# JUDICIAL ETHICS FOR Hearing Officials: Social Media Use, Recusal, and Taking Judicial Notice

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National Association of Hearing Officials
2023 Professional Development Conference
Reno, Nevada September 2023

# Hearing officials and Judicial Ethics

- Hearing officials (executive branch judges) may be subject to the same ethical standards as judges in the judicial branch of government. This will depend on the jurisdiction. For our purposes, we will assume that Hearing officials are subject to the same standards and will discuss judicial ethics standards based upon the ABA Model Code of Judicial conduct as well as statutory law governing disqualification of judges.

# Judges friends and Recusal 1

- AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY Formal Opinion 488 September 5, 2019 Judges' Social or Close Personal Relationships with Lawyers or Parties as Grounds for Disqualification or Disclosure Rule 2.11 of the Model Code of Judicial Conduct identifies situations in which judges must disqualify themselves in proceedings because their impartiality might reasonably be questioned— including cases implicating some familial and personal relationships—but it is silent with respect to obligations imposed by other relationships.

# Judges friends and Recusal 2

- This opinion identifies three categories of relationships between judges and lawyers or parties to assist judges in evaluating ethical obligations those relationships may create under Rule 2.11: (1) acquaintanceships; (2) friendships; and (3) close personal relationships. In short, judges need not disqualify themselves if a lawyer or party is an acquaintance, nor must they disclose acquaintanceships to the other lawyers or parties. Whether judges must disqualify themselves when a party or lawyer is a friend or shares a close personal relationship with the judge or should instead take the lesser step of disclosing the friendship or close personal relationship to the other lawyers and parties, depends on the circumstances. Judges' disqualification in any of these situations may be waived in accordance and compliance with Rule 2.11(C) of the Model Code.1

# Judges friends and Recusal 3

- The Committee has been asked to address judges' obligation to disqualify themselves in proceedings in which they have social or close personal relationships with the lawyers or parties other than a spousal, domestic partner, or other close family relationship. Rule 2.11 of the Model Code of Judicial Conduct ("Model Code") lists situations in which judges must disqualify themselves in proceedings because their impartiality might reasonably be questioned—including cases implicating some specific family and personal relationships—but the rule provides no guidance with respect to the types of relationships addressed in this opinion.

# Judges friends and Recusal 4

- 1. Acquaintances: When the judge is an acquaintance of a lawyer or party to the lawsuit, there is no duty to disclose the relationship or for the judge to disqualify themselves from deciding the case.
- 2. Friends: When the judge is friends with a lawyer or party to the lawsuit,  the judge should disclose the friendship but disqualification may not be required. This is a question of degree.
- 3. Close personal relationship: Judges that have a romantic relationship with a lawyer or party to the lawsuit must disqualify themselves from deciding that case.

# Judge’s fact investigation 1

- **AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY Formal Opinion 478 December 8, 2017 Independent Factual Research by Judges Via the Internet**
- Easy access to a vast amount of information available on the Internet exposes judges to potential ethical problems. Judges risk violating the Model Code of Judicial Conduct by searching the Internet for information related to participants or facts in a proceeding. Independent investigation of adjudicative facts generally is prohibited unless the information is properly subject to judicial notice. The restriction on independent investigation includes individuals subject to the judge’s direction and control.

# Judge’s fact investigation 2

- 1 I. Introduction The Internet provides immediate access to an unprecedented amount of information. Internet searches offer a vast array of information on endless topics. Social media sites provide extensive information that users share about themselves and others. Information discovered on the Internet may be highly educational and as useful to judges as judicial seminars and books. But information gathered from an Internet search may not be accurate. It may be biased, unreliable, or false. And, whether truthful or not, information discovered by a judge via the Internet that does not qualify for judicial notice and is not disclosed to the parties is untested by the adversary process.2 To help the judiciary navigate the hazards of Internet research, this opinion reviews the ethical parameters under the ABA Model Code of Judicial Conduct for conducting on-line independent fact-finding not tested by the adversary system. 3 .....

