JUDGES AND GAMBLING

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INTRODUCTION

In an address to the American Bar Association (ABA) in 1965, Simon H. Rifkind warned judges to avoid being "conspicuous" in their personal lives.[1] He then offered several examples of such behavior, one of which was being "a frequent standee in the $100 window at the racetrack."[2] At the time of Rifkind's speech, dog tracks and horse tracks were nearly the only means available for placing a legal bet in the United States.[3] Three states, however,

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[1] Simon H. Rifkind, *A Judge's Nonjudicial Behavior*, 38 N.Y. ST. B. J. 22, 23 (1966). Although Rifkind spent most of his career in private practice, from 1941 to 1950 he was a federal judge in Manhattan. *See* Eric Pace, *Simon Rifkind, Celebrated Lawyer, Dies at 94*, N.Y. TIMES, Nov. 15, 1995, at D20.

[2] Rifkind, *supra* note 1, at 23.

One jurist who famously did not take Rifkind's advice was Vassar B. Carlton, who became a Florida circuit court judge at the age of twenty-seven and later was elevated to the Florida Supreme Court. *See* Sandra Pedicini, *Retired Chief Justice Vassar Carlton Liked Challenge, Was "Settlin' Judge"*" ORLANDO SENTINEL (Sept. 5, 2005), https://www.orlandosentinel.com/news/os-xpm-2005-09-05-sdead05-story.html. Carlton "loved to gamble" and was a "regular patron of the dog track near Tallahassee, where his research assistant observed that he was a shrewd and successful bettor." MARTIN A. DYCKMAN, A MOST DISORDERLY COURT: SCANDAL AND REFORM IN THE FLORIDA JUDICIARY 19–20 (2008). In 1974, Carlton resigned after a Miami television station filmed him in Las Vegas on a high-roller gambling junket paid for by a dog track that had a case pending before him. *Id.* at 20. It has been claimed that when he resigned, Carlton was under investigation by the Florida Judicial Qualifications Commission and cut a deal with it. *Id.*

Another example is Massachusetts Superior Court Judge Ernest B. Murphy. One day after failing to appear in a North Carolina courtroom to answer reckless driving and speeding charges, he and his wife were spotted at a New York horse track. *See* Jessica Van Sack, *Pols Concerned over Behavior of Murphy,* Bos. Herald (Sept. 28, 2007 12:00 AM), https://www.bostonherald.com/2007/09/28/pols-concerned-over-behavior-of-murphy/. A short time later, Murphy resigned from the bench for health reasons. *See In re Murphy*, 897 N.E.2d 1220, 1221 (Mass. 2008).

[3] *See* Hans Zeisel, *The Law, Gambling, and Empirical Research*, 17 STAN. L. REV. 990, 990 (1965) (reviewing NECHAMA TEC, GAMBLING IN SWEDEN (1964) ("While most of our states have statutes that forbid virtually all gambling . . . about

did offer an additional option: Florida (jai-alai), Nevada (commercial casinos), and New Hampshire (lottery).[4]

Seven years after Rifkind's talk, the Massachusetts Supreme Judicial Court took matters a step further. In *In re DeSaulnier*, the court removed Edward J. DeSaulnier Jr. from the superior court for, among other things, gambling while in Las Vegas.[5] Although recognizing that DeSaulnier had engaged in a legal activity, the court held that "public gambling and being a judge are incompatible."[6]

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half our states allow betting on horses or dogs, provided the bet is placed at the track and the pari-mutuel system is employed.").

[4] THOMAS BARKER & MARJIE BRITZ, JOKERS WILD: LEGALIZED GAMBLING IN THE TWENTY-FIRST CENTURY 78 (2000). Nevada legalized commercial casinos in 1931. *See Gaming, Divorce Bills Signed*, NEV. ST. J. (Reno), Mar. 20, 1931, at 1. Florida approved betting on jai-alai in 1935. *See Sholtz Signs Name to Appointment Act*, PALM BEACH POST, June 4, 1935, at 5 ("Also signed into law were bills . . . legalizing pari-mutuel wagering on the Spanish game of Jai-Alai and placing it under the state racing commission."). New Hampshire reinstituted its lottery in 1963. *See Gov. King Signs Sweepstakes Bill*, PORTSMOUTH HERALD, Apr. 30, 1963, at 1.

[5] In re DeSaulnier, 279 N.E.2d 296, 307, 310–11 (Mass. 1972).

[6] *Id.* at 310. As another commentator has pointed out, the court did not elaborate on its conclusion:

> Why is public gambling incompatible with being a judge? Is it only casino gambling that must be avoided, or is pari-mutuel betting also off-limits? . . . Does the rule hold true only in the United States, or would it apply to Monte Carlo as well? Would it apply to gambling on a cruise ship in non-territorial waters? In short, what is it about legal gambling that might lead to judicial discipline, and how should judges evaluate their conduct in the future?

Steven Lubet, *The Search for Analysis in Judicial Ethics or Easy Cases Don't Make Much Law*, 66 NEB. L. REV. 430, 436–37 (1987).

In addition to the many questions posed by Lubet, one wonders if the court was sending a signal that it would not have had a problem if DeSaulnier had limited himself to "private gambling." Legally speaking, of course, there is no difference between "public gambling" and "private gambling." Historically, however, the former has provoked more outrage than the latter.

In State v. Lawrence, for example, two men attending a baseball game began betting on its outcome. 130 P. 508, 508 (Okla. Crim. App. 1913). As the contest continued, their bets became larger and larger and attracted increasing attention, finally leading to their arrests. *See id.* In upholding their convictions, the appellate court observed:

> As gaming is recognized as a pernicious crime by the law, it logically follows that open and public betting on this game in the presence of and among men, women, boys, and girls when assembled to witness a game of baseball is injurious to public morals and outrages public decency, and tends to destroy the peace and tranquility of the persons so assembled, and thereby

Today, of course, the gambling landscape is quite different. While track attendance has fallen sharply,[7] every other type of betting has experienced explosive growth: twenty-four states now have commercial casinos;[8] twenty-nine states have tribal casinos;[9] forty-five states have lotteries;[10] and thirteen states have sports books.[11] In addition, the internet has turned every smartphone into a virtual casino.[12]

These developments, which reflect society's increasing enthusiasm for

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> disturbs the public peace. We do not desire to be understood as holding that a private wager upon the result of a baseball game, when not openly and publicly made, would constitute a violation of this provision of the statute.

Id. at 510.

[7] *See* WILLIAM N. THOMPSON, GAMBLING IN AMERICA: AN ENCYCLOPEDIA OF HISTORY, ISSUES, AND SOCIETY 189–90 (2d ed. 2015) ("Attendance at races has plunged drastically, and betting at on-track pari-mutuel windows has suffered accordingly. . .When other forms of gambling—lottery, most casino games—became available to. . .consumers, their desire for racing products naturally declined.").

[8] *State of the States 2018: The AGA Survey of the Commercial Casino Industry,* REPORT (Am. Gaming Ass'n, 2018), at 3.

[9] *The Commission: FAQs*, NAT'L INDIAN GAMING COMMISSION, https://www.nigc.gov/commission/faqs ("In which states does Indian gaming occur?") (last visited Sept. 28, 2019). Tribal casinos became legal with the passage of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. No. 100–497, 102 Stat. 2467 (codified as amended at 25 U.S.C. §§ 2701–2721 (1988)). *See generally* STEVEN ANDREW LIGHT & KATHRYN R.L. RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY: THE CASINO COMPROMISE 63–64 (2005).

[10] *See* Steven Stradbrooke, *Mississippi Vote Shrinks Number of Lottery-Free US States to Five*, CALVIN AYRE, (Aug. 29, 2018), https://calvinayre.com/2018/08/29/business/mississippi-approves-lottery-bill/ (explaining that only Alabama, Alaska, Hawaii, Nevada, and Utah currently lack lotteries).

[11] In 1992, Congress outlawed sports betting by adopting the Professional and Amateur Sports Protection Act (PASPA), Pub. L. 102-559, 106 Stat. 4227, (codified as amended at 28 U.S.C. §§ 3701–3704 (1992)) (grandfathering in Nevada's sports books). In 2018, the U.S. Supreme Court invalidated PASPA after finding it violated the Tenth Amendment. *See* Murphy v. Nat'l Collegiate Athletic Assoc., 138 S. Ct. 1461, 1484–85 (2018). *See also* Symposium, *Sports Betting Post-PASPA*, 9 UNLV GAMING L. J. 1, 29 (2019). Since the Court's decision, states have been rushing to approve sports betting. In addition to the thirteen states that already have done so, thirty-seven other states are considering such legislation. *See Legislative Tracker: Sports Betting*, LEGAL SPORTS REP., https://www.legalsportsreport.com/sportsbetting-bill-tracker/ (last visited Oct. 13, 2019).

[12] The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), 31 U.S.C. §§ 5361–5367 (2006), makes it illegal for "gambling businesses" to accept internet bets. It also prohibits banks and credit card companies from facilitating such transactions. Although the UIGEA contains exceptions for certain types of internet gambling, in 2018 the U.S. Department of Justice (DOJ) concluded that all such gambling remains prohibited by the Interstate Wire Act of 1961, 18 U.S.C. §§ 1081–1084 (1961). The DOJ's position was rejected in N.H. Lottery Commission v. Barr, 386 F. Supp. 3d 132, 160–61 (D.N.H. 2019).

gambling,[13] raise an interesting question: is betting by judges now acceptable behavior?[14]

I. THE CODE OF JUDICIAL CONDUCT

In 1924, the ABA promulgated the Canons of Judicial Ethics (CJE), the first national attempt to codify proper judicial behavior.[15] Oddly enough, the CJE has a gambling connection: it was promulgated after Kenesaw M. Landis, a federal judge, agreed to become baseball's first commissioner and clean up the sport, which was reeling from the fixing of the 1919 World Series by professional gamblers. Landis, insisting he could do both jobs, refused to step down from the bench. In response, the ABA censured him (even though no law prohibited Landis's moonlighting) and began a successful campaign to force him to give up his judgeship.[16] Following Landis's resignation from the bench, the ABA began work on the CJE.[17] Included in the final product was Canon 4,

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[13] With two exceptions, every state now authorizes at least one form of gambling. The holdouts are Hawaii (which believes that legalizing gambling would hurt its family-friendly image) and Utah (which objects to gambling on religious grounds). *See* Robert M. Jarvis, *Gambling in Hawai'i and Utah*, 14 GAMING L. REV. & ECON. 755, 755 (2010). Many states permit multiple forms of gambling. Florida, for example, has card rooms; casinos (shipboard and tribal); pari-mutuels (dogs, horses, and jai-alai); slots (in two counties); and a state lottery. *See* Robert M. Jarvis, *Control the Casinos and Stop the Dogs: Florida's 2018 Proposed Constitutional Amendments*, 22 GAMING L. REV. 393, 393 n. 5–6, 394 n. 7, 11 & 13 (2018).

