

Smiling for Pictures and Other Judicial Family Minefields



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A judge 's family member posts this picture Facebook page



WHAT ARE THE CONCERNS FOR JUDICIAL FAMILIES?

CONCERNS IN PERSPECTIVE

1. *Security*
2. *Emotional stress* attributable to --
 - Being in the public eye
 - Intrusive (and occasionally unscrupulous) media
3. Maintaining *privacy* (e.g., health issues)
4. Protecting *young children* from verbal or physical attacks
5. Dealing with those seeking to exert *influence* on the judge
6. Complying with judicial *ethics rules*

WHY DO WE CARE ABOUT THE CODE OF JUDICIAL CONDUCT?

“How many divisions does the Pope have?”

-Josef Vissarionovich Dzugashvili

ETHICS COMPLIANCE

- FIRST, know which rules implicate family members
- SECOND, family members must be given tools to
 - recognize common situations raising ethics issues; and
 - think through application of those rules.
- THIRD, when, as is often the case, application of the rules, urge the judge to consult other judges, judicial ethics experts, or seek guidance from a judicial ethics advisory committee (if your jurisdiction has one: roughly 40 do)

WHO COUNTS AS FAMILY?

- Spouse, domestic partner, child, grandchild, parent, grandparent, or other relative with whom the judge maintains a close familial relationship
- “Residing in judge’s household” – means any relative of the J. by blood or marriage, OR a person treated by the J. as a member of the J’s family, who resides in the J’s household.
- “Third degree of relationship” (“3DR”) – means a person included among the following: grandparent, great-grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, niece.



CAUTION!

Each jurisdiction has its own Code of Judicial Conduct (“CJC”).

While there is some overlap in terms of common CJC provisions, there is **NO ONE-SIZE-FITS-ALL.**

“LOW-HANGING FRUIT”



“All too easy . . .” – Darth Vader

- Presiding over a family member’s case or complaint
- Seeking favors from police, DA’s, other judges on behalf of relatives (even when child is involved!)
- Getting involved in a family member’s dispute
- Hiring or appointing relatives as court staff, counsel, fiduciaries, quasi-judicial roles, or otherwise give court business to a relative
- Presiding over a case where a relative is a lawyer, witness, or employee of a party
- Judge’s spouse, parent, child (wherever residing), or any family member residing in the judge’s household has an economic interest in the case

MORE NUANCED FRUIT



“Nothing is easy . . .” – Elizabeth Bowen

- Family member as lawyer before another J.
- Relative practices with law firm appearing before J.
- Relative’s client appears before J.
- Relative works in office with other gov’t attys appearing before the J (incl. prosecutor, public def)
- In prohibited relationships, J must recuse.
- N.B. In many situations, disqualification can be waived by the parties after full disclosure.

“Nothing worth having comes easy.”

- Theodore Roosevelt

- Family member is an elected public official.
 - Relative w/in 3DR is a law enforcement officer
 - Relative practices law in local law firm
 - Relative works as nonlawyer in local law firm
 - Relative’s client appears before J.
 - Relative works in office with other gov’t attys appearing before the J (incl. prosecutor, public def)
- In prohibited relationships, J must recuse.

Nothing is easy, but who wants nothing?

- Gifts (including bequests, favors, and loans) that could reasonably be perceived as intended to influence the J.
- Other kinds of Gifts
 - Gifts at Bar functions or activities
 - Books and other materials from publishers on a complimentary basis
 - Gifts, awards, or benefits incident to activities of a family member
 - Ordinary hospitality
 - Bona fide Loans

Investments & Financial Dealings

- Stock ownership
 - *De minimis* exception
 - Contrast rule for federal judges
- Asking J. to serve as a fiduciary for family member(s)

POLITICAL ACTIVITIES & FUNDRAISING

Fundraising (Civic & Charitable)

CASE STUDY Scholarship golf tournament

Other scenarios:

- WY (donations & grant applications to support Judicial Learning Center)
- IL (J as “celebrity bagger” at supermarket)
- FL (use of J’s artwork at fundraising event)
- NY (singing national anthem at fundraiser)
- FL (host committee of legal aid organization)
- NY (Red Cross blood drive)
- NY (donations and services from a nonprofit for special-needs child)



Politicking

Especially with respect to judges who face some sort of election (partisan, non-partisan, retention), family members should be chary of public political activities and high profile community involvement. Such activities have the potential to hurt a judge's chances for re-election.