# Judge’s fact investigation 3

- …. IV. Conclusion The Internet provides useful tools for discovering vast amounts of information. Searching reliable sources on the Internet may reveal information that educates, informs, and enlightens the judiciary, not unlike judicial seminars and printed materials. Information properly subject to judicial notice is well within the judge’s discretion to search and use according to the applicable law. On the other hand, adjudicative facts that are needed to determine an issue in a case, but which are not properly subject to judicial notice, may not be researched without violating Rule 2.9(C). Stated simply, a judge should not gather adjudicative facts from any source on the Internet unless the information is subject to proper judicial notice. Further, and within the guidelines set forth in this opinion, judges should not use the Internet for independent fact-gathering related to a pending or impending matter where the parties can easily be asked to research or provide the information. The same is true of the activities or characteristics of the litigants or other participants in the matter.

# Judge’s fact investigation 4

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# Adjudicative facts 1

- Rule 201. Judicial Notice of Adjudicative Facts
- **(a) Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
- **(b) Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:
- **(1)** is generally known within the trial court's territorial jurisdiction; or
- **(2)** can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
- **(c) Taking Notice.** The court:
- **(1)** may take judicial notice on its own; or
- **(2)** must take judicial notice if a party requests it and the court is supplied with the necessary information.
- **(d) Timing.** The court may take judicial notice at any stage of the proceeding.

# Adjudicative facts 2

- **(e) Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
- **(f) Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.
- **NOTES**

# Adjudicative facts 3

- ***NOTES***
- *Subdivision (a)*. This is the only evidence rule on the subject of judicial notice. It deals only with judicial notice of "adjudicative" facts. No rule deals with judicial notice of "legislative" facts. Judicial notice of matters of foreign law is treated in Rule 44.1 of the Federal Rules of Civil Procedure and Rule 26.1 of the Federal Rules of Criminal Procedure.

# Adjudicative facts 4

- The omission of any treatment of legislative facts results from fundamental differences between adjudicative facts and legislative facts. Adjudicative facts are simply the facts of the particular case. Legislative facts, on the other hand, are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body. The terminology was coined by Professor Kenneth Davis in his article An Approach to Problems of Evidence in the Administrative Process, 55 Harv.L.Rev. 364, 404–407 (1942). The following discussion draws extensively upon his writings. In addition, see the same author's Judicial Notice, 55 Colum.L. Rev. 945 (1955); Administrative Law Treatise, ch. 15 (1958); A System of Judicial Notice Based on Fairness and Convenience, in Perspectives of Law 69 (1964).

# Adjudicative facts 5

- The usual method of establishing adjudicative facts in through the introduction of evidence, ordinarily consisting of the testimony of witnesses. If particular facts are outside of reasonable controversy, this process is dispensed with as unnecessary. A high degree of indisputability is the essential prerequisite.

# Judges use of social media for law statements 1

- California Opinion 2021-042 (April 28, 2021)
- Can judges make law related statements on social media?
- **Advice Provided** "Judges may use social media to make statements relating to the law, the legal system, or the administration of justice, but should consider the following when posting or engaging with others online: (1) the same standards for judicial communications that apply in face-to-face settings apply with equal force to online statements and social media posts; (2) due to lack of control over the dissemination and permanence of online statements, judges must exercise caution and restraint and should assume the widest possible audience;

# Judges use of social media for law statements 2

- (3) while statements concerning the law, the legal system, or the administration of justice are generally permissible, judges may not engage in prohibited social or political commentary on social media; and (4) judges must carefully evaluate what they intend to post and continually monitor their social media communications and posts to ensure public confidence in the integrity, independence, and impartiality of the judiciary.”

# Judges use of social media for law statements 3

- Massachusetts judicial ethics opinion No 2021-01 (3 18 2021)
- Judge with knowledge of another judges face book posts related to 2020 election must report judge to judicial discipline authorities. Sample screenshots of judges face book posts include
- “The screenshots show a number of posts and messages on the judge’s Facebook profile between October 6, 2020, and November 14, 2020 [2]. They include:
- Expressions of support for one of the major party candidates for president;
- References and links to negative coverage of the opposing major party's candidate;

# Judges use of social media for law statements 4

- Statements that the opposing party's candidate and his family are “corrupt”;
- Posts ridiculing and demeaning two female politicians of the opposing party;
- Derogatory comments about immigrant parents who were separated from their children at the southern border;
- Complaints about media bias in election reporting; and
- Ten days after the election, a statement that the election was a “mess” along with a link to commentary by a media personality claiming that the election was fundamentally unfair, compromised by alleged voting irregularities, and manipulated for the political benefit of the opposing party.”