[14] Judges who are compulsive gamblers, of course, should never gamble. *See e.g., Appeals Judge Admits Losses in Gambling*, SUN (Flagstaff, AZ), Feb. 18, 1976, at 2 (reporting that Arizona Court of Appeals Judge Gary Nelson "swore off" gambling after losing $7,000 between 1972 and 1975); Kristian Hernandez, *JP Charged in Game Room Theft: Judge Admits to Gambling Addiction, Investigators Say*, MONITOR (McAllen, TX), Oct. 23, 2015, at 1B (reporting on the arrest of Texas Justice of the Peace Oralia Morales for failing to pay more than $1,700 in gambling debts). The ABA's Judicial Assistance Initiative has worked hard to help judges with compulsive gambling. Among its many offerings is a special hotline, called "Judges Helping Judges" that connects impaired judges with judges who have volunteered to serve as mentors. *See Resources for Judges*, A.B.A. (June 26, 2019), https://www.americanbar.org/groups/lawyer_assistance/articles_and_info/resources_for_judges/.

Judges with gambling addictions have become something of a popular culture trope. *See*, *e.g.*, Whitehead v. Paramount Pictures Corp., 53 F. Supp. 2d 38, 42–43 (D.D.C. 1999), *aff'd*, 2000 WL 33363291 (D.C. Cir.), *cert. dismissed*, 531 U.S. 1033 (2000), *reconsideration denied*, 531 U.S. 1110 (2001) (summarizing the plot of the 1995 movie *Bad Company*, which features David Ogden Stiers as a judge who agrees to throw a case because of his gambling debts).

[15] *See* A.B.A., CANONS OF PROFESSIONAL ETHICS: [AND] CANONS OF JUDICIAL ETHICS 27–28 (1937).

[16] LOUIS H. SCHIFF & ROBERT M. JARVIS, BASEBALL AND THE LAW: CASES AND MATERIALS 104 (2016).

[17] *Id.*

which provided: "A judge's official conduct should be free from impropriety and the appearance of impropriety. . ."[18]

In 1972, the CJE was succeeded by the Code of Judicial Conduct (CJC).[19] Canon 1 of the CJC continues the CJE's double-barreled admonition: "A judge shall. . . avoid impropriety and the appearance of impropriety."[20]

Despite its origins, gambling is not specifically mentioned in either the CJE or the CJC, but the comment to CJC Rule 1.2 explains in paragraph 3: "Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms."[21] Nevertheless, as discussed below, it has figured in decisions under both the CJE and CJC.[22]

II. IMPROPRIETY

The CJC defines "impropriety" as actively breaking the law.[23] A number of

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[18] A.B.A., *supra* note 15, at 29.

[19] *See* CHARLES GARDNER GEYH ET AL., JUDICIAL CONDUCT AND ETHICS 1–5 (5th ed. 2013). For the current version of the CJC (including amendments made in 2010), *see* MODEL CODE OF JUD. CONDUCT (AM. BAR ASS'N 2010).

[20] MODEL CODE OF JUD. CONDUCT Canon 1 (AM. BAR ASS'N 2010).

[21] MODEL CODE OF JUD. CONDUCT r. 1.2 cmt. 3 (AM. BAR ASS'N 2014).

[22] Due to a lack of systematic reporting, as well as the fact that many judicial complaints (and their dispositions) never become public, it has not proven possible to locate every instance in which a judge has been accused of, or sanctioned for, a gambling-related offense. In 2001, for example, it was "speculated that a complaint may be in the works with the Nevada Commission on Judicial Ethics against [District] Judge [Joseph] Bonaventure for his participation in the promotion of [a] book [about the alleged murder of Horseshoe Casino owner Ted Binion] while he is still presiding over the case." Steve Miller, *Judge, Prosecutors Reveal Prejudices*, L.V. TRIB. (Nov. 7, 2001), http://www.stevemiller4lasvegas.com/JudgeBonaventure SignsBook.htm. Whether such a complaint ever was seriously considered remains unknown.

Similarly, in 2010 New York Supreme Court Justice George R. Villegas was sued by Janet Cohen, a former law school classmate, who claimed she had paid $500,000 to loan sharks to settle Villegas's gambling debts. *See* William J. Gorta, *Lawyer Suit: Judge Owes Me Half-Mil*, N.Y. POST (Apr. 29, 2010 4:00 AM), https://nypost.com/2010/04/29/lawyer-suit-judge-owes-me-half-mil/; *see also* Brendan Brosh, *Supreme Court Justice George Villegas Returns from Hiding After $500,000 Debt Lawsuit,* N.Y. DAILY NEWS (May 4, 2010, 9:21 PM), https://www.nydailynews.com/new-york/supreme-court-justice-george-villegas-returns-hiding-500-000-debt-lawsuit-article-1.447105. After initially receiving extensive press coverage, the story disappeared from public view. *See generally George R. Villegas*, BALLOTPEDIA, https://ballotpedia.org/George_R._Villegas (last visited Sept. 4, 2019) (making no mention of the incident and reporting that Villegas remains on the bench).

[23] MODEL CODE OF JUD. CONDUCT r. 1.2 cmt. 5 (AM. BAR ASS'N 2014) ("Actual improprieties include violations of law, court rules or provisions of this Code.").

judges have lost their robes, or been disciplined, under this standard for acts involving gambling.

A. Judges Removed for Gambling

Because of a paucity of records, it is impossible to pinpoint the first time a judge was forced off the bench for illegal gambling. It is well documented, however, that in 1842 impeachment proceedings were brought against Alabama Circuit Court Judge John P. Booth for, among other things, being a habitual gambler; consorting with professional gamblers; staying out so late gambling and drinking that on one occasion he was unable to start court until after 12 o'clock the next day; and on another occasion instructing a criminal jury:

> … that the particular statute for the suppression of gambling, to wit: the 12th section of the 6th chapter of the new penal code, "was intended by the legislature to apply to professional gamblers and *not* to private citizens!" Under this charge the jury found William B. Cole, who was on . . . trial for keeping a Faro Bank, [a fact] clearly and positively established by the testimony of two respectable witnesses and not attempted to be controverted—not guilty.[24]

Although a majority of the Alabama House of Representatives refused to investigate, "Booth resigned and soon died."[25]

In 1876, the Virginia Senate removed County Court Judge George S. Stevens from the bench for gambling with cards.[26] In taking this step, the Virginia Senate made it clear that it was not imposing a blanket ban on judges gambling:

> The undersigned Senators desire to have spread upon the journal their reasons for voting for the removal of Judge Stevens from the office of county judge of Nelson county. We are of the opinion that said charges are sustained, with the exception that the allegation that violation of the 4th section of

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[24] INDEPENDENT MONITOR (Tuscaloosa), Dec. 14, 1842, at 2 (emphasis in original).

[25] Oscar L. Tompkins, *Impeachment and Removal of Three Circuit Judges*, 21 ALA. LAW. 211, 211 (1960).

[26] *See* H.R. 163, 88th Gen. Assemb., Reg. Sess. (Va. 1876) (Joint Resolution for the Removal from Office of George S. Stevens, County Judge of Nelson). Although the resolution is devoid of details, contemporary newspaper accounts explain that Stevens had played faro and poker. *See*, *e.g.*, *The Stevens Squabble*, DAILY DISPATCH (Richmond), Feb. 28, 1876, at 1.

> chapter 190 of the [Criminal] Code [prohibiting gambling] is "in violation of his oath of office of judge" is incorrect as a matter of law. Being satisfied, however, from the evidence, that the illegal acts of gaming charged and proved against Judge Stevens were committed under circumstances of peculiar impropriety, and that his conduct was incompatible with the dignity and efficiency of the judicial office, they have concurred in the resolution removing him therefrom.[27]

In 1891, a joint session of the Washington legislature placed Superior Court Judge Morris B. Sachs on trial after receiving reports that he was a habitual gambler.[28] Although Sachs admitted the charges were true,[29] he was spared when the senate could not reach a decision.[30]

In 1892, Esek C. Carpenter, a New York justice of the peace, was accused of, among other things, regularly visiting gambling houses.[31] Although the evidence was disputed, the New York Supreme Court found it reliable enough to warrant his removal:

> While a bad character is not sufficient to remove a public officer, it does give color to the testimony when it is in dispute as between the justice and Shea, and the other witnesses who

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[27] *Judge Stevens in the Senate*, ALEXANDRIA GAZETTE, Mar. 27, 1876, at 2. The phrase "circumstances of peculiar impropriety" was a veiled reference to (1) how much money Stevens had won ($7,200, the equivalent today of $171,000—see https://westegg.com/inflation/); and, (2) from whom he had won it (William H. Fowle, a member of the House of Delegates, Virginia's lower legislative chamber). *See Stevens Squabble*, *supra* note 26. According to some sources, Fowle was behind the effort to oust Stevens:

> There's a lively judicial scandal in Virginia. Judge Geo. S. Stevens, of the Nelson County Court, recently won $7,200 from a Member of the Legislature, and now the squeezed legislator is trying to have the Judge impeached for gambling. If Southern Judges are to be punished for playing poker, there will be a heap of vacancies.

Paragraphic Gossip, CHIPPEWA HERALD (Chippewa Falls, WI), Mar. 10, 1876, at 4.

[28] *See A Judge on Trial*, S.F. CHRON., Feb. 25, 1891, at 1. The case began after the Port Townsend bar association filed a detailed complaint. *See A Recreant Judge: Visits Gambling Houses and Plays Faro*, DAILY OREGON STATESMAN (Salem), Jan. 30, 1891, at 1.

[29] *A Judge Admits He Gambles*, OMAHA DAILY BEE, Feb. 16, 1891, at 5.

[30] *See The Sachs Trial*, SEATTLE POST-INTELLIGENCER, Mar. 7, 1891, at 4 (reporting that while the house voted sixty-two to fourteen in favor of removal, the senate deadlocked sixteen to sixteen).

[31] *See* In re Carpenter, 21 N.Y.S. 351, 352 (Sup. Ct. 1892).

> testify in favor of the existence of the facts charged. We think the proof justifies and calls for the removal of the respondent as justice of the peace of the town of Highland, in Orange county.[32]

In 1940, Hulon Capshaw, a New York City magistrate, was charged with fixing cases for "policy men" (i.e., illegal lottery operators) in exchange for "considerations outside the record."[33] Finding the allegations to be true, the New York Supreme Court stripped him of his job.[34]

In 1970, Edward A. Haggerty, Jr., a Louisiana criminal district court judge, lost his position for a host of reasons, including placing bets with a bookmaker and playing in high-stakes poker games.[35] According to the Louisiana Supreme Court:

> This participation in illegal gambling activities was open and notorious, well known to all those who frequented the public bar of the DeVille [hotel in New Orleans]. Respondent's activities and participation in these illegal acts could have no other effect than to encourage others to participate in similar activities without anticipation of prosecution therefor.[36]

In 1983, the North Carolina Supreme Court retroactively removed J. Wilton Hunt, Sr. from the General Court of Justice (District Court Division) for "willful misconduct," thereby triggering Hunt's "statutory disqualification from receiving retirement benefits and holding further judicial office."[37] While on the bench, Hunt had taken payoff money from Federal Bureau of Investigation

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[32] *Id.* at 353.

[33] In re Capshaw, 17 N.Y.S.2d 172, 175, 179 (App. Div. 1940).