Judge's own campaign

- Conduct activities in a manner that is dignified and consistent with the integrity and independence of the judiciary.
- Avoid making promises or pledges about the J's conduct in office other than the faithful and impartial performance of judicial duties.
- Be scrupulous about presenting only accurate information about the qualifications and other facts about the J or the J's opponent.
- Do not solicit or accept campaign contributions, unless you are a member of the J's campaign committee and are acting in that capacity.

Family member's campaign

- Many state CJs prohibit judges from publicly endorsing another candidate for office.
- Do not ask or allow the J to solicit votes, campaign funds, or other support.
- If the J's home is to be used for campaign events (*e.g.*, for the J's spouse), the better part of valor is for the J not to attend or participate.
- Avoid using the J's name, photo (including in family photos), or other identifying information in a family member's campaign literature.
- If the J accompanies the spouse to political events, the J should not be introduced by title and the appearances should be discreet.

INTERNATIONAL HOT TOPIC: SOCIAL MEDIA

Social media minefield



POLITICAL FACEBOOK AD



The Truth About Gregg Lerman



Jane

Home



The Truth About Gregg Lerman

@meetgregglerman

Home

About

Photos

Likes

Posts

Create a Page

Attorney Gregg Lerman has made a lot of money trying to free Palm Beach County's worst criminals. Now he's running for judge!

Identity Theft
RAPE
SEXUAL ASSAULT
PEDOPHILES
DRUG TRAFFICKING
Internet Solicitation of Minors
CHILD PORNOGRAPHY
MURDERER



Like



Message



Save



More



Status



Photo / Video



Write something on this Page...



The Truth About Gregg Lerman

October 10 at 7:51pm · *

Instead of representing the victims of crime, Gregg Lerman chose to represent convicted serial killer Ronald Knight who targeted gay men and brutally murdered them. Now, he's running for judge!



Search for posts on this Page



39 people like this



Invite friends to like this Page

ABOUT



The Big Surprise

It just makes sense:
Re-Elect
Judge Heidi Almase

Dwayne Johnson
"The Rock"

