

The Quasi AND The Judicial

Ethical Considerations for Quasi-Judicial Officers

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Goals

1. Understanding the meaning of quasi-judicial
2. Overview of common ethical considerations for quasi-judicial officers.
3. Understanding most common/critical ethical scenarios
4. Location of ethical codes, rules and guidance.

Quasi-judicial

- ▶ Non-judicial officer
- ▶ Can interpret law/has powers *resembling* a judge
- ▶ Cannot create new law or precedent
- ▶ Not bound by the strictest rules of evidence
- ▶ Liberty rights not at stake as a result of hearings

Quasi-Judicial

- ▶ Ability to adjudicate hearings to final decision
- ▶ Review evidence
- ▶ Hear argument/legal reasoning by opposing parties
- ▶ Determines rights and obligations between the parties involved.
- ▶ Decisions affect rights and privileges of those that appear before you.
- ▶ *Protect fundamental elements of due process*

How do you define ethics?

- ▶ A set of moral principles, especially ones relating to or affirming a specified group, field, or form of conduct
- ▶ Moral principles that govern a person's behavior or the conducting of an activity.
- ▶ Legal ethics is a term used to describe a code of conduct governing proper professional behavior, which establishes the nature of obligations owed to individuals and to society.
- ▶ Judicial ethics consists of the standards and norms that bear on judges and covers such matters as how to maintain independence, impartiality, and avoid impropriety.

Why do we have judicial ethics?

- ▶ Boost overall public confidence in the system by:
- ▶ Promoting integrity
- ▶ Promoting fairness
- ▶ Ensuring fair outcomes
- ▶ Safeguarding due process
- ▶ Increasing access to justice

Why do we have judicial ethics?

- ▶ “The public’s confidence in a justice system depends upon its perception of the integrity and standards of ethical behavior and professional conduct demonstrated by the judiciary within their official role and in their private life.”

Common Ethical Considerations

- ▶ Ex Parte Contact
- ▶ Bias
- ▶ Maintaining Impartiality
- ▶ *Due Process*

Rules

- ▶ Ex Parte - WA State CJC Rule 2.9: A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* before that judge's court with exceptions.
- ▶ Bias - Maryland CJC Rule 2.3: A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- ▶ Impartiality - Kentucky CJC Canon 1: A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety* and the appearance of impropriety.

Ex Parte Contact

- ▶ Contact between the decision maker and one party *without* the other party present
- ▶ Absent of notice and opportunity for all parties to participate. The term *ex parte* literally means “one-sided.”
- ▶ Is a common mistake among quasi-judicial officers
- ▶ Can lead to a deprivation of a fair hearing (lack of due process) but is not automatic due to some exceptions
- ▶ *Critical to due process*

Five Step Guide to Handling Ex Parte Contacts:

- ▶ End the communication immediately
- ▶ Disclose communication on the record
- ▶ Give both parties a chance to respond, especially the party not present during the communication
- ▶ If necessary, consult a third, disinterested party
- ▶ Render a decision (recusal or proceed) and note any objections

Impartiality (and the appearance of it)

- ▶ Decisions should be based on objective criteria and not bias or preferring the benefit to one party for improper reasons.
- ▶ A concern for quasi-judicial officers who serve on civil and human rights commissions and make statements about matters that could eventually come before them
- ▶ Must be maintained not only in proceedings but also statements, any media and any official capacity.
- ▶ If you feel you must speak then disclaim that you speak only for yourself as a private citizen

Five Steps to Protecting Impartiality

1. Limit ex parte contact and handle accordingly
2. Openly acknowledge facts in your hearings
3. Openly analyze those facts under the law
4. Be open about the reasoning behind your decision making
5. Refrain from commenting on pending matters or matters that could potentially come before you.

Guidance

- ▶ Look to your states judicial codes of conduct.
- ▶ Every state has one and most call it...the code of judicial conduct.
- ▶ There is also Model Code of Judicial Conduct from the ABA.
- ▶ Ethics opinions.
- ▶ Read these codes and learn their concepts and how they are meant to work.

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