[34] *Id.* at 186. Even before *Capshaw*, the New York City Magistrates Court had gained a reputation for protecting gamblers. In 1904, for example, two of its members were accused of regularly dismissing charges against policy men, but both beat the charges. In re Baker, 87 N.Y.S. 1022, 1023–24 (App. Div. 1904); In re Tighe, 89 N.Y.S. 719, 721 (App. Div. 1904). In 1930, an investigation by the state legislature, led by Samuel Seabury, fared better and resulted in numerous removals and resignations. *See* OLIVER E. ALLEN, THE TIGER: THE RISE AND FALL OF TAMMANY HALL 233 (1993). Among those who stepped down was Francis X. McQuade, whose "interests included stock in. . .the Havana Casino, the Cuban gambling establishment. The magistrate was entitled to 5 per cent [sic] of the casino's income." HERBERT MITGANG, THE MAN WHO RODE THE TIGER: THE LIFE AND TIMES OF JUDGE SAMUEL SEABURY 189–90 (Fordham Univ. Press ed. 1996).

[35] *See* In re Haggerty, 241 So. 2d 469, 481 (La. 1970).

[36] *Id.*

[37] In re Hunt, 302 S.E.2d 235, 235-36 (N.C. 1983). By the time the court acted, Hunt already had resigned from the bench (hence the focus on his retirement benefits and eligibility for future office).

(FBI) agents posing as shady businessmen.[38] In exchange, they asked Hunt for various forms of help, including protecting a high-stakes poker game they planned to start.[39]

In 1989, Johnny B. Thomas, a Mississippi municipal court judge, was given eight months in federal prison after illegal slot machines were discovered in his restaurant.[40] Four months later, the Mississippi Supreme Court permanently suspended Thomas for "conduct prejudicial to the administration of justice."[41]

In 1992, Robert S. Chesna, a Pennsylvania magisterial district justice, resigned from the bench.[42] Two years later, the state's judicial conduct board charged him with operating illegal video poker machines at a service station he owned with his wife.[43] While Chesna did not deny the charges,[44] he questioned whether the board had jurisdiction over him.[45] After holding that it did,[46] the Pennsylvania Court of Judicial Discipline removed Chesna (retroactive to the date of his resignation) and barred him from ever again holding judicial office.[47]

In 1993, Rudolph L. Mazzei, a New York county court judge, was removed

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[38] *Id.* at 236.

[39] *Id.* at 236–37.

The FBI sting that nabbed Hunt, dubbed "Colcor" (for Columbus County Corruption), also ensnared many other local officials. *See Colcor Most Prominent Undercover Operation in South*, INDEX-J. (Greenwood, S.C.), June 23, 1983, at 20 (reporting that Hunt ended up being "sentenced to 14 years in prison for racketeering and interstate gambling in connection with taking over $7,000 in bribes.").

Two decades earlier, the FBI had run a similar sting in Jacksonville, Florida. Among those arrested was Justice of the Peace J.W. "Joby" Jones, who was charged with accepting bribes to protect gamblers. *See Jacksonville JP Charged with Taking Bribes*, LAKELAND LEDGER (Fla.), Apr. 10, 1964, at 1 ("A direct information filed by solicitor Edward M. Booth alleges that between Aug. 3, 1963, and Feb. 24, 1964, Jones accepted $300 a month from Howard Strickland, 'a person engaged in the operation of an illegal lottery. . ..'"). After resigning from the bench, Jones pled guilty to the lesser charge of attempting to run a lottery and agreed to become a cooperating witness; in exchange, he was sentenced to three years of probation and ordered to attend weekly meetings of Alcoholics Anonymous. *Ex-Peace Justice on Probation*, TAMPA TRIB., Mar. 23, 1965, at 2A.

[40] Frank Howell, *Glendora Mayor Sentenced; Says He Won't Resign*, CLARKSDALE PRESS REG. (Miss.), June 23, 1989, at 1 (explaining that the slot machines were owned by two other men "who split the profits with Thomas.").

[41] Miss. Judicial Performance Comm'n v. Thomas, 549 So. 2d 962, 965–66 (Miss. 1989).

[42] *See* In re Chesna, 659 A.2d 1091, 1092 (Pa. Ct. Jud. Discipline 1995).

[43] *Id.* at 1093–94.

[44] According to Chesna, he used the $1,200 a week that the machines earned to "put his kids through college." *Id.* at 1094.

[45] *Id.* at 1092.

[46] *Id.* at 1093.

[47] *Id.* at 1096.

from the bench for obtaining a credit card under false pretenses and using it to withdraw $2,000 from an ATM at an Atlantic City casino.[48] Mazzei stipulated to the facts but claimed his conduct warranted only a censure.[49] In rejecting this argument, the New York Court of Appeals explained: "[U]nder any standard, petitioner's conduct compels a sanction of removal. . .. That petitioner's conduct was not directly related to his judicial office is immaterial in these circumstances. . ."[50]

In 1995, William L. Scholl, an Arizona superior court judge, was indicted for filing false tax returns and structuring currency transactions to avoid federal reporting requirements.[51] Although Scholl claimed that he was a pathological gambler and therefore was not responsible for his actions, he resigned from the bench,[52] was sentenced to five years of federal probation,[53] and had his law license suspended for six months.[54]

In 2000, John F. Lallo, a recently-retired Rhode Island administrative adjudication court (AAC) judge, admitted that between 1993 and 1997 he had slipped away from work sixty-six times to gamble at the nearby Foxwoods casino.[55] The state's judicial discipline commission recommended that he be retroactively removed from office and ordered to repay the state $28,000.[56] Although Lallo did not contest his removal, he appealed the monetary penalty to the Rhode Island Supreme Court, claiming it was punitive.[57] In agreeing with this contention, the court wrote:

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[48] *See* In re Mazzei, 618 N.E.2d 123, 124–25 (N.Y. 1993). Shortly after her death, Mazzei's mother (who had been living with Mazzei) received two credit card offers from Chemical Bank. *Id.* at 124. Mazzei filled them out, forged his mother's signature, and added himself as an authorized user. *Id.* Although the first application was rejected, the second was approved. *Id.* at 124–25. Mazzei's fraud came to light when he tried to withdraw a second $2,000 at the casino. *Id.*at 125.

[49] *Id.* at 124.

[50] *Id.* at 126.

[51] *See* In re Scholl, JC-96-0004 (February 18, 2000) *in* ARIZ. JUD. BRANCH, *Summaries of Major Arizona Judicial Discipline Cases* 9, http://www.azcourts.gov/Portals/137/SummaryMajorCases.pdf [hereinafter *Summaries*].

[52] United States v. Scholl, 166 F.3d 964, 970 (D. Ariz. 1997), *aff'd*, 166 F.3d 964 (9th Cir.), *cert. denied*, 528 U.S. 873 (1999). Scholl resigned just as the Arizona Commission on Judicial Conduct was getting ready to recommend to the Arizona Supreme Court that he should be removed from office. Summaries, *supra* note 51.

[53] Scholl, 166 F.3d at 969.

[54] In re Scholl, 25 P.3d 710, 716 (Ariz. 2001).

[55] In re Lallo, 768 A.2d 921, 922–23 (R.I. 2001).

As a traffic judge in Providence, Lallo earned $90,000-a-year. After losing $400,000 at Foxwoods, he filed for bankruptcy but then committed perjury so that he could keep gambling. *See Former Judge Admits Lying in Bankruptcy Court Filing*, BOS. GLOBE, Sept. 8, 2000, at E21. As a result, a federal court sentenced Lallo to two years of probation, including six months of home confinement. *See Lallo*, 768 A.2d at 923.

[56] *Id.*

[57] *Id.* at 925, 928.

> The commission has acknowledged that the $28,000 figure was a "rough calculation" of the value of the services, and represents respondent's entire salary for what has been described by the commission as absence during the "judicial day." Although we are mindful of the fact that the "judicial day" is a term that does not necessarily correspond with the hours that a court is open to the public, it is clear that respondent's conduct, in regularly absenting himself from his courtroom during normal working hours and engaging in the pastime of gambling in a public casino, was unacceptable and has cast disrepute on his judicial office. Throughout this proceeding, respondent has continued to insist that gambling is a legal activity. Although he may be correct in this assertion, it is unseemly conduct for a judicial officer regularly to gamble in a public casino during the normal working hours for that particular court. However, the record is clear that on the days that respondent absented himself from the AAC and traveled to Foxwoods, he first completed his calendar and any other work assigned to him by the Chief Judge and often arrived at his post as early as 7 a.m. Therefore, we uphold the imposition of a monetary sanction in the nature of restitution, but remand the matter to the commission for a more accurate calculation of the amount of restitution in light of the fact that in various instances respondent's absence from court for gambling caused him to miss only a portion of the days in question. In that recalculation, however, the commission may, in its discretion, include or factor in an element for the cost of prosecution of this case.[58]

At about the same time that Lallo was admitting his guilt, Edward A. Cox, an Ohio state appellate judge, was running for re-election.[59] After he lost, an ethics investigation was started to determine whether Cox had supported his gambling habit by accepting money from lawyers appearing before him.[60] Finding that he had,[61] the disciplinary panel recommended that Cox's law

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[58] *Id.* at 92526.

[59] *See Supreme Court of Ohio Case Summaries,* SUP. CT. OF OHIO & OHIO JUD. SYS., https://www.supremecourt.ohio.gov/PIO/summaries/2002/0703/020296.asp (last visited Oct. 13, 2019).

[60] *Id.*

[61] According to the disciplinary panel's report, "[Cox] was addicted to race track gambling and that to obtain funds for his gambling, he borrowed money from his friends who also were attorneys who appeared before him." Office of Disciplinary

license be suspended for two years.[62] The Ohio Supreme Court, however, opted for harsher punishment:

> We find respondent's violations of the Code of Judicial Conduct to be deplorable and egregious. Canon 1 of the Code of Judicial Conduct requires a judge to uphold the integrity and independence of the judiciary. Canon 2 requires a judge, inter alia, to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. By his actions, respondent has undermined public confidence in judicial integrity and impartiality and therefore an indefinite suspension is appropriate.[63]

In 2004, the Pennsylvania Court of Judicial Discipline removed Magisterial District Justice Ronald Amati from the bench and permanently barred him from holding future judicial office.[64] While serving as a judge, Amati had operated illegal video poker machines in his co-owned coffee shop.[65] In addition to being removed from the bench, Amati was sentenced to 42 months in federal prison.[66]

Shortly after Amati's case ended, Deborah A. Neal, a Missouri municipal court judge, was arrested during an early-morning raid at an illegal tribal casino.[67] After admitting she had taken loans from numerous attorneys to support her gambling habit, Neal resigned from the bench, pled guilty to mail fraud, and was sentenced to 28 months in prison.[68] She also voluntarily surrendered her law license.[69]

In 2007, Utah Justice Court Judge Darla B. Serassio resigned after the

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Counsel v. Cox, 770 N.E.2d 1007, 1008 (Ohio 2002).

62 *Id.*

63 *Id.* at 1009.

64 In re Amati, 849 A.2d 320, 323 (Pa. Ct. Jud. Discipline 2004). In an earlier decision, the court had suspended Amati without pay. *See* In re Amati, 776 A.2d 371, 373 (Pa. Ct. Jud. Discipline 2001).

