



Ethics Manual

For Members of the Board of Immigration Appeals,
Immigration Judges, and Administrative Law Judges
Employed by the Executive Office for Immigration Review



U. S. Department of Justice

Executive Office for Immigration Review

Office of the Director


Director

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MEMORANDUM TO: All Board Members, Immigration Judges, and
Administrative Law Judges

FROM: 
Kevin D. Rooney
Director

SUBJECT: Ethics Manual

In December 1999, the Department's Office of Professional Responsibility (OPR) notified the Executive Office for Immigration Review (EOIR) of its intention to draft an ethics manual for EOIR adjudicators (including Board Members, Immigration Judges, and Administrative Law Judges). During the ensuing months, representatives from OPR, EOIR (including several Immigration Judges and Board Members, as well as representatives from the Office of the Chief Administrative Hearing Officer), and the Department's Ethics Office worked together to refine OPR's initial draft. This Ethics Manual is the end product of those efforts, which involved many hours of work in the past year.

On January 17, 2001, Attorney General Janet Reno approved the Ethics Manual for distribution. This Manual now more accurately reflects EOIR's concerns with regard to a standard of conduct for EOIR adjudicators. The Manual is best described as an annotated version of the Standards of Conduct for Executive Branch Employees (found at 5 CFR Part 2635 et seq.), summarizing the various laws and regulations that govern the conduct of Department of Justice employees as they apply to the specific activities of EOIR. Each section of the Manual includes case examples for easy reference. In addition, the Manual contains references to the American Bar Association's Model Code of Judicial Conduct intended to serve as aspirational guidance on certain issues.

The Manual does not impose any additional standards or requirements upon EOIR adjudicators but may serve as a useful guide for anyone seeking guidance on particular ethical issues. As always, if you have specific ethics questions you would like answered, you should contact EOIR's Office of the General Counsel.

FOREWORD

Immigration Judges, Members of the Board of Immigration Appeals, and Administrative Law Judges employed by the Executive Office for Immigration Review (EOIR) play an essential role in ensuring that matters delegated to them are conducted honorably, fairly and in accordance with the law.¹ Deference to the judgments and rulings of EOIR Judges depends upon public confidence in their integrity and impartiality. Public confidence in the integrity and impartiality of the EOIR Judges is, in turn, maintained by the adherence of each EOIR Judge to the law and to applicable ethics regulations. Conversely, violation of the law or applicable ethics regulations diminishes public confidence in EOIR Judges and the proceedings which they are authorized to conduct. Accordingly, EOIR Judges should participate in establishing, maintaining, and enforcing, and should observe, high standards of conduct in order to preserve the integrity of their offices. Toward that end, we have developed this first edition of the Ethics Manual for Immigration Judges, Members of the Board of Immigration Appeals, and Administrative Law Judges Employed by the Executive Office for Immigration Review.

¹ Hereinafter, the term "EOIR Judge" will be used to refer collectively to an Immigration Judge, a Member of the Board of Immigration Appeals, and an Administrative Law Judge within EOIR.

This Manual is divided into four parts. Part one consists of the Ethics Handbook for Immigration Judges, Members of the Board of Immigration Appeals, and Administrative Law Judges Employed by the Executive Office for Immigration Review. Part two contains the Standards of Conduct for Executive Branch Employees and the Supplemental Standards of Conduct for Department of Justice Employees. Part three provides various Departmental memoranda and orders which bear on ethical considerations EOIR Judges may encounter. Part four is a reproduction of the American Bar Association (ABA) Model Code of Judicial Conduct.

The Handbook summarizes the various laws and regulations that govern the conduct of all Department of Justice employees as they apply to the specific conduct and activities of EOIR Judges. Citations have been included after each provision in the Handbook to enable you to consult the full text of the law or regulation when you have a specific question.² The Handbook also contains commentary and examples of ethical dilemmas actually presented to EOIR that provide additional guidance.

The ethics laws and regulations condensed in the Handbook include the conflict of interest statutes found at 18 U.S.C. §§ 202 to 209, Executive Order 12674 on Principles of Ethical Conduct for Government Officers and Employees (as amended by

² You also may consult the Ethics Handbook for Department of Justice employees which summarizes the various laws and regulations governing the conduct of all Department of Justice employees for additional guidance on specific questions.

Executive Order 12731), the Standards of Conduct for Executive Branch Employees at 5 CFR Part 2635 that implement Executive Order 12674, and the Department of Justice Supplemental Standards of Conduct at 5 CFR Part 3801.

Part two of the Manual provides the complete text of all Standards of Conduct and Supplemental Standards of Conduct applicable to EOIR Judges. Certain rules are complex and require some analysis in applying them to specific situations. You should use this Manual as a means of keeping yourself apprised of the general prohibitions, but you always should seek advice if you are contemplating an action that you think might be covered by the applicable laws and regulations. There are a number of ethics officials throughout the Department who can advise you on the application of the laws and regulations referenced above.

The Designated Agency Ethics Official (DAEO) for the Department of Justice is the Assistant Attorney General for Administration and the Alternate DAEO is the Deputy Assistant Attorney General, Law and Policy. The Departmental Ethics Office is responsible for the overall direction of the ethics program in the Department. In addition, each Bureau, Office, Board, and Division has a Deputy DAEO. The General Counsel of EOIR serves as the Deputy DAEO and should be your first contact for ethics advice.

EOIR Judges also should consult the orders and memoranda compiled in Part three of the Manual for additional guidance on ethical conduct. Finally, EOIR Judges are encouraged to review

the ABA Model Code of Judicial Conduct which is reproduced as Part four of the Manual. Although EOIR Judges are not required to comply with the Model Code of Judicial Conduct, its canons and commentary represent principles of ethical conduct EOIR Judges should aspire to achieve.

Allegations of professional misconduct by EOIR Judges should be referred to the Department's Office of Professional Responsibility (OPR) for resolution. It is not anticipated that every transgression of the applicable laws and regulations will result in a finding of professional misconduct or disciplinary action. Whether a finding of misconduct by an EOIR Judge for violating an applicable law(s) or regulation(s) is appropriate will be determined through a reasonable and reasoned application of the relevant law or regulation and will include consideration of such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or the administration of justice. If, based on all the circumstances, OPR concludes that an EOIR Judge violated an applicable law(s) or regulation(s) in the course of the judge's official duties and engaged in professional misconduct, OPR will recommend to EOIR that disciplinary action be taken. Further, in some circumstances, violation of an applicable law(s) may result in a criminal prosecution and accompanying criminal penalties.

We hope this Manual will become a useful tool for all EOIR Judges as you carry out your obligation to adjudicate the cases which come before you in a fair and just manner.