# Social media connections 1

- Judges and Lawyers
- Question Raised: Can a judge (or any decision-maker) friend an attorney who might appear before him or her, and vice versa?
- Several jurisdictions have issued opinions on this very matter. Many more, however, have not. So, the definitive answer depends on where you live. Some jurisdictions have responded, but, in doing so, have not necessarily framed the issue in the same way.
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# Social media connections 2

- 1. Can a judge be on facebook/social media sites?
- All 7 opinions say YES - 1 is qualified)
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- Kentucky Opinion JE-119: Yes
- Oklahoma Opinion 2011-3: Yes
- California Opinion 66: Yes
- Florida Opinion 2010-06: Yes
- Ohio Opinion 2010-7: Yes
- Massachusetts Opinion 2011-6: Yes, but may not identify him or herself as a judge
- New York Opinion 2010-2: Yes
-

# Social media connections 3

- 2. Can a judge friend lawyers?
- 
- Florida Opinion 2010-06: Yes - if atty does not appear or is unlikely to appear
- Kentucky Opinion JE-119: Yes (implied)
- Oklahoma Opinion 2011-3: Yes, those lawyers who do not regularly appear or are unlikely to appear in the Judge's court.
- California Opinion 66: Yes (implied)
- New York - Yes
- Mass- (open question)
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# Social media connections 4

- 3. Can a judge friend lawyers who “may appear” before him or her?
-
- Florida Opinion 2009-20: No
- Ohio Opinion 2010-7: Yes - but must be vigilant
- Kentucky Opinion JE-119: Yes (qualified)
- Oklahoma Opinion 2011-3: No
- California Opinion 66: Yes (qualified)
- Massachusetts Opinion 2011-6: No
- New York - Yes
-
- Can a judge friend a lawyer actually appearing on a case?
- (based on earlier determinations, only 2 states even get to this question)
-
- Ohio - Yes - but maintain vigilance.
- California - No in pending case before the Judge: May NOT friend anew, must “de-friend” if already friends, and must make this known,

# Social media connections 5

- TIPS
- An attorney, a judge or a decision-maker is not relieved of ethical responsibilities when engaging in social media.
- Be on guard when communications stray into pending case matters. You do not want to engage in ex parte communications
- Attorneys and judges and state agency employees are all well-advised to proceed with caution if they are “friends” on social networking sites.

# Judges Ethics 1

- In New York, a judge was reprimanded in part because he used his Facebook account to provide details of his location and schedule, up-dated his status while on the bench, posted a photograph of his crowded courtroom to his account, and invited several lawyers to be his friends on Facebook.

- **Source:** *See* Molly McDonough, *Was Judge Transferred Because of His Facebook Activity?*, ABA Journal, Oct. 16, 2009,http://www.abajournal.com/news/article/was_judge_transferred_because_of_his_facebook_activity.

# Judges Ethics 2

A North Carolina judge was reprimanded for "friending" a lawyer in a case pending before him, posting and reading messages about the litigation on Facebook, and accessing the website of an opposing party in a child custody and support case. Can a Judge post comments about the lawyers on Facebook regarding a particular case and/or the parties, i.e. "that lawyer did a lousy job trying their case".?

- **Source:** Debra Cassens Weiss, *Judge Reprimanded for Friending Lawyer and Googling Litigant,* ABA Journal. com, June 1. 2009, available at www.abajournaLcom/newsljudge reprimanded for friending lawyer and googling litigant;.

# Judges Ethics 3 A

- In North Carolina, a judge received a public reprimand for social networking misconduct.3 That case involved child custody dispute.  While the case was pending, the judge and the father's counsel became Facebook "friends," and thereafter exchanged relatively innocuous ex parte statements. Further, the North Carolina judge used an internet site to perform his own investigation of the mother. *See* Public Reprimand of Terry, North Carolina Judicial Standards Commission, Inquiry No. 08-234, April 1, 2009.