65 Janice Crompton, *A Bad Gamble: The Downfall of District Justice Ronald Amati and His Thoughts Before Heading to Prison*, PITT. POST-GAZETTE, June 3, 2001, at W-1.

66 *See* United States v. Vlanich, 75 F. App'x 104 (3d Cir. 2003) (upholding Amati's conviction but remanding for resentencing). Amati ended up serving 28 months in prison. David Templeton, *District Justice Quits, May Run Again – Amati, Now out of Federal Prison, May Join Son in Campaign for Mid-Mon Valley Seat*, PITT. POST-GAZETTE, Feb. 22, 2004, at W-4.

67 Rick Alm, *Officials Shut Down Casino in Early Morning Raid*, KAN. CITY STAR, Apr. 3, 2004, at C1.

68 Neal v. Kansas City Star, 461 F.3d 1048, 1050-51 (8th Cir. 2006). *See also* Mark Morris, *Former Judge Pleads Guilty*, KAN. CITY STAR, May 4, 2005, at A1.

69 *Report of the Office of Chief Disciplinary Counsel*, 62 J. MO. B. 322, 325 (2006).

state's judicial conduct commission charged her with engaging in internet gambling.[70] Despite her resignation, and the fact the Serassio had gambled only at home during non-work hours using her own computer, the Utah Supreme Court adopted the commission's reprimand order,[71] which explained the following:

> 1. Gambling is illegal within the State of Utah.
> 2. Judge Serassio engaged in gambling within the State of Utah, as shown by the proffers and her own admissions.
> 3. Judge Serassio's actions constitute "conduct prejudicial to the administration of justice which brings a judicial office into disrepute" in violation of Article VIII, Section 13 of the Constitution of Utah, and Utah Code Ann. § 78-8-103(1)(e).[72]

In 2010, U.S. District Judge G. Thomas Porteous Jr. "was removed from office [by the U.S. Senate] for accepting tens of thousands of dollars in cash from lawyers to pay gambling debts and then lying about his misbehavior to federal investigators."[73] Porteous thus became one of the few federal judges ever to be removed from the bench.[74]

Lastly, in 2019 Patrick H. DeJean, a Louisiana justice of the peace, was convicted by a federal jury of siphoning money from his court's bank account and obtaining illegal bank loans by claiming they were for the court.[75] DeJean

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[70] *See* In re Serassio, No. 07-3JC-081 (Utah Jud. Conduct Comm 2008), https://jcc.utah.gov/wp-content/uploads/2018/01/SerassioDarla-2008Reprimand.pdf.

[71] *Id.*

[72] *Id.* at 5.

[73] LARRY K. GAINES & ROGER LEROY MILLER, CRIMINAL JUSTICE IN ACTION 272 (7th ed. 2013).

[74] For the complete proceedings, *see* H. COMM. ON THE JUDICIARY, IMPEACHMENT OF G. THOMAS PORTEOUS, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, H.R. REP. No. 111-427 (2010); 156 CONG. REC. H1327–37 (daily ed. Mar. 11, 2010) (impeachment); 156 CONG. REC. S8607–11 (daily ed. Dec. 8, 2010) (conviction and removal).

In 1986, the U.S. Senate removed Harry E. Claiborne, the chief judge of the U.S. District Court for the District of Nevada, following his conviction for tax evasion. During his earlier criminal trial, one of the key pieces of evidence had been checks Claiborne cashed at Las Vegas casinos, which prosecutors argued proved he was trying to hide his income. *See* Linda Greenhouse, *Accused Judge Says Impeachment Imperils Judiciary's Independence*, N.Y. TIMES, Sept. 24, 1986, at A26.

[75] Chad Calder, *Former Jefferson Parish Justice of the Peace Convicted in Federal Corruption Trial*, ADVOCATE (New Orleans) (Feb. 27, 2019, 7:58 PM), https://www.theadvocate.com/new_orleans/news/article_4f757148-3afc-11e9-a554-87f97e2b6e91.html; *see also* United States v. DeJean, No. 17-49, 2019 WL 2162850, at *3 (E.D. La. 2019) (denying DeJean's motion for a new trial)

used these monies "primarily to gamble at local casinos."[76] By the time of his trial, DeJean already had had his judicial commission and his law license suspended by the Louisiana Supreme Court.[77]

B. Judges Reprimanded for Gambling

Some judges merely have been reprimanded for their gambling. In *In re Byrd*, for example, the Florida Supreme Court rebuked Circuit Court Judge James S. Byrd for promoting gambling during a charity golf tournament he had organized,[78] while in *In re McIver* it meted out the same punishment to Circuit Court Judge William C. McIver, who had been found guilty of misdemeanor gambling.[79] It appears that the court did not impose a more serious penalty because by the time it ruled, McIver already had been "sentenced to one year's reporting probation, a fine of $750.00, 150 hours of community service, attendance at Gambler's Anonymous once a week and [had agreed] to abstain from all gambling during the probation period."[80] In yet another case, the court reprimanded County Court Judge Jack Block for engaging in illegal gambling while he was a lawyer.[81]

In *In re Matter of Hensley*, the New York Commission on Judicial Conduct rebuked Paul M. Hensley, a district court judge, for participating in high-stakes poker games.[82] As the commission's opinion makes clear, Hensley's clean record and acceptance of responsibility helped him avoid a more serious penalty:

> While it has been stipulated that respondent's involvement in gambling activities as a player did not violate the law, the person or persons who ran and profited from the games were engaging in criminal conduct, as respondent should have

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(according to DeJean, one of the jurors had been biased against gamblers).

[76] Calder, *supra* note 75.

[77] *See* In re DeJean, 199 So. 3d 607, 607 (La. 2016) (judicial commission); In re DeJean, 241 So. 3d 1002, 1002 (La. 2018) (law license).

[78] In re Byrd, 460 So. 2d 377 (Fla. 1984). Although the court's opinion does not provide any details about the tournament, a contemporary newspaper article does. *See* Louis Trager, *Grand Jury: Golfers Broke Gambling Laws*, ORLANDO SENTINEL, July 19, 1984, at C1.

[79] In re McIver, 638 So. 2d 45, 45 (Fla. 1994).

[80] *Id.* at 46. Once again, the court was vague in describing exactly what McIver had done; a contemporary newspaper report, however, explains that he had been caught playing in a high-stakes poker game. *See* Peter Franceshina, *Lee Judge Agrees to Public Reprimand*, NEWS-PRESS (Fort Myers), May 6, 1994, at 2B.

[81] *See* In re Block, 496 So. 2d 133, 134 (Fla. 1986).

[82] In re Matter of Hensley, (N.Y. Comm'n Jud. Conduct 2012), *reprinted in* NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, ANNUAL REPORT 2013, at 164, http://cjc.ny.gov/Publications/AnnualReports/nyscjc.2013annualreport.pdf.

> recognized. Thus, respondent and the other players who participated in the poker games made it possible for the crimes to occur. Significantly, even after learning that a police sergeant had come to the premises to investigate a complaint about the poker games, respondent continued to attend the games. This reckless behavior showed extremely poor judgment. Moreover, since respondent's judicial status was well known at the facility, his presence at and participation in the games gave his judicial imprimatur to this unlawful activity. . ..
>
> In its totality, respondent's conduct showed insensitivity to the high ethical standards incumbent on judges and detracts from the dignity of judicial office. Such conduct affects public confidence in the integrity of the judiciary. . .even though it is unrelated to respondent's performance on the bench. . ..
>
> In considering the appropriate sanction, we note that respondent has no previous disciplinary record, is remorseful and has acknowledged that his conduct was inconsistent with his obligations as a judge.[83]
>
> By reason of the foregoing, the Commission determines that the appropriate disposition is censure.[84]

III. APPEARANCE OF IMPROPRIETY

The objective nature of the impropriety standard makes it easy to administer. In contrast, the "appearance of impropriety" standard, being subjective, is rather tricky.[85] Thus, while Rifkind felt that only "conspicuous" betting crossed the line, the *DeSaulnier* court thought that any amount of public

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[83] *Id.* at 172–73.

[84] *Id*. at 174.

[85] Occasionally, however, the appearance of impropriety standard can be just as straightforward as the impropriety standard. For example, a part-time municipal court judge asked the Alabama Judicial Inquiry Commission if he could serve as the general counsel of a local casino development corporation. The commission prohibited the relationship because, "Under the circumstances, it is impossible to avoid the appearance of impropriety in connection with your representation of the gaming casino development corporation before the council of the city in which you serve as presiding part-time municipal judge." Alabama Judicial Inquiry Commission, Op. 93-508, at 2 (1993), https://www.alabar.org/assets/uploads/JIC/1993-508 .pdf.

Several years later, a tribal appellate court came to a different conclusion under somewhat different circumstances. *See* Feltman v. Muckleshoot Tribe of Indians, 5 NICS App. 101, 103 (Muckleshoot Tribal Ct. App. 1999), https://www.codepublishing.com/WA/NICS/html/5NICSApp/5NICSApp101.html (plaintiff's lawyer would not be disqualified even though he also was a contract judge in the court system hearing the case because "such an extreme remedy for a perceived appearance of a conflict of interest [is] both unwarranted and unwise.").

betting by a judge was too much.[86]

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[86] Both Rifkin and *DeSaulnier* assume that a judge who enters a gambling facility does so to gamble. This is not always true—other reasons to visit such a location include having dinner with friends, taking in a show, or attending an educational program. In 2009, for example, the American Judges Association held its annual conference at the Golden Nugget Casino and Resort in Las Vegas. *See* http://aja.ncsc.dni.us/htdocs/2009Annual/SpeakerMaterials/Briefprogram.pdf. *See also* California Judges Association, *Judicial Ethics Update*, Jan. 2012, at 7, https://www.caljudges.org/docs/Ethics%20Updates/January-2012_30.pdf (concluding that a "[j]udge may serve on [a] panel of judges for [a] Lions Club sponsored high school speech contest on national immigration issues to be held at an Indian tribe casino.").

Some Indian tribes now expressly address the situation in their judicial conduct codes:

> A [tribal court] judge is prohibited from engaging in any form of gaming, of any kind (including charitable games) at any facility operated by the Band, any Band enterprise or other entity controlled by or affiliated with the Band. Nothing herein precludes a judge from utilizing other amenities of any Band-owned or controlled gaming facility, including but not limited to, restaurants, shops, shows, banquet facilities, or hotel accommodations, provided such utilization does not otherwise violate these Rules.

Nottawaseppi Huron Band of the Potawatomi, *Court Rules of Judicial Conduct*, at Canon 4.C.2, https://www.nhbpi.org/wp-content/uploads/2018/07/Chap-2-CR-of-Judicial-Conduct-Amended-6-6-2016-MLP.pdf.