Office of the Attorney General
January 2001

**ETHICS HANDBOOK FOR IMMIGRATION JUDGES, MEMBERS OF THE BOARD
OF IMMIGRATION APPEALS, AND ADMINISTRATIVE LAW JUDGES EMPLOYED
BY THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

I. BASIC OBLIGATION OF PUBLIC SERVICE (5 CFR sections 2635.101 to 2635.107)

A. Public service is a public trust. Each EOIR Judge has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each judge shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

DOJ Note: Most of the individuals who appear before EOIR in proceedings are non-citizens. EOIR Judges should respect and adhere to the principles of ethical conduct to ensure that both citizens and noncitizens can have complete confidence in the integrity of the Federal Government.

MCJC Note ¹: Public confidence in EOIR Judges is enhanced when EOIR Judges act in a responsible and proper manner. Thus, an EOIR Judge should strive to avoid all impropriety and the appearance of impropriety. The admonition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of an EOIR Judge. Because it is not practicable to list all possible improprieties, the admonition is necessarily cast in general terms that extend to conduct by EOIR Judges that damages public confidence in the integrity and impartiality of immigration proceedings and EOIR Judges. Actual improprieties include violations of law or specific provisions of the Standards of Conduct. Whether particular circumstances create an appearance that the law or the Standards of Conduct have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. An EOIR Judge holds a position of public trust and authority. Accordingly, EOIR Judges can expect to be the subject of public scrutiny. Therefore, EOIR

¹ The Model Code of Judicial Conduct is not binding on EOIR Judges, but its canons and commentary present aspirational goals.

The MCJC Notes have been edited for clarity. The MCJC Notes also have been modified to refer to EOIR Judges and the Standards of Conduct in place of language relating to judges generally and the MCJC. The entire, unedited text of the MCJC may be found at Tab 5.

Judges should freely and willingly accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen. See Commentary under MCJC Canon 2A.

B. General principles. The following general principles apply to every Executive Branch employee. Where a situation is not covered by the standards set forth in 5 CFR part 2635, EOIR Judges shall apply the principles set forth below in determining whether their conduct is proper.

- (1) Public service is a public trust, requiring EOIR Judges to place loyalty to the Constitution, the laws and ethical principles above private gain.
- (2) EOIR Judges shall not hold financial interests that conflict with the conscientious performance of duty.
- (3) EOIR Judges shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- (4) EOIR Judges shall not, except as otherwise permitted by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the Judge's agency, or whose interests may be substantially affected by the performance or nonperformance of the Judge's duties.
- (5) EOIR Judges shall put forth honest effort in the performance of their duties.
- (6) EOIR Judges shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
- (7) EOIR Judges shall not use public office for private gain.
- (8) EOIR Judges shall act impartially and not give preferential treatment to any private organization or individual.
- (9) EOIR Judges shall protect and conserve Federal property and shall not use it for other than authorized activities.
- (10) EOIR Judges shall not engage in outside employment or

activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) EOIR Judges shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) EOIR Judges shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.

(13) EOIR Judges shall adhere to all laws and regulations that provide equal opportunity for all individuals regardless of race, color, religion, sex, national origin, age, handicap, or sexual orientation. See Executive Orders 11478, 12106, and 13087.

(14) EOIR Judges shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

DOJ Note: *In addition to disclosing waste, fraud, abuse, and corruption, an EOIR Judge shall report to an appropriate supervisor, the Office of Professional Responsibility (OPR), or the Office of the Inspector General (OIG) any evidence or non-frivolous allegation of misconduct that may be in violation of any law, rule, regulation, order, or applicable professional standard committed by a Department employee, including another EOIR Judge. See Attorney General Order 1931-94 and accompanying memoranda.*

MCJC Notes: *EOIR Judges have a duty to hear all matters delegated to them fairly and with patience. They also should maintain order and decorum in proceedings. These duties are not inconsistent with the obligation to dispose of matters promptly and efficiently. EOIR Judges can be prompt and efficient while being patient, deliberate, dignified, and courteous. Further, EOIR Judges should encourage lawyers to be prompt, patient, courteous, and dignified, consistent with their roles in the adversary process. See MCJC Canon 3B and Commentary.*

An EOIR Judge should accord to all persons who are

legally interested in a proceeding, or their lawyer, a full right to be heard according to law. However, an EOIR Judge should not engage in *ex parte* communications prohibited by law. See **MCJC Canon 3B(7)**.

Membership of an EOIR Judge in an organization that practices invidious discrimination, at a minimum, may give rise to perceptions that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which EOIR Judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. See New York State Club Ass'n, Inc. v. City of New York, 487 U.S. 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987); Roberts v. United States Jaycees, 468 U.S. 609 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus, the mere absence of diverse membership does not by itself demonstrate invidious discrimination unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, color, religion, sex, sexual orientation, national origin, age, or handicaps, persons who would otherwise be admitted to membership.

An EOIR Judge's membership in an organization that practices invidious discrimination gives the appearance of impropriety. In addition, it would be a violation of an EOIR Judge's obligation to avoid impropriety and the appearance of impropriety and comply with the law by arranging a meeting at a club that the EOIR Judge knows practices invidious discrimination. Moreover, public manifestation by an EOIR Judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the EOIR Judges and

immigration proceedings.

An EOIR Judge should determine whether an organization of which the judge is a member practices invidious discrimination. When an EOIR Judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under the Standards of Conduct, the EOIR Judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within one year of the judge's first learning of the practices), the EOIR Judge should resign from the organization. See Commentary under MCJC Canon 2C.

II. GIFTS FROM OUTSIDE SOURCES (5 CFR sections 2635.201 to 2635.205)

A. An EOIR Judge may not solicit or accept a gift given because of his official position or from a prohibited source to include anyone who:

- (1) Has or seeks official action or business with EOIR;
- (2) Is regulated by EOIR;
- (3) Has interests that may be substantially affected by the performance of an EOIR Judge's official duties; or
- (4) Is an organization composed mainly of persons described above.

***MCJC Note:** A gift to an EOIR Judge or an EOIR Judge's spouse or minor child may lead a reasonable person to question the EOIR Judge's impartiality and the integrity of the office and might require disqualification of the EOIR Judge where disqualification would not otherwise be required. See Commentary under MCJC Canon 4D (5)(b)-(d).*

***Inquiry:** After years of working together, a contract interpreter gives an Immigration Judge an intricate metal ornament from Lebanon as a holiday gift, in celebration of their shared ethnic origin. Can the Immigration Judge accept the ornament?
Answer: If the value of the ornament is less than \$20, the Immigration Judge may keep it. He also should remind the*

contract interpreter about the regulatory prohibitions on the acceptance of gifts. Immigration Judges and other EOIR Judges should not accept gifts from individuals in proceedings, INS Trial Attorneys, or contract interpreters.