# Judges Ethics 4

- A Florida judge was disqualified in a criminal case because the judge had become face book friends with the prosecutor, and the defendant challenged the judge's ability to be fair and impartial.
- Domville v. State of Florida, No. 4D12-556,2012 WL 3826764 (Fla. Dist. Ct. App. September 5, 2012)http://www.4dca.org/opinions/Sept 2012/09-05-12/4D12-556.op.pdf

# ALJ judicial ethics articles 1

- **Articles on ALJs and Judicial Ethics, Listed Chronologically**
- 1.David C. Barnett, Samuel S. Frankel, Jr., &; Liza E. Lima, Discovery Issues And Ethical Considerations
- Under The Rules Of Practice And Procedure For Administrative Hearings Before The Office Of
- Adminstrative Law Judges, 13 Loy. Mar. L.J. 1 (2014)
- 2. Daniel F. Solomon, Fundamental Fairness, Judicial Efficiency And Uniformity: Revisiting The
- Administrative Procedure Act, 33 J. Nat'l Ass'n Admin. L. Judiciary 52 (2013)
- 3. Steven A. Glazer, Toward A Model Code Of Judicial Conduct For Federal Administrative Law Judges, 64
- Admin. L. Rev. 337 (2012)

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- 4. Diana Gillis, Closing An Administrative Loophole: Ethics For The Administrative Judiciary, 22 Geo. J. Legal
- Ethics 863 (2009)
- 5. Edwin L. Felter, Jr., Accountability In The Administrative Law Judiciary: The Right And The Wrong Kind,
- 86 Denv. U. L. Rev. 157 (2008)
- 6. Harold J. Krent & Lindsay DuVall, Accommodating Alj Decision Making Independence With Institutional
- Interests Of The Administrative Judiciary, 25 J. Natl Assn Admin. L. Judges 1 (2005)

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- 7. Symposium: Modern Ethical Dilemmas for ALJs and Government Lawyers: Conflicts of Interest,
- Appearances of Impropriety, and Other Ethical Considerations
- Power, Robert C., Modern Ethical Dilemmas for AlJs and Government Lawyers: Conflicts of Interest,
- Appearances of Impropriety, and Other Ethical Considerations - Introduction Symposium: Modern
- Ethical Dilemmas for AlJs and Government Lawyers: Conflicts of Interest, Appearances of Impropriety,
- and Other Ethical Considerations, 11 Widener J. Pub. L. 1 (2002)

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- 8. Patricia E. Salkin, Judging Ethics For Administrative Law Judges: Adoption Of A Uniform Code Of Judicial
- Conduct For The Administrative Judiciary, 11 Widener J. Pub. L. 7 (2002)
- 9. Gedid, John L., ALJ Ethics: Conundrums, Dilemmas, and Paradoxes Symposium: Modern Ethical
- Dilemmas for ALJs and Government Lawyers: Conflicts of Interest, Appearances of Impropriety, and
- Other Ethical Considerations, 11 Widener J. Pub. L. 33 (2002)
- 10. Christianson, Robert A., Thoughts Relating to the Proposal of a Uniform Code of Judicial Conduct for
- Administrative Law Judges Symposium: Modern Ethical Dilemmas for AlJs and Government Lawyers:
- Conflicts of Interest, Appearances of Impropriety, and Other Ethical Considerations, 11 Widener J. Pub.
- L. 57 (2002)

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- 11. Lee, Randy, The State of Self-Regulation of the Legal Profession: Have We Locked the Fox in the Chicken
- Coop Symposium: Modern Ethical Dilemmas for ALJs and Government Lawyers: Conflicts of Interest,
- Appearances of Impropriety, and Other Ethical Considerations, 11 Widener J. Pub. L. 69 (2002)
- 12. Johnston, Patrick J., Amended Model Rule of Professional Conduct 1.11: Long-Standing Controversy,
- Imperfect Remedy, and New Questions Symposium: Modern Ethical Dilemmas for AlJs and Government
- Lawyers: Conflicts of Interest, Appearances of Impropriety, and Other Ethical Considerations, 11
- Widener J. Pub. L. 83 (2002)

# Judicial independence and impartiality

- 1.Due process of law requires an impartial decision maker (Goldberg v. Kelley, 397 U.S. 254, 1970).
- ALJ independence is essential to impartial decision making in administrative agencies.
- Appointment of ALJ's by agency heads (as required by the Lucia decision) can create challenges to ALJ independence unless ALJ's have civil service protections against removal unless there is good cause.