The Pokagon Band of the Potawatomi has adopted the same restriction. *See also Pokagon Band of Potawatomi Indians Court Rules of Judicial Conduct*, at Canon 4.C.2, http://www.pokagonband-nsn.gov/sites/default/files/assets/group/tribal-court/2017/chapter8-courtrulesofjudicialconductupdated08-29-2012-5608.pdf. For a further discussion, see JUSTIN B. RICHLAND & SARAH DEER, INTRODUCTION TO TRIBAL LEGAL STUDIES 459 (3d ed. 2016) ("Certain tribal courts that hear cases involving the tribe's gaming enterprise may prohibit tribal judges and, by extension, law clerks, from gambling at tribal facilities to avoid the appearance of impropriety. It would be difficult for a plaintiff to have confidence in the impartiality of the court if the judge or his or her law clerk wins a jackpot from the very entity that is being sued.").

Most of the authorities that have considered the matter, however, have advised judges to think twice before being seen in a gambling facility for any reason. *See*, *e.g.*, JUDICIAL CONFERENCE OF THE UNITED STATES COURTS, 2B GUIDE TO JUDICIARY POLICY Ch. 3, at 38 (2014) (cautioning federal judges that, "Although the Code [of Judicial Conduct] does not prohibit holding a court meeting in a facility that legally offers gambling, the Committee recommends serious consideration of related appearance concerns under Canon 2.").

In a recent ethics advice column, the author was asked whether a judge could socialize with convicted felons. The author felt doing so was permissible but added: "Clearly, if a judge is associating with persons with criminal backgrounds at places where a crime might be expected, that might be another issue. Going to a gambling hall with persons with criminal records would not be a wise decision by a judicial officer." Samuel C. Stretton, *Ethics Forum: Questions and Answers on Professional Responsibility*, LEGAL INTELLIGENCER (Jan. 10, 2019, 12:07 PM), https://www.law.com/thelegalintelligencer/2019/01/10/ethics-forum-questions-and-answers-on-professional-responsibility-60/.

In *In re Disciplinary Proceedings Against Turco*, a 1999 decision, the Washington Supreme Court in *dicta* agreed with Rifkind's position:

> . . . All judges in Washington are either elected or appointed by elected officials, and are thus subject to popular opprobrium and election redress for conduct the public considers inappropriate, reprehensible, or unseemly for those who would be a judge among them. For instance, if a judge were a nightly visitor to a gambling casino and known to be a heavy bettor, some in the community might think such activity unbefitting and unacceptable for a judge. That judge may be ultimately called to account for that behavior at the next election, but unless there were a showing that behavior affected the judge's integrity or ability to judge impartially—that is, unless an articulable nexus were shown between the judge's immoderate gambling and performance of judicial duties—there would be no basis for discipline. The ultimate discipline, if any, for such behavior would emerge at the next election.[87]

In a 2018 opinion, the New York Advisory Committee on Judicial Ethics also followed Rifkind:

> A town justice who sometimes gambles at legal casinos in New York and elsewhere asks if he/she may accept certain offers from the local casino in his/her town. They include (1) perks such as "'free play' and food comps"; (2) an invitation to attend a "special reception" at the casino; and (3) "an exclusive VIP weekend" featuring a complimentary two-night stay in a "luxurious suite," as well as champagne, hand-rolled cigars, and spa samples. He/she notes the perks and special reception are similar to ones offered by other casinos, based on the judge's status as a casino patron and/or the judge's "use

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In Miss. Jud. Performance Comm'n v. Hopkins, James "Petey" Hopkins, a Justice Court judge, was removed from the bench for fixing parking tickets. 590 So. 2d 857, 858 (Miss. 1991). Much of the evidence against him was gathered at "The Hut," an undercover bar where state troopers had installed illegal video poker machines. *Id.* Because Hopkins never played the machines and did not take payoffs from them, he was not charged with any gambling offenses. *Id.* at 860. Nevertheless, in its opinion the Mississippi Supreme Court remarked: "The acts of misconduct by Judge Hopkins [*i.e.*, the ticket fixing], *together with his presence in a place where he, as a judge, had no business being*, brings the judicial office into disrepute." *Id.* at 866 (emphasis added).

[87] In re Disciplinary Proceedings Against Turco, 970 P.2d 731, 740 (Wash. 1999) (en banc).

> of a player's club card" at the casino. However, criminal matters arising from conduct at this casino (e.g., larceny, disorderly conduct, and harassment) come before the judge for arraignment and disposition.
>
> A judge must always avoid even the appearance of impropriety. . .and must always promote public confidence in the judiciary's integrity and impartiality. . .. Thus, a judge must conduct all of his/her extra-judicial activities so they do not (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) detract from the dignity of judicial office; or (3) interfere with the proper performance of judicial duties and are not incompatible with judicial office. . ..
>
> Initially, we see no impropriety if the judge accepts such routine perks and invitations from other casinos, whose interests are unlikely to come before him/her. Indeed, such perks might best be analyzed as marketing techniques or incentives offered to all similarly situated casino patrons, in an effort to build customer loyalty and encourage repeat business.
>
> As for the casino located in the judge's town, however, we see an appearance of impropriety if the judge accepts anything more than the most routine perks. Here, we believe the judge may accept modest and reasonable perks such as "'free play' and food comps," if the judge knows similarly situated non-judge patrons are offered such perks. . .and as long as the casino is not "presently an active participant in a trial or hearing before him/her[.]"
>
> By contrast, this judge may not accept an invitation to a "special reception" or "exclusive VIP weekend" at the local casino in his/her town. The judge's attendance at such relatively lavish, expensive, and/or exclusive events could create an appearance a casino is attempting to curry favor with a judge who will preside over a wide variety of cases involving its interests and might cause the public to question the judge's impartiality in such matters. . ..[88]

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[88] N.Y. Advisory Comm. on Jud. Ethics, Op. 18-65 (2018), http://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/18-65.htm (footnotes omitted).

Other recent opinions by the Committee draw a similar line between modest events and lavish ones. *Compare*, *e.g.*, N.Y. Advisory Comm. on Jud. Ethics, Op. 16-158 (2016), http://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/16-158.htm (judge could participate in "Casino Night" run by pre-school attended by judge's child), *with* N.Y. Advisory Comm. on Jud. Ethics, Op. 15-102 (2015), http://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/15-102.htm (judge could not participate in the World Series of Poker).

In 2007, James DeLeon, a Philadelphia municipal court judge, raised eyebrows after it was discovered that he and his wife had accepted free food, drinks, and

Despite these precedents, *DeSaulnier's* concern that a judge who gambles will set tongues wagging is not groundless.[89] Indeed, gambling-related rumors

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lodging at an Atlantic City casino. *See* Peter Jackson, *Gifts to Judges Raise Questions*, SENTINEL (Carlisle, PA) (Apr. 9, 2007), https://cumberlink.c om/news/ gifts-to-judges-raise-questions/article_e51ae34b-3050-5ac4-96b1-b754aa2 b8ed0.h tml. When asked about the trip, DeLeon replied: "I looked into it beforehand and there didn't seem to be any issues with it[.]" *Id.*

[89] In 1894, for example, South Carolina Circuit Court Judge William C. Benet was accused by the *Sumter Freeman* of gambling. *See A Sumter Sensation: Judge Benet Accused of Gambling with Cards*, TIMES & DEMOCRAT, (Orangeburg, S.C.), Mar. 28, 1894, at 1. Although Benet issued a public denial from the bench, it only partially satisfied the newspaper. *See id; see also The Freeman Replies*, TIMES & DEMOCRAT (Orangeburg, S.C.), Apr. 11, 1894, at 5.

A century later, Florida Circuit Court Judge Steven B. Feren found himself on the hot seat. *See* Bob Norman, *Is Judge (and Former Sunrise Mayor) Steven Feren a Gambling Addict?*, BROWARD-PALM BEACH NEW TIMES (July 10, 2009, 11:24 AM), https://www.browardpalmbeach.com/news/is-judge-and-former-sunri se-mayor-steven-feren-a-gambling-addict-6452673 (discussing Feren's love for gambling). After serving one term, Feren was defeated in 2014 when he ran for re-election. *Steven B. Feren*, BALLOTPEDIA, https://ballotpedia.org/Steven_B._Fe ren (last visited Sept. 1, 2019). During the campaign, Feren sent out a flyer attacking his opponent; the back of the mailer depicted a pair of dice (showing snake eyes) with the words "questionable integrity" written on one and "extremist supporters" on the others. *See* Buddy Nevins, *Update: Complaint Filed Agt Judge Steve Feren for Violating Code of Judicial Conduct*, BROWARD BEAT, https://www.browardbeat .com/judge-steve-ferens-ad-does-it-violate-code-of-judicial-conduct/ (last visited Sep. 1, 2019). Although an ethics complaint was filed, it became moot when Feren lost. *See id.*

For other examples of judges having their integrity questioned due to gambling, *see, e.g.*, *Gambling Charges Rock Live Oak Sanity Hearing: Slain Physician, Judge, Prosecutor Accused*, TAMPA DAILY TIMES, Sept. 25, 1954, at 13 ("[Florida Circuit Court] Judge [Hal] Adams, asked if he had any comment on alleged claims he was financially interested in gambling operations, replied: 'It would be contrary to the judicial proprieties for me to comment.'"); *New York Judge Accused of Gambling Holdout*, TROY REC., May 19, 1951, at 1 ("Ex-mayor William O'Dwyer's top civic sleuth was accused yesterday of white-washing or pigeonholing data on gambling in New York City. He is Chief Magistrate John M. Murtagh. . .. The charge was made by the Brooklyn District Attorney. . .. Murtagh had no comment on the charge. But his lawyer. . .said he would plead innocent if the case comes to trial."); *Judge Accused of Gambling*, ST. PETERSBURG TIMES, June 30, 1945, at 15 ("[Ohio Court of Common Pleas] Judge Philip A. Henderson. . ., now facing charges of misconduct in Ohio, was charged by his wife in circuit court here Thursday with being engaged in 'bolita, bookmaking and other gambling operations' with his brother in Miami."); *Perry Justice Hits Accusers*, COURIER-J., (Louisville, Ky.), Jan. 19, 1925, at 2 ("When accused of visiting [local] dives, gambling and drinking, [Kentucky Circuit Court] Judge [Rufus B.] Roberts made no reply.").

Sometimes, however, tongues wag for no reason. In 1943, for example, the Dallas police raided a gambling operation at the Jefferson Hotel. As they were being processed, one of the arrestees claimed she was "Judge Sarah Hughes." This was a lie. Nevertheless, the real Sarah T. Hughes, a local district court judge, soon found herself the subject of unrelenting gossip. Matters got so out of hand that the Dallas Bar Association launched an investigation that exonerated Hughes. *See*

have nipped at the heels of two U.S. recent Supreme Court justices.[90] In 1970, Representative Gerald R. Ford (R-Mich.) called for the impeachment of Justice William O. Douglas.[91] As the *New York Times* reported, Ford believed that Douglas had ties to "Albert Parvin, owner of Las Vegas Gambling enterprises, and possible links with some of Mr. Parvin's underworld associations."[92] After an eight-month investigation, a special House Judiciary subcommittee concluded "that there were no grounds for impeachment."[93]

Similarly, U.S. Circuit Judge Brett M. Kavanaugh's alleged gambling became an issue during his 2018 nomination to fill the seat of Justice Anthony M. Kennedy.[94] As a result, Kavanaugh was asked about a dice game he lost in 2001, which allegedly caused him to "blow up"; his poker habits; his visits to Atlantic City casinos; whether he had any gambling debts; and if he had ever sought help for compulsive gambling.[95] In a written set of answers, Kavanaugh replied:

> …The game of dice referred to in that email was not a game with monetary stakes. . .. Like many Americans, I have

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DARWIN PAYNE, INDOMITABLE SARAH: THE LIFE OF JUDGE SARAH T. HUGHES 119–23 (1st ed. 2004).