Inquiry: *A Court Administrator is leaving EOIR to become a FBI agent. One of the attorneys who practices before the Immigration Court offers to bring a mariachi band to play during the farewell lunch (to which all court staff and other members of the Court community are expected to attend). Can EOIR accept the gift of the band?*

Answer: *No. Although the Court Administrator is leaving the component, a band is not a nominal gift from an outside, prohibited source, so to accept it would create the appearance of impropriety.*

B. A gift does not include items such as publicly available discounts and prizes, commercial loans, food not part of a meal such as coffee and donuts, and items of little value such as plaques and greeting cards.

Inquiry: *A Board Member attends a symposium sponsored by an immigration advocacy group. One of the speakers announces that there will be a ten-minute break after his presentation, and that coffee and pastries will be served. Can the Board Member have coffee and a pastry?*

Answer: *Yes, she may partake of the refreshments offered to all symposium participants.*

C. Unless the frequency of the acceptance of gifts would appear to be improper, an EOIR Judge may accept:

(1) Gifts based on a personal relationship when it is clear that the motivation is not his official position.

Inquiry: *A private attorney invites an Immigration Judge to attend his wedding. They do not have a personal relationship; the judge only knows the attorney from performing her official duties as an Immigration Judge. The Judge would be interested in attending since this is a traditional wedding in Chinatown. Can she attend the wedding and secure an invitation for her husband as well?*

Answer: *One of the exceptions to the "no gifts from prohibited sources" rule is when the gifts are based on a personal relationship. 5 CFR 2635.204(b). There is no personal*

relationship outside work in this instance. Also, a private celebration such as a wedding does not qualify under the widely attended gathering exception in 5 CFR 2635.204(g). This is not an AILA conference, but rather a private party to which the Immigration Judge (and her spouse) should not attend, as it would create the appearance of impropriety.

(2) Gifts of \$20 or less per occasion, not to exceed \$50 in a year from one source.

Inquiry: *An INS Trial Attorney is a season ticket holder for an NFL team. He cannot attend one game, and offers the tickets to an Immigration Judge who he knows is a long-time fan of the opposing team. The face value of the tickets is considerably more than \$20, and the Trial Attorney and the Judge are not personal friends, but are instead workplace acquaintances. Can the Immigration Judge accept the tickets?*

Answer: *The Immigration Judge may pay the Trial Attorney the face value of the tickets. By paying face value, the tickets are no longer considered a gift under the applicable regulations. The judge should remember, however, that Trial Attorneys are prohibited sources, so he should seek other ways of obtaining football tickets in the future.*

(3) Discounts and similar benefits offered to a broad class, including a broad class of government employees.

Inquiry: *The management company of a condominium complex offers a discounted rate to residents who wish to join the in-house fitness center. May an Immigration Judge take advantage of this discount?*

Answer: *Yes. Since the discount is offered to all residents of the complex, the Immigration Judge may accept the discounted offer.*

(4) Most genuine awards and honorary degrees, although in some cases an EOIR Judge will need a formal determination.

Inquiry: *A Board Member is nominated for an award given every year by a well-known humanitarian organization. Can the Board Member accept the award?*

Answer: *Since this is an established, bona fide award program, and not an attempt to curry favor with the Board of Immigration Appeals, the Board Member may accept the award and be honored*

at the organization's annual banquet. The Board Member must consult the component before accepting such an award.

(5) Free attendance, food, refreshments and materials provided at a conference or widely attended gathering or certain other social events which an EOIR Judge attends in his official capacity, with approval.

a. **Conferences and Other Events.** When an EOIR Judge is participating in his official capacity as a speaker or panel member at a conference or other event, he may accept an offer of free attendance, including a meal or refreshments, on the day of his presentation. The EOIR Judge's participation in the event on that day is viewed as a customary and necessary part of his duties and is not considered a gift to him or the Department. 5 C.F.R. § 2635.204(g)(1).

b. **Widely Attended Gatherings.** When it is determined that an EOIR Judge's attendance at all or an appropriate part of an event is in the interest of the Department because it will further agency programs and operations, the Judge may accept an unsolicited gift of free attendance from the sponsor of the event if the event is found to be a widely attended gathering. A gathering is widely attended if a large number of people with mutual interests are expected to attend and the event is open to members from throughout a given industry or profession.

A determination that an EOIR Judge's attendance at a widely attended gathering is in the interest of the Department shall be made orally or in writing. If the person extending the invitation has interests that may be substantially affected by the performance or nonperformance of the Judge's official duties, or is an association or organization the majority of whose members have such interests, the determination must be made in writing.

***Inquiry:** A Board Member is invited to the Annual AILA Conference, and it is determined that it is in the component's interest that she attend the event. Can she partake of dinner and refreshments?*

***Answer:** Yes, the Board Member may attend the conference and enjoy the same benefits (dinner and refreshments, materials, attendance fee) as other speakers or attendees. She cannot, however, accept meals or gifts not offered to the rest of the*

conference's attendees or speakers.

(6) Gifts based on an outside business relationship, such as travel expenses related to a job interview.

(7) An EOIR Judge should return gifts not meeting the exceptions or contact the Deputy Designated Ethics Officer on how to dispose of them. Perishable items may be given to charity or shared by the office, with approval.

Inquiry: *The chairperson of the Immigration Section of the Arizona State Bar used to work at the INS with several Immigration Judges. When these judges visit Arizona, she presents them with individual "Welcome to Phoenix" gift bags. The bags contain edible products, such as chips and salsa, and their estimated value is \$26.50. Can the Immigration Judges accept these gifts?*

Answer: *Under the gift rules, an EOIR Judge may accept a gift worth more than \$20 if it is from a personal friend. In this case, however, the gift bags come from a prohibited source -- the Immigration Section of the Bar -- and are worth more than \$20. If refusing or returning the gift bags is not feasible, the Immigration Judges may bring -- if approval is granted -- the gift bags to work and share their contents with the staff -- this is the "perishable gift" exception. The Immigration Judges can write to the chairperson to thank her for the gifts, but remind her about the general "no gifts" rule and its \$20 maximum value exception.*

Inquiry: *A family who is granted asylum relief (and whose case the INS is not appealing) sends a floral arrangement to the Immigration Court where their case was heard. Can the Immigration Court accept such gift?*

Answer: *The Court Administrator may accept the flowers on behalf of the Court, and place them in one of the Immigration Court's work areas for the enjoyment of all of the staff.*

D. Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the EOIR Judge and may be accepted only insofar as provided under 41 CFR part 301-53. An EOIR Judge may not retain benefits from commercial sources, including bonus flights, if they result from his official travel. In most cases, an EOIR Judge may not fly first class when on official business. 41 C.F.R. §

301-10.121-124. If an EOIR Judge volunteers to take a later flight where the flight is over booked, he may keep any bonus as long as the delay does not interfere with the conduct of his duties and he does not charge the Government for additional costs. 41 C.F.R. § 301-10.116-117. Frequent flyer points awarded because of official travel may be used only for future official travel. An EOIR Judge should not co-mingle points accrued from official travel with those from personal travel. 41 C.F.R. § 301-53.

