

Tighter conduct code for Pennsylvania's judges outlined

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By Paula Reed Ward / Pittsburgh Post-Gazette

In recent years, Pennsylvania's judiciary has seen two Common Pleas judges go to federal prison, a handful of Philadelphia Traffic Court judges indicted, one Supreme Court justice convicted of corruption and another sitting justice under federal investigation.

Although the Supreme Court will not say that those individual instances led to the creation of a new Code of Judicial Conduct in Pennsylvania, those scenarios certainly are addressed in the rules announced Wednesday that will take effect July 1.

Modeled after a similar code introduced by the American Bar Association in 2007, the new code in Pennsylvania prohibits nepotism, as well as judges sitting on the boards of commercial entities.

Chief Justice Ronald Castille said the new code was necessary "because times have changed."

"We addressed new problems no one thought about 40 years ago."

Among them, social media platforms, new categories of protected groups, and specialty courts that handle cases like DUIs, prostitution or mental health issues.

Justice Castille said the process took 2 1/2 years, and that the final product was reviewed line by line by the entire court.

"It was tedious," he said.

In recent years, Pennsylvania has seen significant judicial scandals.

Two judges in Luzerne County were sentenced to federal prison in the "Kids for Cash" scheme. Several Philadelphia Traffic Court judges are under indictment. A state Supreme Court justice, Joan Orié Melvin, was convicted of theft of services for using her staff and that of her sister in the Legislature to run her election campaigns. She subsequently resigned. And current state Supreme Court Justice Seamus McCaffery is under federal investigation after his wife, his chief administrative judicial assistant, collected more than \$800,000 in a referral fee.

The code of conduct prohibiting judicial staffers from doing outside legal work was changed in August.

Lynn Marks, the executive director of Pennsylvanians for Modern Courts, praised the update as "much needed."

"A strong, clear and comprehensive judicial code of conduct assures the public that judges are held to the highest ethical standards."

Superior Court Judge Anne E. Lazarus, who chaired the Supreme Court ad hoc committee, agreed it was a lengthy process.

"They didn't take everything we suggested, and they created some of their own, but I think the final product is a good product -- and much better than what we had," she said.

Her committee of nine, which included judges, lawyers, academicians and a wide diversity of gender, age and background, met at least 25 times, she said.

The new code has been reformatted to follow those used around the country, Judge Lazarus said.

She, too, notes that the most important changes made relate to commercial boards, campaign contributions and nepotism.

Before now, judges in Pennsylvania were allowed to sit on corporate boards. Anyone still in such a position will have until July 2015 to step down.

"Permitting judges to serve on corporate boards undermines the appearance of impartiality when those businesses or their interests later appear in court," Ms. Marks said. "While we realize that this change may require some sacrifice on the part of judges who currently sit on boards, that sacrifice is outweighed by the greater public good."

One example cited in Allegheny County was Common Pleas Senior Judge Frank J. Lucchino, who serves in Orphans Court. He sat on the board of U.S. Steel Corp. from 2003 until April 2013, earning \$207,250 in his last year, according to company filings. That salary was on top of his earnings as a Common Pleas judge.

As for the change related to campaign contributions, the new code said that a judge should disqualify himself if "the judge knows or learns that a party, a party's lawyer, or the law firm of a party's lawyer has made a direct or indirect contribution(s) to the judge's campaign in an amount that would raise a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the party, the party's lawyer, or the law firm of the party's lawyer."

Judge Lazarus noted that the committee members did not want to put a specific dollar figure on the contribution rules to make sure they couldn't easily be thwarted.

President Judge Jeffrey A. Manning of Allegheny County Common Pleas Court said locally, the courts already follow that rule.

"We will be largely pleased and fully embrace this, because it's the conduct we've been engaged in for decades."

The rule on nepotism, Judge Lazarus said, will be prospective, meaning that those family members already hired will not lose their jobs, but will eventually be gone through attrition.

Judge Manning said he didn't believe the rule relating to nepotism in the new code was spelled out with enough specificity, but he did say it would be taken into consideration for all future hires.

There has been previous criticism within the Allegheny County court system because of nepotism. Former President Judge Donna Jo McDaniel had four family members hired under her tenure, and at least six other judges had relatives on the payroll.

Ms. Marks said nepotism has, for years, been a troubling issue.

"Judges must be seen as fair and impartial and when family members are appointed to key positions, the public perception is one of favoritism," she said.

The code being replaced was written in 1973, and the updated version, Judge Lazarus said, will provide real guidance to new judges as they join the bench.

Throughout the 41-page document, there are references to "promoting confidence in the judiciary."

That, Justice Castille said, is essential.

"We have to rely on the court being perceived as efficient, honest and effective," he said. "The people have to have confidence in the court itself."

Many of the new rules appear to be pointedly directed at some of the recent troubles in the courts.

Apparently addressing the Orié Melvin case, the new code includes a rule prohibiting the abuse of office supplies and equipment, as well as another prohibiting the use of staff for campaign purposes.

Other rules include a prohibition on any judge belonging to any group that practices invidious discrimination, as well as provisions dealing with bias, harassment or discrimination.

Justice Castille expects that the court will receive extensive comments over the next several months related to the new code.

"We expect there will be comments galore, and if we find them to be constructive, we'll take action," he said.

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