Eighteen years later, Hughes was appointed to the federal bench. *See id.* at 227. In 1963, she became world famous when a photographer aboard Air Force One snapped her picture as she administered the oath of office to Lyndon B. Johnson following the assassination of President John F. Kennedy. *Id.* at 256.

Hughes died in 1985. *Id*. at 394. The confusion caused by the Jefferson Hotel raid, however, has lived on. In 2013, for example, a book about the Dallas mob reported that Hughes was an "avid gambler," claimed she had a "bias in favor of illegal gambling," and asserted that Johnson used his knowledge of Hughes's arrest to control her. *See* MARK NORTH, BETRAYAL IN DALLAS: LBJ, THE PEARL STREET MAFIA, AND THE MURDER OF PRESIDENT KENNEDY 8, 55, 139–40 (2013). North also contends that the fear that Johnson would publicize her gambling arrest kept Hughes from exposing Johnson's role in covering up the truth about Kennedy's killing. *Id.* at 139–40.

[90] The U.S. Supreme Court is the country's only court that does not have a code of conduct, even though Congress (and others) have called on it repeatedly to adopt one. *See*, *e.g.*, Steve Lubet, *H.R. 1 and the Code of Judicial Conduct*, FACULTY LOUNGE (Jan. 8, 2019, 3:07 PM), https://www.thefacultylounge.org/2019/01/hr-1-and-the-code-of-judicial-conduct.html.

[91] Marjorie Hunter, *Ford Asks Douglas's Ouster*, N.Y. TIMES, Apr. 16, 1970, at 1.

[92] *Id.*

[93] Marjorie Hunter, *House Unit Gives Data on Douglas*, N.Y. TIMES, Dec. 16, 1970, at 20.

[94] *See* Matthew Rozsa, *Does Brett Kavanaugh Have a Gambling Problem? Sen. Sheldon Whitehouse Wants to Know*, SALON (Sept. 13, 2018, 12:30 PM), https://www.salon.com/2018/09/13/does-brett-kavanaugh-have-a-gambling-problem-sen-sheldon-whitehouse-wants-to-know/.

[95] *See* Debra Cassens Weiss, *Kavanaugh Responds to Gambling Questions, Explains Rebuffed Handshake,* ABA J. (Sept. 13, 2018, 11:39 AM, http://www.abajournal.com/news/article/kavanaugh_says_he_occasionally_gambled_while_a_student_but_did_not_accrue_g.

> occasionally played poker or other games with friends and colleagues. I do not document the details of those casual games. . .. I recall occasionally visiting casinos in New Jersey when I was in school or in my 20s. I recall I played low-stakes blackjack. I have not accrued gambling debt.[96]

As for whether he had ever sought treatment for a gambling problem, Kavanaugh answered "No."[97]

A. Recusals Based on Deeds or Words

Appearance of impropriety concerns are heightened, of course, when a judge has made his or her views about gambling (either generally or specifically) a matter of public record.[98] Mindful of this fact, U.S. Circuit Judge Ruth Bader Ginsburg declined to answer when she was asked about Indian gambling at her 1993 U.S. Supreme Court confirmation hearing:

> Senator PRESSLER: The Indian Gaming Act mandates that the States negotiate in good faith with the tribes in establishing compacts regulating reservation gambling. The statute does not define good faith nor set out much direction for what is required by either party. As you know, Indian gaming has become a controversial issue in many States. What are your views with respect to the ability of Congress to mandate that these two sovereigns negotiate in good faith, without providing significant direction to either?
>
> Judge GINSBURG: The Indian Gaming Act is a new and much litigated law. Cases concerning that legislation may well come before me, so at this time I am not in a position to comment on it.[99]

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[96] Senator Chuck Grassley, *Questions for the Record [to] Judge Brett Kavanaugh, Nominee, Associate Justice of the Supreme Court of the United States*, at 19, https://www.judiciary.senate.gov/imo/media/doc/Kavanaugh%20Responses%20to%20Questions%20for%20the%20Record.pdf.

[97] *Id.*

[98] Of course, if a judge waits until retirement to speak, problems are unlikely to arise. *See, e.g.*, Quentin Tolby, *Gambling at the Casino*, GLENDALE STAR (AZ) (Feb. 15, 2018), http://www.glendalestar.com/opinion/article_08e98bde-1266-11e8-b8ba-53b99a727244.html (op-ed by retired judge recommending that readers not gamble).

[99] DENIS STEVEN RUTKUS, CONG. RESEARCH SERV., R41300, QUESTIONING SUPREME COURT NOMINEES ABOUT THEIR VIEWS ON LEGAL OR CONSTITUTIONAL ISSUES: A RECURRING ISSUE 7 (2010), https://fas.org/sgp/crs/misc/R41300.pdf. Three years later, Pressler's question reached the Supreme Court. In a 5-4 decision,

Judges who are less circumspect leave themselves open to recusal challenges.[100] In *State ex rel. La Russa v. Himes*, for example, the Florida Supreme Court ordered a criminal court judge to recuse himself because of campaign remarks he had made about certain individuals that later found themselves in his courtroom:[101]

> Relators were [indicted] in Hillsborough County for violating the lottery laws. . .. They filed their suggestion for writ of prohibition in this Court seeking to disqualify [Judge John R. Himes] to sit in the trial of their case. The affidavit of disqualification related a series of circumstances transpiring in 1936, 1938 and 1940, the latter circumstance being that while respondent was running for reelection as Judge of the Criminal Court, he made the following statement to a public gathering in Hillsborough County, May 7, 1940: "the people are shot down in cold blood; the people are assaulted and their homes broken into, and what the people want is a judge who will put people like Philip La Russa and his associates away in Raiford."
>
> The supporting affidavits contained the following statement made under like circumstances and in the same campaign, "people like Philip La Russa and his associates cannot come into Court and get a license for gambling by a fine or to violate the lottery laws by a fine, but he would put them in Raiford where they belonged." All the affidavits contained other allegations of prejudice made at other times and of different character.
>
> Respondent demurs to the suggestion for writ of prohibition and says that it does not meet the requirements of

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the Court held that Congress could not force states to negotiate with tribes that wanted gambling compacts. *See* Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 47 (1996). Ginsburg disagreed and joined a dissent penned by Justice Souter. *See id.* at 100.

[100] For a case in which the government unsuccessfully attempted to have a lawyer held in contempt for bringing a recusal motion that accused the judge of "conspiring and colluding with gamblers." *See* Giblin v. State, 29 So. 2d 18, 19 (Fla. 1947) (en banc). The dispute pitted former (and future) Florida Circuit Court Judge Vincent C. Giblin against sitting Florida Circuit Court Judge Stanley Milledge. *See* William G. Crawford, Jr., *Judge Vincent C. Giblin: Broward's First Circuit Judge was Capone's Lawyer, Dade Judge in the '50s*, 18 BROWARD LEGACY, 2, 9–10 (1995), http://journals.fcla.edu/browardlegacy/article/view/76991 (explaining that the Florida Supreme Court ruled that Giblin's comments were privileged and therefore non-actionable).

[101] State ex rel. La Russa v. Himes, 197 So. 762, 762 (Fla. 1940) (en banc).

> the law. . .and is therefore insufficient to disqualify him to proceed further in the trial of the cause. The gist of respondent's contention is the relator's suggestion and affidavits are predicated on matters too remote and that the supporting affidavits are made on information and belief.
>
> There is no merit to this contention. It is true that the affidavits contain allegations of fact that took place as early as 1936, but the parts quoted and relied on here took place as late as 1940 in what appears to have been a heated campaign. . ..
>
> It is contrary to all human experience to contend that a judge under the circumstances stated may single out one charged or that may be charged with crime and talk to the public about sending him to Raiford (State Penitentiary) and then contend that the one singled out when haled before the judge for trial had no ground for belief that the latter was prejudiced.
>
> [T]he demurrer to the suggestion and the writ of prohibition is overruled.[102]

Similarly, in *Commonwealth ex rel. Meredith v. Murphy*, the government moved to have Kentucky Circuit Court Judge Ray L. Murphy disqualified from a nuisance abatement case, alleging that he had repeatedly visited the defendants' clubs and expressed support for their illegal gambling operations.[103] Although Murphy denied he was biased, the Kentucky Court of Appeals ordered him off the case.[104]

In *State ex rel. Sagonias v. Bird*, the Florida Supreme Court declined to remove Circuit Court Judge John U. Bird from hearing a gambling case, even though Bird regularly had expressed his strong desire to see gamblers prosecuted:[105]

> …[R]espondent is commendably zealous that violations of the gambling laws shall not go unpunished—as he is, we are sure,

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[102] *Id.* at 762–63. In a later case involving the same statements, the Florida Supreme Court declined to disqualify Himes because the defendants had failed to raise their objections in a timely fashion. *See* State ex rel. Fuente v. Himes, 36 So. 2d 433, 433–34 (Fla. 1948) (Div. B).

[103] Commonwealth ex rel. Meredith v. Murphy,174 S.W.2d 681, 682 (Ky. Ct. App. 1943).

[104] *Id.* at 686. When it first learned that Murphy intended to hear the case, the government took the extraordinary step of making him a co-defendant. *Id.* at 682. After he was removed from the case, the government dismissed the charges. *See Attorneys Look for Judge to Hear Gambling Trial in Newport Friday*, CIN. ENQUIRER, June 4, 1944, at 22.

[105] State ex rel. Sagnias v. Bird, 67 So. 2d 678, 679 (Fla. 1953) (en banc).

> with respect to violations of our other criminal statutes. But this does not mean that the respondent is disqualified to discharge his duty to try any criminal case arising in the Judicial Circuit of which he is a judge.
>
> While we hold, then, that the disqualification of the respondent has not been made to appear, we feel that we should make it clear that this judgment is not to be interpreted as an expression of approval of the propriety of remarks alleged to have been made.[106]

In 1955, Pennsylvania Criminal Court Judge A.A. Nelson, who normally sat in Cambria County, was temporarily reassigned to Allegheny County to help clear up its backlog. While hearing a lottery case, he told the jury, "I have played the numbers myself."[107] Upon learning what Nelson said, "Presiding Judge William H. McNaugher directed the removal of the visiting jurist[.]"[108]

In *United States v. Balistrieri*, Frank P. Balistrieri moved for a new trial after he was convicted in federal court of running an illegal sports betting ring.[109] Prior to the trial, Balistrieri repeatedly asked U.S. District Judge Robert W. Warren to recuse himself because "during the period from 1969 into 1971[,] while serving as the Attorney General of Wisconsin, [Warren] had formed a firm belief that Balistrieri was the head of the Milwaukee Mafia and had announced that belief and acted on it as Attorney General on numerous occasions."[110] Warren denied Balistrieri's first three motions but stepped down for unrelated reasons shortly after Balistrieri filed his fourth motion.[111] By the time Warren recused himself, he had ruled on numerous pre-trial matters.[112] In finding that this fact did not entitle Balistrieri to a new trial, the Seventh Circuit wrote:

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[106] *Id.* at 680. Bird subsequently recused himself. *See Dayton to Hear Trial of Sagonias*, TAMPA MORN. TRIB., Jan. 21, 1954, at 39 (quoting Bird as saying, "I'm not disqualifying myself, but just 'recusing' myself from this case.").
A decade earlier, Florida Municipal Court Judge Jack R. Kirchik likewise had been challenged for being too tough after police raids landed 100 gamblers in his court. To move his docket, Kirchik began fining defendants who pled "guilty" $75; those who pled "not guilty" and were found guilty received fines of $300 to $500. When defense attorneys complained, Kirchik recused himself from the remaining 50 cases. *See City Judge at Miami Quits in Gambling Row*, TAMPA MORN. TRIB., Oct. 31, 1941, at 1.