III. GIFTS BETWEEN EMPLOYEES (5 CFR sections 2635.301 to 2635.304)

A. An EOIR Judge may not give, or solicit a contribution for, a gift to an official superior, and she may not accept a gift from an employee receiving less pay than her.

B. On annual occasions where gifts are traditionally given, such as birthdays, Christmas, and Boss's Day, an EOIR Judge may give the following to an official superior:

(1) Items, other than cash, valued at \$10 or less;

Inquiry: Motivated by the holiday spirit, a legal technician gives a Board Member a poinsettia plant purchased for \$15. Can the Board Member accept it?

Answer: No, the Board Member may not accept the poinsettia since it exceeds the \$10 limit for gifts from a subordinate to a supervisor.

(2) Items such as food and refreshments to be shared in the office; and

(3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends.

Inquiry: A Board staff attorney is hosting a holiday party in his home. May he invite one of the Board Members to attend this social function and may the Board Member attend?

Answer: The Board staff attorney may invite the Board Member to a holiday party in his home, and the Board Member may attend.

Inquiry: An Immigration Judge and her husband are invited to attend a law firm's holiday party (cocktail hour and buffet dinner). The firm's practice is primarily business immigration, so it seldom

represents clients before the Immigration Court. The Immigration Judge had a long-standing personal relationship with members of the firm; she used to work at this firm, and has maintained contact with the firm members -- financial interests are not an issue. The Immigration Judge routinely disqualifies herself from cases in which the firm provides legal representation to avoid the appearance of partiality. Can the Immigration Judge attend this activity?

Answer: Yes, given the circumstances.

C. On special, infrequent occasions, such as marriage, illness, or the birth of a child, or an occasion that terminates the superior/subordinate relationship, an EOIR Judge may give an official superior a gift that is appropriate to the occasion. In addition, an EOIR Judge may solicit voluntary contributions of nominal amounts from fellow EOIR Judges, but not subordinates, to contribute to the gift.

Inquiry: One of the supervisors at Headquarters receives a promotion which does not terminate the supervisor/subordinate relationship. Some of his subordinates decide to celebrate the promotion by planning an open house reception. Contributions are sought from all subordinates for refreshments. Can the subordinates give, and the supervisor accept, such gift?

Answer: Since the promotion has not terminated the superior/subordinate relationship, the \$10 rule applies for individual gifts. Contributions for refreshments should be nominal and voluntary.

Inquiry: An Immigration Judge in California is transferred to Headquarters. Can he accept a gift worth \$25 from the legal technician who has assisted him in the courtroom for the past two years?

Answer: Yes, if the transfer terminates the superior/subordinate relationship, the Immigration Judge and the legal technician are not bound by the \$10 rule. Although Court Administrators, and not Immigration Judges, supervise legal technicians and other Immigration Court staff, the Immigration Judges can offer input to the Court Administrators in the preparation of performance appraisals. Therefore, Immigration Judges have been advised that to avoid any appearance of impropriety, they should consider themselves to be supervisors for purposes of the gift rules.

Inquiry: Two legal technicians attend a training session offered by the Border Patrol. They want to express their gratitude to the

Assistant Chief Immigration Judge who chose them to participate in this activity, and buy him a Mexican metal planter. The price tag is still attached, and the value in U.S. dollars is approximately \$12. Can the Assistant Chief Immigration Judge keep this gift?

Answer: No, the two legal technicians who contributed toward the purchase of the gift did not give it to commemorate a special and infrequent training occasion, so the ACIJ may not keep the planter.

Inquiry: A Court Administrator has had a baby. The legal technicians want to purchase a \$50 flower arrangement for her. Can the staff give, and Court Administrator accept, such a gift?

Answer: If the contributions are voluntary and nominal, and are not solicited by the supervisor, the Immigration Court staff may purchase the flowers and a card for the Court Administrator and her family. Likewise, the Court staff may hold a baby shower party for the Court Administrator (without interfering with official court business) and give gifts to her worth more than \$10 since this is a special and infrequent occasion.

IV. CONFLICTING FINANCIAL INTERESTS (5 CFR 2635.401 to 2635.403)

A. An EOIR Judge is prohibited from participating in any matter in which he has a financial interest. In addition to an EOIR Judge's own financial interest, certain interests are considered his ("imputed" to him), such as those of his spouse, minor children and business partners. However, an EOIR Judge may participate in such a matter if he has a waiver.

***DOJ Note:** Immigration Judges (levels IJ-2 and above), Board Members, and OCAHO ALJs are required to file public financial disclosure reports pursuant to regulation every year. Financial disclosure reports are used to identify potential or actual conflicts of interest. If the ethics official charged with reviewing an EOIR Judge's report finds a conflict, she should, upon consultation with the EOIR Judge's supervisor, decide on the remedy. Possible remedies include disqualification, divestiture or a waiver of the disqualification under 18 U.S.C. § 208 or 5 C.F.R. § 2635.502. Before an EOIR Judge divests, he should find out if he is eligible for a Certificate of Divestiture from the Office of Government Ethics which will allow him to receive favorable tax treatment on the sale of his asset. 5 C.F.R. § 2634.1001-1004.*

***MCJC Note:** In order to comply with the applicable regulation and law regarding financial disqualification, EOIR Judges should*

inform themselves about their personal financial interests and make a reasonable effort to inform themselves about the personal financial interests of spouses and minor children. See MCJC Canon 3E(2).