# Lucia v. SEC decision 1

- Lucia v. Securities Exchange Commission (June 21, 2018) 138 S. Ct. 2044. In this decision, the Supreme Court held that Administrative law judges (ALJ's) were Officers of the United States but did not require senatorial confirmation because they were "inferior Officers" that could be appointed by the President, courts of law, or department heads [U.S Const., Art. II, Section 2, Clause 2]. Lucia was subject to SEC sanctions following an administrative hearing before an SEC ALJ. That ALJ was not appointed by the Commission but by a subordinate official of the SEC. The supreme court reversed the SEC decision and remanded the case back to the SEC for a new hearing before a properly appointed ALJ.

# Lucia Decision 2

- Prior to the Lucia decision, federal ALJ's were selected by agencies after qualifying for a civil service appointment under standards developed by the Office of Personnel Management. ALJ's were considered to be employees who held office in good standing and could not be removed from office except for good cause. ALJ's could challenge removals under hearing procedures administered by the federal Merit Systems Protection Board.
- The Lucia majority held that ALJ's were inferior officers because they occupied a continuing position established by law and they exercised significant authority pursuant to the laws of the United States.

# Lucia Decision 3

- Following the Lucia decision, President Trump issued an executive order requiring ALJ's to be selected by agency heads, and exempting those ALJ's from the merit based hiring process known as the competitive civil service. The Trump administration stated that the executive order implemented the holding of the Lucia case.
- Many leaders in the ALJ community as well as some members of Congress oppose the executive order and have expressed concerns that this new approach could impair an ALJ's ability to issue impartial decisions and to disagree with agency heads in particular cases. The pre Lucia approach emphasized the judicial model for ALJ independence whereas this executive order approach emphasizes the institutional model of agency decision making .

# ALJ independence

- 1. ALJ's need to be independent to satisfy impartial decision maker requirements of due process of law. This is called the judicial model for ALJ decision making.
- 2. Agency heads orientation focuses more on getting the job done, and being successful at the mission of the agency. This is called the institutional model for decision making.
- 3. These two models can easily clash particularly if the agency head wants the ALJ to rule in favor of the agency in a high percentage of cases that the ALJ is responsible for deciding.

# Ex parte contacts sanctions

- Reversal of a decision for improper ex parte contacts between a decision maker and a lawyer for a party.
- Arbitration decision Grabowski v. Kaiser Foundation Health Care plan, Inc. 64 Cal. App. 5th 67 (2021)
- The court "held that arbitrator's failure to disclose ex parte communication with health care provider's counsel about claimant's self-represented status required vacation of arbitration award."

# Hypothetical One A 1

- 1. ALJ Smith is assigned to hear medical licensing cases. Smith has been assigned to hear the case of medical licensing board v. Caldwell, in which the Board is seeking suspension of a doctor's license for repeatedly writing medical exemption letters for parents who do not want their children to be vaccinated against Measles and Mumps. Doctor Caldwell has been charged with writing those letters and making diagnoses that are not medically justified. Smith is a member of the Parents Against Vaccines organization (PAV) (which advocates for broad exemptions to mandatory vaccine laws).
- 
- A. Should Smith tell the Board attorney (deputy attorney general) or Caldwell's attorney (a private lawyer) about his PAV affiliation, or is this something that the litigants do not need to know, as Smith knows how to be a fair judge? (See ABA Model Code of Judicial Conduct Rule 2.11(A)?
-

# Hypothetical One A 2

- **D.C. Rules of Jud. Conduct Rule 2.9**

- **CANON 2 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL**
- **OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY**
-
- **Rule 2.11 Disqualification .**
-
- **(A) A judge shall disqualify himself or herself in a proceeding in which**
- **The judge's impartiality might reasonably be questioned, including but not limited to the following circumstances**
-