[107] *Judge Admits Gambling, Fired*, ORLANDO SENTINEL, Feb. 12, 1955, at 5.

[108] *Id.*

[109] United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985), *cert. denied,* Thompson v. United States, 475 U.S. 1094 (1986), *and cert. denied sub nom*, DiSalvo v. United States, 475 U.S. 1095 (1986).

[110] *Balistrieri*, 779 F.2d at 1196.

[111] *Id.*

[112] *Id.*

> Balistrieri argues that the recusal came too late; because Judge Warren should have recused himself at the start, none of his rulings on pretrial motions was valid. We disagree. We do not question Judge Warren's exercise of discretion in recusing himself [after the fourth motion, and] hold that he was under no obligation to recuse himself earlier.[113]

During a 13-month span in 1996-97, Nevada Supreme Justice Robert E. Rose twice refused to recuse himself from cases involving gambling, even though a Nevada state regulation prohibited justices who held gambling licenses (as Rose did) from hearing such suits.[114] Both times, a majority of Rose's fellow justices agreed with him that the matters were not sufficiently gambling-related to trigger the regulation.[115]

In *State v. Fraternal Order of Eagles, Aerie 2347*, the government moved to disqualify Ohio County Court Judge Gene R. Hoellrich. [116] In an earlier gambling case, Hoellrich had shown extreme leniency to the defendants to protest Ohio's state lottery.[117] In rejecting the government's recusal request, Common Pleas Court Judge Jonathan P. Hein explained:

> Admittedly, Judge Hoellrich's statement provides much insight into his personal attitudes toward the gambling statutes

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[113] *Id.* at 1196-97.

[114] *See* Snyder v. Viani, 916 P.2d 170, 171–72 (Nev. 1996); Las Vegas Downtown Redevelopment Agency v. Hecht, 940 P.2d 134 (Nev. 1997).

[115] Strong dissents were registered in both cases. *See Snyder*, 916 P.2d at 178 (Steffen, C.J. dissenting) and 184 (Springer, J., dissenting); *Hecht*, 940 P.2d at 141 (Springer, J., dissenting).
Other states have similar rules. *See*, *e.g.*, Greenberg v. Kimmelman, 494 A.2d 294, 297 (N.J. 1985) (upholding law prohibiting state judges and their immediate families from working in casinos); *see also* Knight v. Margate, 431 A.2d 833, 835, 844 (N.J. 1981) (upholding law prohibiting judges from investing in casinos); Pa. Jud. Ethics Comm., Informal Op. (Sept. 27, 2010), http://ethics.pacourts.us/digests.htm (stating that "[a] judge is prohibited from investing in the stock of a Pennsylvania casino."); S.C. Advisory Comm. on Standards of Jud. Conduct, Op. 16-2006, Propriety of Part-time Mun. Judges Buying Lottery Tickets (2006), https://www.sccourts.org/advisoryOpinions/html/16 -2006.pdf (stating that judges are prohibited from buying lottery tickets); N.Y. Comm'n Jud. Conduct, Determination In re Garvey (1981), http://cjc.ny.gov/Determinations/G/Garvey.Charles.P.1981.06.23.DET.pdf (committee determination upholding law prohibiting judges from obtaining horse racing licenses). *But see* S.C Advisory Comm. on Standards of Jud. Conduct, Op. No. 20-2005, Propriety of Part-time Mun. Judges Selling Lottery Tickets (2005), https://www.sccourts.org/advisoryOpinions/html/20 - 2005.pdf (part-time municipal court judge could own convenience store that sold lottery tickets).

[116] State v. Fraternal Order of Eagles, Aerie 2347, 715 N.E.2d 630 (Ohio Co. 1999).

[117] *See id.* at 631.

> as they currently exist in Ohio. Indeed, when Ohio's legislature implemented legalized gambling through the Ohio lottery, a double standard was created concerning Ohio's gambling statutes.
>
> Regarding the state's motion for disqualification, this court is not prepared to find that the statements of Judge Hoellrich on a single day when sentencing numerous parties to a nominal fine are so egregious so as to constitute "bias or prejudice." In the prior cases, Judge Hoellrich also considered the defendants' apparent lack of prior, similar records and the apparently low likelihood of recidivism. Further, the judge indicated that future criminal conduct would be dealt with more severely. Last, the court also recognized additional, administrative penalties that would likely be imposed by the Ohio Department of Liquor Control.
>
> There was no nullification of the gambling statute, since Judge Hoellrich found the defendants guilty. Further, although the penalties were unexpected and were marginally deterrent in view of prior penalties for similar crimes, the sentences imposed were within statutory guidelines. Additionally, it can reasonably be concluded that Judge Hoellrich will impose more severe penalties in future cases if the circumstances warrant more severe penalties.
>
> Without more evidence, the state of Ohio has failed to demonstrate that Judge Hoellrich has shown such bias or prejudice to the state of Ohio that he should be removed from hearing further gambling cases.[118]

In *Barber v. Jefferson County Racing Association, Inc.*, the Birmingham district attorney charged that a local dog track was offering games that violated the state's ban on slot machines.[119] The trial court sided with the track, but on appeal the Alabama Supreme Court unanimously reversed.[120] During the appeal, the track asked Justices Michael F. Bolin, Patricia M. Smith, and Lyn Stuart to recuse themselves because, while running for office, each had gone on record as being anti-gambling.[121] All three entered "statements of non-recusal" declaring that their campaign positions had not affected their votes.[122]

In *Matter of King*, the Alabama Court of the Judiciary suspended Circuit

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118 *Id.* at 632.

119 Barber v. Jefferson Cty. Racing Ass'n., Inc., 960 So. 2d 599, 601 (Ala. 2006).

120 *Id.*

121 *See* Bob Johnson, *Sweepstakes Machines Ruled Illegal*, MONTGOMERY ADVERTISER, Dec. 2, 2006, at 3B.

122 *See Barber*, 960 So. 2d at 617 (statement of Stuart, J.), 618 (statement of Smith, J.), 619 (statement of Bolin, J.).

Court Judge Dan C. King, III for 60 days without pay for, among other violations, making intemperate remarks.[123] King had been assigned to a case called *Anchor Club Inc. v. Riley*, one of several arising from a state crackdown on illegal bingo halls.[124] Two days after receiving it, King issued an order recusing himself.[125] In it, he pointedly criticized fellow Circuit Court Judge Eugene Viren (although he did not mention Viren by name), who was handling one of the other bingo hall cases:

> …My long[-]time friend and colleague has apparently succumbed to the political pressure "Bingo" brings and this week entered an Order that contradicts previous Orders he has entered.
>
> This is not a condemnation of my colleague, but a reaffirmation that my decision to place temptation behind me was correct. I now refuse to ignore that voice that speaks the truth and justice and hereby affirm [my] decision to recuse myself from this "Bingo" case.[126]

Lastly, in *Alred v. Commonwealth, Judicial Conduct Commission*, the Kentucky Supreme Court stripped a circuit court judge of his office for numerous violations, including remaining on a gambling case in which he was the complaining witness:[127]

> … Judge [Russell D.] Alred urged the Kentucky State Police to investigate and the Harlan Commonwealth's Attorney to pursue criminal charges that ultimately became two Harlan Circuit Court cases. Judge Alred then presided over these cases despite the fact he was the initial complaining witness.

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123 Ala. Ct. Jud., Final Judgment & Censure, *In re King*, Case No. 38, (2010), http://judicial.alabama.gov/docs/judiciary/FinalJudgment38.pdf.

124 *Id.* at ¶ 16.

125 *Id.* at ¶ 17.

126 *Id.* Viren's order, which King believed Viren had issued after "caving to political pressure from pro-bingo forces," had "grant[ed] the city of Fairfield and other bingo halls. . .an injunction against raids by then-Gov. Bob Riley's Task Force on Illegal Gambling." Toraine Norris, *Former Judge is Bingo Lawyer King had Scolded a Fellow Judge*, BIRMINGHAM NEWS, Apr. 8, 2011, at 1, 2011 WLNR 6897240. For a further look at the crackdown, see John Shryock, *Task Force Asks for Judge's Removal from Greenetrack Case*, WSFA (June 30, 2010, 8:07 PM), http://www.wsfa.com/story/12736612/task-force-asks-for-judges-removal-from-greenetrack-case/ (reporting on the state's attempt to get Circuit Court Judge Eddie Hardaway removed from his bingo case for repeatedly enjoining the raiding of the Greenetrack dog track).

127 Alred v. Commonwealth, Judicial Conduct Comm'n, 395 S.W.3d 417 (Ky. 2012).

> Judge Alred claims. . .he did not urge law enforcement to investigate the matter. Rather, he [claims he] merely passed along allegations of illegal gambling machines at gas stations.
>
> … Judge Alred testified that he received several complaints from citizens concerning the alleged gambling operations. And he admitted that he called law enforcement's attention to the very defendant who later appeared before him in court on charges arising from the investigation. Although judges should alert the authorities to potential criminal activity, it is incumbent the judge recuse himself from criminal cases that arise from those allegations. Judge Alred specifically identified the defendant to law enforcement, received that same defendant's indictment when returned by the grand jury, and disposed of the case by approving an agreed order of dismissal.
>
> This was an egregious error, not a good faith legal mistake. And it is yet another instance of Judge Alred's pattern of misconduct.[128]

B. *Recusals Based on Relationships*

Of course, recusal motions need not be based on a judge's words or deeds—a judge's prior or current family, professional, and social relationships also are fair game. In *Parker v. Priest*, for example, Sandra Smith Hochstetter, an Arkansas Supreme Court "special justice," refused to disqualify herself in a case involving a proposed 1996 Arkansas constitutional amendment that sought to legalize gambling:[129]

> The Intervenors in this case have filed a Motion to Disqualify me on the basis of an alleged conflict of interest. Intervenors claim that I have a working relationship with the Friday law firm and Mr. James Simpson, attorneys for Amendment 4, which is an alternate gambling proposal to Intervenors' Amendment 7. Because of this purported relationship, Intervenors claim that there is, at a minimum, an appearance of impropriety. However, for the reasons set forth below, I would deny Intervenors' Motion to Disqualify.
>
> In this case, Intervenors allege that I have a working relationship with Mr. James Simpson and the Friday law firm.