***Inquiry:** An Immigration Judge has an interest in a defined benefit plan with his former law firm. Can the Immigration Judge hear cases in which his former partners appear as legal representatives?*

***Answer:** No, he cannot hear such cases because he still has a financial interest in the partnership. Even without the financial interest, the Immigration Judge should disqualify himself from participating in cases brought by his former law firm to avoid the appearance of impropriety and the rule on impartiality.*

B. EOIR Judges are prohibited from receiving compensation for their work from any private source.

V. IMPARTIALITY IN PERFORMING OFFICIAL DUTIES (5 CFR sections 2635.501 to 2635.503)

A. Generally, an EOIR Judge should seek advice from the Deputy Designated Ethics Officer before participating in any matter in which her impartiality could be questioned. An EOIR Judge may not participate, without authorization, in a particular matter involving specific parties which the Judge knows is likely to affect the financial interests of members of the Judge's household or in which the Judge knows a person with whom the Judge has a covered relationship is or represents a party. An EOIR Judge has a covered relationship with:

- (1) A person with whom an EOIR Judge has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;
- (2) A relative with whom an EOIR Judge has a close relationship;
- (3) A present or prospective employer of a spouse, parent or child;
or
- (4) An organization which an EOIR Judge now serves or has served, as an employee or in another capacity, within the past year.

B. If a conflict of interest exists, in order for the EOIR Judge to participate in the

matter, the Chief Immigration Judge, with the concurrence of the Deputy Designated Ethics Officer, must make a determination that the interest of the government in the judge's participation outweighs the concern that a reasonable person may question the integrity of the Department's programs and operations. The determination must be made in writing.

DOJ Note: In addition to the impartiality regulation, 28 C.F.R. § 45.2 prohibits an EOIR Judge (and other DOJ employees), without written authorization, from participating in a criminal investigation or prosecution if he has a personal or political relationship with: (1) any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution, or (2) any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

Inquiry: *An Immigration Judge's cousin has retained as counsel an attorney who frequently brings cases before the Judge for the purpose of handling the admission process of his Hong Kong fiancée. The Immigration Judge and his second cousin had not seen each other in over ten years, and they do not live in the same part of the country. The Immigration Judge works in a two-judge court, so disqualification would have a significant impact on case assignment. Can the Immigration Judge continue to preside over the attorney's cases?*

Answer: *After examining the factual circumstances in this particular case, it was determined that the Immigration Judge does not have a "covered" (close personal or business) relationship with his cousin under the applicable regulations, so he can continue to preside over the attorney's cases. Immigration Judges are reminded to contact the Designated Deputy Ethics Officer if they have questions about possible personal or financial conflicts of interest.*

DOJ Note: *A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of the above provision. However, an EOIR Judge formerly employed by a government agency should disqualify himself or herself in a proceeding if the EOIR Judge's impartiality might reasonably be questioned because of such association. See also Legal Opinion on the Disqualification of Former INS Trial Attorneys in Matters Connected with Former Duties or Official Responsibilities (OGC, December 2, 1998).*

MCJC Note: *When an EOIR Judge is aware of a potential question with respect to the judge's impartiality, the judge should inform the parties to the proceeding of the issue so that they can make an informed decision prior to going forward before the particular EOIR Judge. See Commentary under MCJC Canon 3E(1).*

VI. SEEKING OTHER EMPLOYMENT (5 CFR sections 2635.601 to 2635.606)

A. An EOIR Judge may not take official action on a matter which can affect the financial interests of an organization with which she is negotiating or has an arrangement for future employment. The remedy is disqualification. *See* 18 U.S.C. § 208.

B. An EOIR Judge may have to disqualify herself from working on a matter when she is merely seeking employment, but before actually negotiating for a job. An EOIR Judge would be considered to be seeking employment if she sends her resume to firms or if she is approached by someone about a position with a firm and she responds that she is interested.

***Inquiry:** An Immigration Judge is approached by several local law firms about possible employment -- he has expressed his plans to leave the bench. He turned down all offers outright, save for one, which he is considering. He has three cases pending before him involving attorneys from the law firm. Should the Immigration Judge recuse himself even though he was not the one who approached the law firm seeking employment?*

***Answer:** Yes. Pursuant to the regulations on seeking future employment, an EOIR Judge is considered to be seeking employment if he engages in negotiations with another firm or person. Negotiations mean a discussion or communication conducted with a view toward reaching an agreement regarding possible employment, even if specific terms and conditions of employment are not discussed. It does not matter who initiates the negotiations, the firm or the EOIR Judge. The determining factor is that the judge is considering the employment overture, and has not rejected it. The Immigration Judge must recuse himself from all cases brought by the law firm while pondering the employment offer. Once he accepts the offer, he clearly can no longer work on any of the cases.*

C. Post-employment restrictions. There are statutory prohibitions on former EOIR Judges that generally prevent them from "switching sides" after leaving the

government. The following are the primary restrictions:

(1) Lifetime Ban - An EOIR Judge is prohibited from representing anyone else before the government on a particular matter involving specific parties in which she participated personally and substantially.

(2) Two-Year Ban - An EOIR Judge is prohibited for two years from representing any other person on a particular matter involving specific parties which was pending under her responsibility during her last year of government service.

(3) One-Year Ban - An Executive Level official or an ES 5 or 6 in the Senior Executive Service (or comparable level of another pay system) is subject to an additional restriction that generally prohibits her from representing anyone before the Department or her component for one year. *See* 18 U.S.C. § 207 and 5 C.F.R. § 2637.

Inquiry: A Judicial Law Clerk worked at an Immigration Court for a year. She joins one of the advocacy groups which brings cases before the Court as an attorney. Nine months after leaving EOIR, she returns to the Immigration Court to represent a client at a master calendar hearing. A fellow attorney does not feel well, and asks her to handle the merits hearing of a complex case in which she worked while she was at the Immigration Court. Can the ex-Judicial Law Clerk handle the case?

Answer: No. Former employees are barred from representing parties in particular matters in which they participated personally and substantially while working for the government.

VII. MISUSE OF POSITION (5 CFR sections 2635.701 to 2635.705)

A. Use of public office for private gain. An EOIR Judge may not use his public office for his own private gain or for that of persons or organizations with which he is associated personally. An EOIR Judge's position or title should not be used to coerce; to endorse any product, service or enterprise; or to give the appearance of governmental sanction. An EOIR Judge may use his official title and stationery only in response to a request for a reference or recommendation for someone he has dealt with in Federal employment or someone he is recommending for Federal employment.