# Hypothetical One B, and C 1

- B. Suppose ALJ Smith does tell the parties, and the deputy attorney general moves to disqualify Smith under ABA Model Code of Judicial Conduct Rule 2.11(A)?. What should Judge Smith do? Is he/she required to follow the code of ethics for judges? Isn't that code only for judges in the judicial branch? Should Judge Smith grant the motion to disqualify or not?
- 
- C. Suppose ALJ Smith does NOT tell the parties, and Smith's membership is discovered by the parties AFTER his decision is made? What should Judge Smith do now? Would any of your responses change if Smith were the national president of the PAV Society?
-

# Hypothetical One B and C 2

- 28 U.S.C. Section 455 (disqualification of judges)
- **(a)** Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
  [statutory disqualification]

- Comment: Judges may recuse themselves or may be subject to a party disqualification motion.

# Financial Interests: Hypothetical Two A 1

- 2. ALJ Jones is a member of a federal agency that adjudicates disability cases. The following two proposals for pay incentives have been proposed by the agency to provide salary enhancements for excellent work by federal ALJ's :
-
- A) Incentive pay of $5,000 per year for each ALJ when an ALJ issues a minimum of ten recommended decisions per year terminating disability benefits or upholding denial of disability benefits in which the aggregate of benefit dollars saved per benefit year exceeds $50,000.;

# Financial Interests: Hypothetical Two A 2

- B. Relevant Case Law
- 
- 1. Tumey v. State of Ohio, 273 U.S. 510 (1927). The due process right to an impartial decision maker was violated when defendant was convicted by a judge whose salary was based in part upon the fines and costs levied by him acting in a judicial capacity. The judge's salary was larger if he imposed more fines on defendants in his court. This is a disqualifying financial interest.
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# Financial Interests: Hypothetical Two A 3

- **D.C. Rules of Jud. Conduct Rule 2.11**

- **CANON 2 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL**
- **OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY**
-
- **Rule 2.11 Disqualification .**
-
- **(A) A judge shall disqualify himself or herself in a proceeding in which**
- **The judge's impartiality might reasonably be questioned, including but not limited to the following circumstances**
-
- **(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, wherever residing, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.**

# Financial Interests: Hypothetical Two B 1

- B) Augmented travel budgets of $50,000 per year for the agency ALJ's office when the supervising ALJ certifies that ALJ's in each regional office have met the goals set forth (ten termination or upholding of denials of benefits per year, with $50,000 in benefit saved ).

# Financial Interests: Hypothetical Two B 2

- Ward v. Village of Monroeville, Ohio, 409 U.S. 57 (1972). The due process right to an impartial decision maker was violated when the judge before whom petitioner was compelled to stand trial for traffic offenses was also the Mayor of the town and was responsible for village finances, and the mayor's court through fines, forfeitures, costs and fees, provided a substantial portion of the village funds. This is a disqualifying financial interest.

# Financial Interests: Hypothetical Two C 1

- C) ALJ Jones rejected the application of the medical vocational guidelines to benefits claimant Smith who has a 5th grade education, worked as a maid in a hotel, and has severe back problems precluding her prior work. The guidelines would have provided that Smith could do light work thereby making her ineligible for disability benefits. Jones found that she was eligible for disability benefits. Jones' decision to reject the guidelines was ultimately affirmed by the Circuit Court of Appeals. At the time Jones adjudicated this matter, Jones' adult daughter had suffered from severe back problems, and her disability benefits application would not have been granted but for the appellate court upholding of the rejection of the medical vocational guidelines in the Smith case. Jones primarily based his decision on the merits of Smith's case, but he was affected by his adult daughter's struggles to overcome her medical problems.

# Financial Interests: Hypothetical Two C 2

- Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986). Justice's participation in case violated insurer's due process rights in an action seeking punitive damages for insurer's alleged bad-faith refusal to pay valid claim where Justice, at time he cast the deciding vote and authored the court's opinion, had pending at least one very similar bad faith refusal-to-pay lawsuit against an insurer in another state court. The Justice's interest in this case was direct, personal, substantial, and pecuniary.