outside capacity as JP
- Attorney JP's cannot practice in their own court or anything related to one of their JP cases

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Canon 4 - Finances

- Compensation and reimbursement allowed for extra-judicial activities if it does not appear to influence judicial duties and it is a reasonable amount
- Shall file financial and other legally required reports

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Discussion Questions – Proper?

- Attend a holiday party at a law firm that is open to public?
- Accepting lower interest rate on car loan because you are a JP?
- Be a speaker or guest of honor at an organization's fund-raising event?

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Lending Prestige of the Office

- This means you can't use your role as a judge to benefit a person (including yourself), entity, or activity. This is part of the reason that you cannot endorse an individual candidate for political office. Examples of other things you must avoid include:
 - Public fundraising activities.
 - Advertising for a specific lawyer or business in the courthouse.
 - Anything that would give the impression that a particular person or entity has any special influence over you.

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Character Witness &
Recommendations –
Discussion
Questions

- Your brother is on trial for a criminal offense. He wants you to testify and say that his character is solid and that as a judge you know how to judge character. OK?
- Your former clerk is applying to law school and wants you to write a letter of recommendation for them, describing their work in the court. OK?
- A friend is applying for a job and needs references and wants you to send one on judicial letterhead, signed as Judge Doe. OK?

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Endorsements & Politics

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Canon 5

- Shall not make pledges or promises about cases that suggest you are predisposed to a probable decision
 - “I won’t grant evictions” or “I don’t believe in seat belts, so all seat belt tickets will be not guilty”
- You cannot make false or reckless comments about an opponent
- Must resign once you become a candidate in a contested election for a non-judicial officer role
 - Separate from “resign to run” statute (1 year & 1 month)

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Endorsements

- You **may not** endorse a candidate for **any** political office
 - You may attend events that a candidate holds
 - May indicate support of political party

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What Counts as Endorsement?

- Some examples of what could be considered an "endorsement" include:
 - An explicit endorsement that is spoken or written, including online.
 - A joint fundraising activity.
 - Allowing your name or photo to be used on another's campaign materials.
 - "Liking" a campaign post on a candidate's Facebook page.

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Political Activity Discussion Questions

- Which of the following are OK? Why or why not?
 - Sharing a Facebook meme that says, "I back Minnie Mouse in 2024" or "I back Peter Pan in 2024"?
 - Sending out a mailer on your opponent with statements that have not been fact checked?
 - Keeping your job as JP after becoming a candidate for County Court at Law Judge in contested election?

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Social Media & Media Relations

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Social Media Pitfalls

- Recently, judges have frequently been in trouble for social media comments or interactions that:
 - appeared to endorse a political candidate,
 - suggested a bias for or against a particular political party, race, gender, or other group, or
 - discussed a pending or future case.

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Social Media – Discussion Questions

What if a court clerk posts on Facebook about the “crazy person” who came into court today?

Is this a potential ethical problem for the judge even though it’s on an employee’s private account?

Can a judge limit what is posted on an employee’s social media?

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Traditional Media – Discussion

What are some situations to avoid and factors to consider when dealing with “traditional” media such as journalists and reporters?

Anyone have a situation that went particularly well or particularly poorly? Why did it go that way, and what could ensure that future situations go well?

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Knowing and Following the Law

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Knowing
the Law is
Ethics?

Removal due to “incompetence”
(includes judicial education
requirements)

Failure to provide justice and due
process

Making sure clerks are properly
trained in the law and customer
service

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Canons

- 2A: “A judge shall comply with the law.”
- 3B(2): “A judge should be faithful to the law and shall maintain professional competence in it.”

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Duty to Perform Judicial Functions

- This means that if the court has jurisdiction of a matter, it must be processed. Even if the person could have also filed it elsewhere, the judge has an obligation to hear it and may not send the person away. Courts must also move through their dockets (the cases currently pending before a court) in a reasonable manner and not delay proceedings unnecessarily.
- What if all the debt claim cases in your county are being filed in your precinct? What can/should you do?

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Doesn't Mean Perfection!

- Legitimate mistakes regarding the law will happen to every judge
- Don't make:
 - Willful mistakes
 - The same mistake over and over again
 - Mistakes based on your relationships with parties or attorneys
- Discuss other suggestions to avoid making mistakes related to the law

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Comments or
Questions?

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