Inquiry: *The neighbor of a legal technician has filed an application for benefits before the Social Security Administration. Months have transpired since the filing and she asks the legal technician for help. Can the legal technician call the SSA on her neighbor's behalf?*

Answer: *The legal technician should not use official time and resources for her neighbor's gain. Moreover, she cannot use her official title when calling on her neighbor's behalf, in an attempt to get special treatment from another federal agency.*

Inquiry: *A private attorney convicted of conspiracy to present fraudulent documents to the INS writes to two Immigration Judges asking them to write character letters on her behalf which would be mailed directly to the sentencing judge in federal court in New York. Can the Immigration Judges write such letters?*

Answer: *If the Immigration Judges know the attorney solely through her appearances in Immigration Court, then the Attorney General's memorandum of October 29, 1986, prohibits the judges from writing character letters on behalf of a convicted felon. However, if the attorney is a personal friend of the Immigration Judges, the prohibition would not be absolute. Notwithstanding, the letters would have to be approved by the Deputy Designated Ethics Officer and the Department. See also Attorney General Memorandum on Personal Letters of Recommendation Written to the Probation Office or to a Court on Behalf of Convicted Federal Defendants.*

Inquiry: *The childhood friend of an Immigration Judge is engaged in a civil suit (breach of contract). The Department is not a party to, nor has an interest in, the litigation. The friend has never appeared in Immigration Court before the Judge. Can the Immigration Judge testify on behalf of his friend as a character witness?*

Answer: *Although the federal government is neither a party nor has an interest in the case, and the Immigration Judge would testify as a character witness in his personal capacity, the Immigration Judge re-examined the rules on misuse of position, particularly the prohibition against giving the appearance of government sanction to personal activities, and decided not to testify.*

MCJC Note: *The testimony of an EOIR Judge as a character witness inappropriately lends the prestige of the office in support*

of the party for whom the EOIR Judge testifies. Accordingly, an EOIR Judge should not offer to appear at a proceeding to testify as a character witness. See Commentary under MCJC Canon 2B.

Inquiry: *An INS Special Agent and personal friend of an Immigration Judge is being sued civilly (under Bivens) by a lawful permanent resident who allegedly was roughed up by another INS agent. The plaintiff claims that the Special Agent was present when this happened. The Special Agent denies this allegation; he is not accused of participating in any malfeasance. The U.S. Attorney's Office is representing the Special Agent in the suit. The Immigration Judge has been asked to testify as a character witness. Can the Immigration Judge testify on behalf of his friend?*

Answer: *The Immigration Judge may testify on behalf of his friend, the Special Agent, in his personal capacity. His position as Immigration Judge is irrelevant to the content of his potential testimony. An Immigration Judge should not use his official title for private gain (or that of his family, friends or associates), so the federal attorney must determine if the Immigration Judge is the best suited character witness for the Special Agent, or if his official title – which will have to be used if only identification purposes when taking the stand – will have an adverse effect on the case, as it would give the appearance of an unfair or heavy-handed advantage to the government.*

Inquiry: *Two Immigration Judges are served with subpoenas to testify as character witnesses on behalf of a co-defendant in a federal criminal fraud case. The Judges know the defendant, in the most part, in the context of their official duties. Can the Immigration Judges testify?*

Answer: *The U.S. Attorney's Office can move to quash the subpoenas based on the Departmental policy memorandum, and because the co-defendant failed to comply with the Touhy regulations (regulations on production or disclosure of documents or testimonial evidence in federal and state proceedings at 28 C.F.R. Part 16). The Immigration Judges' testimony could be given more credence by the jury because of their official position. [Note: In this particular case, the District Court Judge denied the motion to quash, but instructed the jurors not to give more weight to the Immigration Judges' testimony than to that of other witnesses.]*

***Inquiry:** Several Immigration Judges are asked if they can help to rate Trial Attorneys - an INS District Counsel is doing the annual performance evaluations and wants input from the Judges on the job performance of the Trial Attorneys. Can the Immigration Judges assist the INS District Counsel in evaluating Trial Attorneys?*

***Answer:** In response to the query about the Trial Attorneys, Immigration Judges may, if they so wish, informally provide information to the District Counsel on the job performance of the Trial Attorneys. They are not, however, under any obligation to offer rating information to the INS. It is the Service's responsibility to rate its attorneys. The District Counsel can come into the courtrooms and observe the Trial Attorneys in action.*

***Inquiry:** An Immigration Judge is asked if he can rate a private practitioner by submitting a letter of reference to Martindale-Hubbell. May the Immigration Judge write such a letter?*

***Answer:** Although the regulations in 5 C.F.R. allow an Immigration Judge to write a letter on behalf of someone who practices before him -- something which the Model Rules of Judicial Conduct advise against -- and use official stationery and his job title, filling out a rating form or writing a letter to Martindale-Hubbell would be an endorsement contrary to regulation. The regulations on misuse of position are very much against endorsements, particularly those of a commercial nature. Letters of reference are a narrow, circumscribed exception to the general prohibition. Martindale-Hubbell is a commercial enterprise which assists practitioners in advertising their talents and expertise, so a letter rating the private practitioner would be an endorsement by a federal employee. Such letter would give the appearance of government sanction to a private, commercial activity.*

B. Use of non-public information. An EOIR Judge may not engage in a financial transaction using nonpublic information nor allow the use of such information to further his private interests or those of another. Nonpublic information is information an EOIR Judge gains on the job which has not been made available to the general public and is not authorized to be made available upon request.

***Inquiry:** A Board Member is preparing a speech for an immigration practitioners group. She is not giving this speech as part of her official duties. After months of working on a complex*

and newsworthy asylum case, the Board Member would like to share with her audience some of the arguments presented in the briefs submitted to the BIA, and how fellow Board Members have analyzed and discussed the issues. Can she include remarks about this case in her speech?

Answer: No, she cannot provide these insights, particularly since the Board has not yet issued a decision in the case. Although she can make a disclaimer (to the effect that the views expressed are her own, and not necessarily those of the Department of Justice and the EOIR), she cannot discuss the arguments presented in an asylum case (protected by regulation), nor how her fellow Board Members have been analyzing the issues and deliberating.

C. Use of government property. Generally, an EOIR Judge should recognize her responsibility to make an honest effort to use government property and official time for official business only. An EOIR Judge may not use the official time of another employee for anything other than official business.

DOJ Note: Department of Justice employees are generally authorized to make personal use of most office equipment and library facilities where the cost to the Government is negligible and on an employee's own time. 28 C.F.R. § 45.4. In addition to the use of government property, DOJ employees are authorized by memorandum dated January 13, 1997, to make personal use of the Internet as described in the memorandum. Under the Department's policy on the use of its electronic mail systems, an employee may send a short, personal message to another employee. However, personal messages sent to groups of people and messages sent to disseminate information on non-Governmental activities, such as charitable events, religious observances and personal businesses, are prohibited. There are security and other concerns that arise with any Internet use, so employees also should familiarize themselves with DOJ memoranda on use of the Internet dated March 11, 1998 and December 9, 1998.

D. Use of official time. An EOIR Judge shall use official time in an honest effort to perform official duties. Generally, personal activities should not be conducted during duty hours.