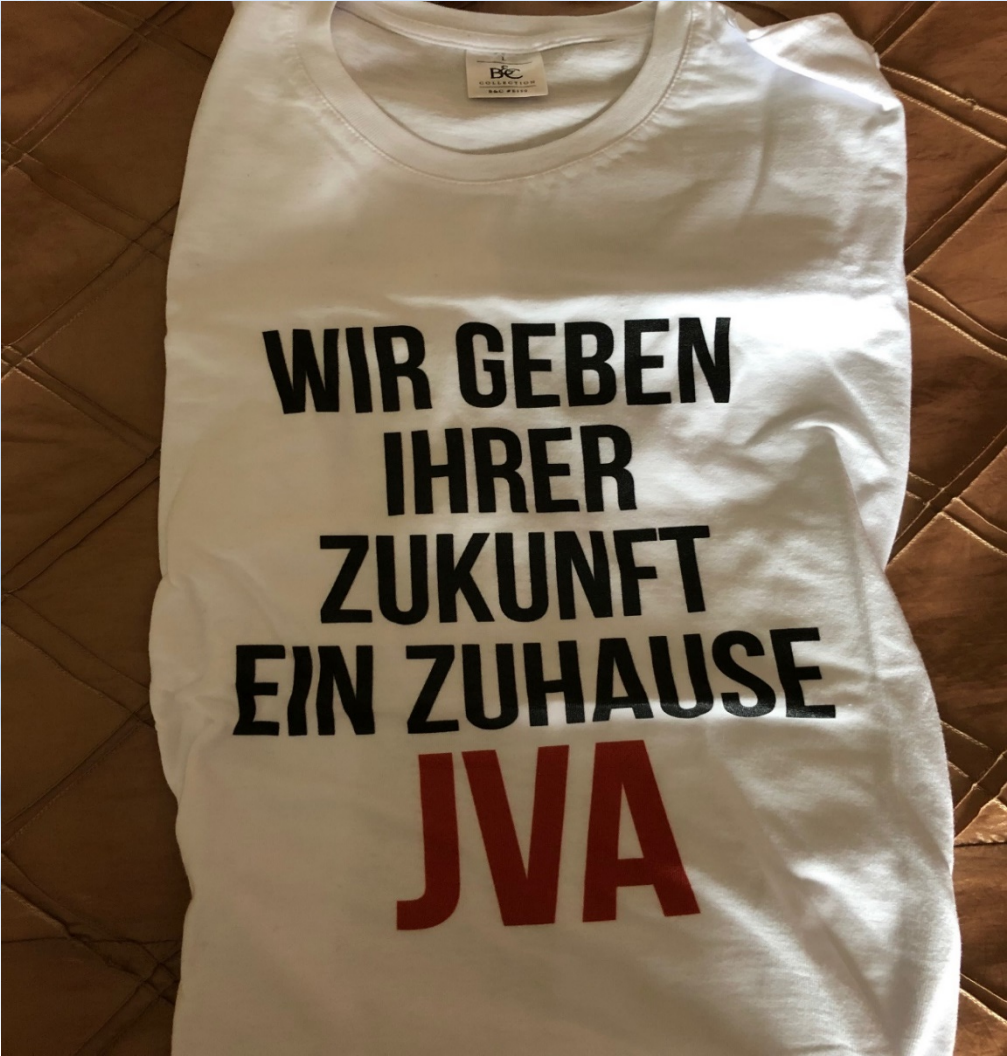
Dwayne Johnson

RE-ELECT *Judge* **HEIDI** ALMASE

For Municipal
Court Judge, Dept. 3

“I have 60,000 Facebook Friends”

- Eastern European Judge



**WIR GEBEN
IHRER
ZUKUNFT
EIN ZUHAUSE
JVA**

Common examples of things that should be encompassed by any comprehensive, working definition of social media include:

- Blogs/Vlogs
- Chat sites (including chatrooms (multilateral) and software enabling one-on-one chat)
- **E-mail**
- Facebook
- Flickr
- Flipboard
- Forums and message boards
- Google+
- Instagram
- Internet dating sites
- LinkedIn
- Pinterest
- Podcasts
- Quora
- Reddit
- Skype
- Snapchat
- TripAdvisor
- Twitter
- Vivino
- Whatsapp
- Yelp
- Youtube

Do not assume that emails are private!

Pillow ~~Talk~~ Email

- Conduct Commission recommended removal
 - “We had an oral argument yesterday re: fracking ban where there was standing room only and a hundred people in our overflow video room. The **little Mexican** is going to write in favor of the Plaintiffs and it looks like I am dissenting in favor of the Oil and Gas Commission. You and Sid will be so disappointed.”
 - Also referred to her ex-husband’s new wife as **the “squaw.”**

Insidious Nature of Social Media: Mimics interpersonal communication but may be broadcast to a much larger audience for an indefinite period of time

SOCIAL MEDIA IMPLICATIONS

- Confidentiality
- Avoiding impropriety inside and outside of the office
- Diminishing the prestige of judicial office or dignity of the court
- Avoiding bias/prejudice and the appearance of bias/prejudice
- Sending a message of favoritism or special access to the Court
- Commenting on matters pending before the Court
- Supporting fund raising efforts
- Supporting a commercial venture/private interests of another
- Discussing matters that may be litigated before the Court
- Taking a political position

POOL PARTY REPRISE



SUGGESTIONS (1)

Social media's potential pitfalls and constant evolution require judges and their family members to be cautious and circumspect when using these technologies.

1. Be aware that many provisions of applicable ethics rules could be compromised
2. Monitor content on accounts frequently.
3. Develop, or receive training on removing or blocking friends, followers, etc.

SUGGESTIONS (2)

4. Familiarize yourself with the security and privacy policies, rules, and settings of each social media platform used.
5. Educate other family members and close family friends about judicial ethics obligations and how their use of social media can undermine the judge's compliance.

Speaker Information

Keith R. Fisher is Principal Consultant and Senior Counsel for Domestic & International Court Initiatives at the National Center for State Courts. He formerly chaired the ABA Business Law Section's Professional Responsibility Committee and has served on the ABA Standing Committee on Ethics & Professional Responsibility. He has authored briefs and law review and other articles and lectured frequently on legal ethics and judicial ethics issues.

For Questions, or if you would like to use slides:

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