Inquiry: An Immigration Judge wants to help his daughter sell Girl Scout cookies. He brings the cookie order form to work and makes copies for all of the Immigration Court staff. He asks a

legal technician to distribute the order form copies and collect the orders a week later. When the cookies arrive, he stores them in the copier room and asks the legal technician to help him distribute the cookie boxes and collect the money. Can the Immigration Judge do this?

Answer: No. The Immigration Judge cannot use official time and resources to perform activities other than those required in the performance of official duties. Also, he cannot use a subordinate's time in pursuing an outside activity. He cannot ask his secretary to sell the cookies either.

Inquiry: One of the supervisory legal technicians is an oldies music trivia expert. He asks the Immigration Court staff to tune to a radio station which is holding a trivia contest, and dial the telephone number of the station whenever a trivia question is posed (he would provide the answer). Can the Immigration Court staff participate in this contest during working hours?

Answer: No. Court staff should use official time to perform their duties, not to participate in radio contests. The supervisory legal technician could be subject to disciplinary action for asking other staff to neglect their duties.

VIII. OUTSIDE ACTIVITIES (5 CFR sections 2635.801 to 2635.809)

A. An EOIR Judge should not engage in any outside employment or other outside activity that conflicts with her official duties. Department of Justice employees are prohibited from engaging in outside employment that involves criminal matters, the paid practice of law and matters in which the Department is or represents a party. The Deputy Attorney General may waive these prohibitions. An EOIR Judge must obtain written approval to engage in the unpaid practice of law and outside employment that relates to her component's area of responsibility. 5 C.F.R. 3801.106.

MCJC Note: An EOIR Judge should regularly reexamine the avocational activities and organizations with which the judge is affiliated to ensure that these activities do not lead to the perception of partiality on the part of the EOIR Judge. See **Commentary under MCJC Canon 4C(3)(a)**.

Inquiry: In order to pay her son's tuition costs, a Language Specialist decides to take a part-time job at a department store. Can she undertake this outside activity?

Answer: Yes. EOIR employees may hold part-time jobs or

participate in outside activities as long as this does not conflict with their official duties. Since this job is not related to immigration, the Language Specialist does not need to seek agency approval.

***Inquiry:** The same Language Specialist is offered a part-time position (translating documents) by an attorney who has cases before the Immigration Court. Can she accept this job offer?*

***Answer:** Probably not. As a general rule, employees who are interested in paid or voluntary activities related to immigration (or their official duties, such as computer programing, interpreting, etc.) must seek EOIR approval. Since this job is related to immigration (and to her official duties at the Court), she would have to seek authorization from EOIR. The documents she would have been translating might end up before the Immigration Court. Even if the Language Specialist is authorized to work at the attorney's law office, she could not help aliens fill out their asylum applications, nor make suggestions based on her Immigration Court experience (she would truly be in the middle of a conflict of interests situation, and could even be disclosing nonpublic information).*

B. Representation before federal agencies. An EOIR Judge may not represent anyone before an agency or court of the Federal Government, with or without compensation, on a matter in which the United States is a party or has a substantial interest. This prohibition applies whether the EOIR Judge renders the representation personally or shares in compensation from someone else's representation. *See* 18 U.S.C. §§ 203 and 205.

***Inquiry:** An Immigration Judge is invited to join the Board of Directors of a religious/social organization. This organization receives substantial funding from HUD. Can the Immigration Judge join the Board?*

***Answer:** After examining the mission statement, by-laws, financial records and Board of Directors minutes, the Immigration Judge may be allowed to join the Board subject to the following restrictions: (1) he cannot sign letters addressed to HUD (or other federal agencies), nor act as the organization's representative when seeking federal grants; (2) he cannot use his official title in matters related to his membership on the Board but unrelated to his federal employment (the exception to this rule would be if the job title is mentioned in a biographical profile of all Board Members together with other information about the Immigration*

Judge's educational background, work experience and outside interests); (3) he should recuse himself from any cases in which a person receiving funds from the organization or its members, including fellow Board Members, appear before him in Immigration Court; (4) he cannot give legal advice to program participants, particularly pertaining to immigration issues; and (5) he cannot use official time nor resources (including the assistance of other EOIR employees) while pursuing this outside activity.

C. Practice of law. An EOIR Judge may not engage in the practice of law unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse or minor children. The Department interprets "uncompensated and in the nature of community service" to include almost any uncompensated practice. For example, activities such as preparing a will for a neighbor, representing a cousin in a divorce proceeding or writing a letter for a friend with a grievance against a private employer would be excepted from the ban. However, an EOIR Judge must obtain prior written approval from the Chief Immigration Judge before engaging in any outside practice of law.

D. While most uncompensated activities are permissible, an EOIR Judge is prohibited from engaging in any practice of law which involves a criminal matter, be it Federal, state or local, or any matter in which the Department is or represents a party. The paid practice of law also is prohibited. These prohibitions may be waived by the Deputy Attorney General if the restrictions will cause undue personal or family hardship, unduly prohibit a DOJ employee from completing a professional obligation entered into prior to Government service, or unduly restrict the Department from securing necessary and uniquely specialized services. All requests for a waiver of these prohibitions should be made through the Departmental Ethics Office. 5 C.F.R. § 3801.106.

***Inquiry:** A Board Member wishes to represent an elderly friend in a traffic accident case. He will not be paid, and will do this in the nature of community service. Can he represent his friend?*

***Answer:** Yes, the Board Member may represent his friend in state court if the Director approves his request. The Board Member must remember, however, that the Department does not provide for malpractice insurance or offer legal representation in matters arising from pro bono, non-official legal matters.*

E. Service As An Expert Witness. An EOIR Judge may not serve as an expert witness in her private capacity in any proceeding before the United States in which the United States is a party or has an interest, unless specifically authorized.

F. Participation in professional associations. (Reserved in the regulation).

DOJ Note: See Deputy Attorney General Memorandum on Participation in Bar Activities by Justice Department Attorneys.

G. Teaching, speaking and writing. Generally, an EOIR Judge may not be compensated for speaking or writing that relates to his official duties. A subject matter relates to an EOIR Judge's official duties if it deals in significant part with a matter to which the Judge is presently assigned or has been assigned in the last year; any ongoing or announced policy, program or operation of the Department; or in the case of a non-career employee, the general subject matter area primarily affected by the programs and operations of the Department. 5 C.F.R. § 2635.807. Under 5 C.F.R. § 3801.103, most components in the Department are designated as separate. This means that an EOIR Judge would only be prohibited from speaking or writing on a subject matter related to the policies, programs or operations of his component, not the entire Department.

H. There is an exception for teaching certain courses, even if the course relates to an EOIR Judge's official duties, provided the course requires multiple presentations and:

(1) is offered as part of a regularly established curriculum of an institution of higher education; an elementary or secondary school; or a program sponsored and funded by the Federal Government or by a state or local government which is not offered by an entity described above. An EOIR Judge may accept compensation for teaching a course provided it meets these requirements. An employee in a non-career position above GS-15 must have advance authorization before engaging in teaching for compensation. 5 C.F.R. § 2636.307

(2) When engaging in speaking or writing in a private capacity, an EOIR Judge may not use nonpublic information, nor should there be any use of his official title except as part of other biographical information or for an article in a scientific or professional journal where there is a disclaimer. An EOIR Judge may not use official time or that of another employee to prepare materials. Some components require advance review and clearance for certain written work and speeches.

Inquiry: An Immigration Judge is asked to teach a course on immigration law at a local university. She is invited because of her expertise in the field, and not because of her official position.

The professors who invited her do not have interests which may be affected substantially by the performance of her official duties. The Immigration Judge would be compensated (same salary offered to all part-time professors). The class would not conflict with regular working hours. Can the Immigration Judge teach the course?

Answer: Yes, the Immigration Judge may teach the course since it is offered by an accredited law school, the only time her official title would be used would be in a brief biographical profile (which would include other relevant professional experience and would be similar to the information provided on other professors), she would not be using official time or resources (including the assistance of clerical staff) in the pursuit of this activity, and she would not disclose nonpublic information. The Immigration Judge must make a disclaimer at the first lecture to the effect that the views expressed are her own, and do not necessarily reflect those of the Department of Justice.

I. Fundraising activities. An EOIR Judge may engage in fundraising in her personal capacity as long as she does not solicit from subordinates or persons having business with the Department, and she does not use her official title or position. In addition, soliciting should not be done on government property.

J. An EOIR Judge may not engage in fundraising, including active participation in a fundraiser, in her official capacity unless authorized by statute, executive order, regulation or agency determination. The only authorized fundraising in the Department is on behalf of the Combined Federal Campaign. However, an EOIR Judge may be authorized to give an official speech at a fundraising event, if the circumstances are appropriate, even though this constitutes participating in a fundraiser.

Inquiry: One of the legal technicians is active in AIDS fundraising. She has signed up for a walk-a-thon, and is seeking contributions from the Immigration Court staff. Can she do this?

Answer: Fundraising should be done after working hours, and employees should not solicit from subordinates. Although there are regulatory prohibitions against fundraising in Government Services Administration-leased space (with the sole exception of the Combined Federal Campaign), employees could post information on their fundraising efforts on an internal bulletin board (located in the lunchroom, for example), so that participation in the fundraising would be voluntary.

***Inquiry:** An Immigration Judge is asked to serve as a member of the reception committee of an immigrant organization. As a committee member, the name of the Immigration Judge (and her official title) would appear on the invitation to a reception, which is a fundraising activity. Can the Immigration Judge participate in this activity?*

***Answer:** The Immigration Judge is reminded about the regulations on misuse of position and fundraising in 5 C.F.R. 2635.808. She agrees that there is a conflict between her official duties and the activities of the immigrant organization. Moreover, the Immigration Judge cannot allow the organization to use her official title to promote its fundraising activity.*

***Inquiry:** A Board Member serves as artistic director of an annual fashion show to raise funds for sickle cell research. She knows that she cannot use her official title in the pursuit of this activity, and that she cannot solicit funds from subordinates or persons who appear before her in Immigration Court. Can the Board Member participate in this fundraising activity?*

***Answer:** Yes, she may participate.*

K. Just financial obligations. An EOIR Judge shall satisfy in good faith his obligations as a citizen, including all just financial obligations imposed by law, especially those such as Federal, state or local taxes or child support payments.

L. Purchase of forfeited property. Without written approval, an EOIR Judge may not purchase or use property that has been forfeited to the Government and offered for sale by the Department of Justice or its agents.

IX. POLITICAL ACTIVITIES (5 CFR sections 734.101 to 734.702)

A. EOIR Judges may:

- (1) Register and vote as they choose.
- (2) Assist in voter registration drives.
- (3) Express opinions on candidates and issues.
- (4) Be a candidate for public office in non-partisan elections.
- (5) Contribute money to political organizations, in general.

- (6) Attend and be active at political rallies and meetings.
- (7) Attend political fundraisers.
- (8) Join and be an active member of a political party or club.
- (9) Sign nominating petitions.
- (10) Campaign for or against referendum questions, constitutional amendments and municipal ordinances.
- (11) Distribute campaign literature in partisan elections.
- (12) Make campaign speeches for candidates in partisan elections.
- (13) Campaign for or against candidates in partisan elections.
- (14) Hold office in political clubs and parties.

B. EOIR Judges may not:

- (1) Be a candidate in a partisan election.
- (2) Engage in political activity while on duty, in a government office, while wearing an official uniform or using a government vehicle.
- (3) Solicit political contributions from the general public or collect contributions except from a fellow member of a federal labor or employee organization who is not a subordinate.
- (4) Solicit or discourage the political activity of anyone who has business with the Department.
- (5) Use official authority or influence to interfere with an election.
- (6) Wear political buttons while on duty.

DOJ Note: In 1993, Congress amended 18 U.S.C. § 603 which governs political contributions by Federal employees to their employer or employing authority. The original statute had been interpreted as potentially prohibiting all executive branch employees from making political contributions to the reelection

campaign committee of an incumbent President. However, by memorandum dated May 2, 1995, the White House issued an opinion which states that based on the Hatch Act Reform Amendments of 1993, 18 U.S.C. § 603 would no longer prohibit employees from making contributions to the reelection campaign of an incumbent President.

Inquiry: *The husband of an Immigration Judge wishes to host a political fundraising dinner at their residence. She is concerned about the Hatch Act prohibitions. What should the Immigration Judge do?*

Answer: *A federal employee is barred from hosting a fundraising activity at her home pursuant to 5 CFR 734.303. Such prohibition, however, does not extend to non-federally employed spouses. Therefore, if the Immigration Judge refrains from soliciting contributions and does not include her name on the fundraiser's invitations (not even as a point of contact), her husband can host the activity, and the Immigration Judge can comply with the applicable federal rules. The Immigration Judge should keep a low profile to avoid the appearance of impropriety.*

Inquiry: *One of the judges is active in local politics. He goes to vote on election day at lunch, and returns to work wearing a political pin. Can he do this?*

Answer: *No. Judges are prohibited from wearing political pins or insignia at the workplace.*