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128 *Id.* at 442–44 (footnotes omitted from direct quotation).

129 Parker v. Priest, 932 S.W.2d 320, 320 (Ark. 1996).

> In support thereof, Intervenors cite a pending case between NorAm Gas Transmission Company and Par Oil Corporation in which Friday, Eldredge & Clark represents NorAm Gas Transmission Company. Intervenors also claim that Mr. James Simpson regularly represents Arkla.
>
> The facts, however, are as follows. I do not know Mr. Simpson and have never worked with him. Mr. Simpson does not regularly represent Arkla, nor does any other attorney with his firm. Over the past twelve years Arkla has only retained the services of the Friday law firm twice, and I was not involved with either case. I represent Arkla, not NorAm Gas Transmission Company, so any case involving NorAm Gas Transmission Company, which is a separate corporation from Arkla, is entirely outside the realm of my involvement or control.
>
> Since I have no relationship with either Mr. Simpson or the Friday law firm, there can be no bias, prejudice, or influence to possibly create a conflict of interest. The absence of any relationship further means that there can be no appearance of impropriety or any reasonable basis to question my judicial impartiality. Accordingly, as there is no conflict of interest, real or apparent, there is no basis for disqualification.[130]

In the run-up to the 1996 elections in Arkansas, four different gambling amendments were proposed: Amendment 4 (authorizing a lottery plus casinos in Hot Springs); Amendment 5 (lottery plus video terminals throughout the state); Amendment 7 (lottery plus up to eight casinos in various locations); and Amendment 8 (lottery plus up to 11 casinos in various locations).[131] The Arkansas Supreme Court permitted Amendment 4 to appear on the ballot but struck down the other three measures.[132] On election day, Amendment 4 was defeated by a wide margin.[133]

Because Justice Robert L. Brown had recused himself from the

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[130] *Id.* at 320.

[131] *See* Bob Qualls, *4 Proposed Amendments Seek to Legalize Gaming*, BAXTER BULL. (Mountain Home, Ark.), Oct. 5, 1996, at 4A.

[132] *See* Parker v. Priest, 932 S.W.2d 320, 320 (Ark. 1996) (Amendment 4); Crochet v. Priest, 931 S.W.2d 128 (Ark. 1996) (Amendment 5); Parker v. Priest, 931 S.W.2d 108, 110 (Ark. 1996) (Amendment 7); Scott v. Priest, 928 S.W.2d 337 (Ark. 1996), *later proceedings reported at* Parker v. Priest, 930 S.W.2d 383 (Ark. 1996) (Amendment 8).

[133] *See Arkansas State Lottery and Casino Gambling, Proposed Amendment 4 (1996)*, BALLOTPEDIA, https://ballotpedia.org/Arkansas_State_Lottery_and_Casino_Gambling,_Proposed_Amendment_4_(1996) (last visited Sep. 3, 2019).

Amendment 7 case due to a conflict of interest, Governor Mike Huckabee, who opposed all four amendments, had appointed Hochstetter to sit in his place as a special, or temporary, justice.[134] She ended up delivering the deciding vote against Amendment 7, due to the remaining members of the court being deadlocked.[135] As a result, the sponsors of Amendment 7 were seeking to have the case reheard without her.[136]

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[134] *See* Chuck Bartels, *Gambling Rehearing Requested*, BAXTER BULL. (Mountain Home, Ark), Oct. 24, 1996, at 13A.

[135] *Id.*

[136] *Id.* Today, Arkansas has both a lottery (approved in 2008) and casinos (approved in 2018). *See* Michael R. Wickline, *Casino Measure Wins Arkansas Voters' Support: Amendment Allows Four Licenses for Gambling Sites in Two Counties*, ARK. DEM. GAZETTE (Nov. 7, 2018, 4:30 AM), https://www.arkansasonline.com/news/2018/nov/07/casino-measure-wins-voters-support-2018/?elections.

Gambling amendments in other states likewise have generated judicial bias claims. In 2008, for example, the League of Women Voters filed a federal lawsuit claiming that Ralph J. Cappy had done the following while he was Pennsylvania's chief justice:

> Cappy engaged in backroom dealing with state legislators in an effort to secure a judicial pay raise in exchange for agreeing to make certain judicial rulings in pending cases. Embellishing the factual allegations of the previous lawsuit, Plaintiff alleged that one of the cases that Defendant Cappy agreed to "fix" was an appeal that the League and other plaintiffs had filed to challenge the constitutionality of the Commonwealth's recently enacted statute authorizing casino gaming.

League of Women Voters of Pa. v. Cappy, No. 1:08-CV-0971, 2009 WL 1845217, at *1 (M.D. Pa. 2009). Calling the allegations "scurrilous," the district court dismissed the case, a decision it later refused to reconsider and that was upheld on appeal. *Id.*; *see* 2009 WL 2244470 (M.D. Pa. 2009); *see* 385 F. App'x 134 (3d Cir. 2010).

In 2013, Acting New York Supreme Court Justice Richard M. Platkin dismissed a lawsuit challenging a casino expansion amendment. *See* Jesse McKinley, *Judge Rejects Suit to Block Vote on Casinos*, N.Y. TIMES, Oct. 16, 2013, at A28. According to some people, Platkin ruled as he did because his term was expiring and he was attempting to curry favor with Governor Andrew Cuomo, who favored the amendment. *See* John Sullivan, *Schneiderman Ignores Casino-Measure Stench*, N.Y. POST (Oct. 23, 2013, 8:48 PM), https://nypost.com/2013/10/23/schneiderman-ignores-casino-measure-stench/.

In 2014, a proposal repealing the state's 2011 casino law was submitted to the Massachusetts Supreme Judicial Court. During oral arguments, Justice Robert Cordy sharply questioned its backers. The next day, the *Boston Globe*, which favored repeal, ran a story informing readers that Cordy had been a gambling lobbyist before becoming a judge. *See* Andrea Estes, *Justice Hearing Casino Repeal Case Tied to Suffolk Downs*, BOS. GLOBE (May 11, 2014, 12:00 AM), https://www.bostonglobe.com/metro/2014/05/10/supreme-judicial-court-justice-hearing-casino-case-worked-lobbyist-for-suffolk-downs/ywQuHjRTQwAylFGmxbbu7J/story.html. Despite this fact, Cordy joined the rest of the court in holding that the amendment could appear on the ballot. *See* Abdow v. Attorney Gen., 11 N.E.3d

In *In re Wilder*, the South Carolina Supreme Court reprimanded George Wilder, a municipal court judge, for various ethical lapses,[137] including presiding over a gambling case involving a social acquaintance:

> In April 1997, Roy Lee McFadden was arrested by the Lake City Police Department for possession of gambling paraphernalia. The police seized $1,456.74, $526.00 of which was seized directly from the person of McFadden.
>
> Without consent of the police department and prior to trial, respondent ordered the return of $526.00 to McFadden.
>
> McFadden pled guilty to the possession charge before respondent. Respondent did not recuse himself and failed to disclose on the record that McFadden was a fellow masonic lodge member.[138]

In *In re Kutrubis*, the Illinois Judicial Inquiry Board suspended Circuit Court Judge Lambros J. Kutrubis for six months without pay.[139] Kutrubis's many transgressions included "fail[ing] to disqualify himself from adjudicating two cases: (1) a case against his girlfriend's daughter, who was charged with a municipal violation for gambling; and (2) a municipal violation case involving gambling against his friend and business partner."[140]

In *Matter of Mosley*, Nevada District Court Judge Donald M. Mosley was involved in a bitter child custody battle with Terry Figliuzzi, his former girlfriend and the mother of his son Michael. [141] After their break up, Figliuzzi wound up living with Joseph McLaughlin and his wife.[142] McLaughlin later was charged with various crimes, including cheating at gambling.[143] After a plea deal was worked out, his case was assigned to Mosley for sentencing.[144] When Mosley found out that the McLaughlins believed Figliuzzi was doing a

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574 (Mass. 2014). On election day, voters overwhelmingly rejected it (60 percent–40 percent). *See Massachusetts Casino Repeal Initiative, Question 3 (2014),* BALLOTPEDIA, https://ballotpedia.org/Massachusetts_Casino_Repeal_Initiative,_Question_3_(2014).

137 In re Wilder, 516 S.E.2d 927, 929 (S.C. 1999). By the time the case reached the court, Wilder had resigned. As a result, a reprimand was the maximum punishment the court could impose. *Id*. at 929.

138 *Id.* at 928.

139 Ill. Jud. Inquiry Bd., In re Kutrubis, Case No. 99-CC-3 (2002), at 2https://www2.illinois.gov/sites/jib/Documents/Orders%20from%20Courts%20Commission/Kutrubis.pdf.

140 *Id.*

141 *See*, Matter of Mosley, 102 P.3d 555, 559 (Nev. 2004).

142 *Id.* at 562.

143 *Id.*

144 *Id*.

poor job raising Michael, Mosley enlisted them in his custody battle.[145] Although Mosley eventually recused himself from McLaughlin's criminal case, the Nevada Supreme Court reprimanded him for not doing so immediately:

> Judge Mosley asserts that a recusal is not required at any particular time so long as it is accomplished. Judge Mosley also argues that judges do not have a duty to recuse themselves unless a clear and valid reason exists for doing so. Therefore, Judge Mosley argues that he was not unreasonable in waiting to determine whether the McLaughlins' testimony was genuine before he recused himself.
>
> We conclude that Judge Mosley is wrong. Judge Mosley should have recused himself immediately after he received a telephone call from [McLaughlin's criminal attorney Catherine] Woolf notifying him that the McLaughlins had information about his custody case and that Mr. McLaughlin was assigned to his chambers for sentencing. . .. A reasonable, objective observer could conclude that the judge was using his position for personal advantage, thereby diminishing public confidence in the integrity and impartiality of the judiciary. Therefore, we conclude that the Commission did not err in determining that Judge Mosley violated [Nevada Code of Judicial Conduct] Canons 1, 2, and 3B(7).[146]

In 2004, Illinois Administrative Law Judge Herbert Holzman agreed to recuse himself from hearing Attorney General Lisa Madigan's petition to revoke the gaming license of the bankrupt Emerald casino.[147] According to Emerald, it was worried that Holzman might not be impartial because he had done work for the Attorney General's office in another case.[148] Years later, with the case still dragging on, Bankruptcy Judge Eugene Wedoff's impartiality came into question after his son was hired by the trustee's law firm.[149] Without deciding whether Wedoff had a conflict, the district court withdrew the case

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145 *Id.* at 562–63.

146 *Id.* at 564. In addition to reprimanding him, the court ordered Mosley to pay a $5,000 fine and attend a general ethics course. *Id.* at 566.

147 *See* Kristina Buchthal, *Judge Bows Out of Casino Hearing*, CRAIN'S CHI. BUS. (Aug. 4, 2004, 7:00 AM), https://www.chicagobusiness.com/article/20040804/NEWS02/200013407/judge-bows-out-of-casino-hearing.

148 *See id.* (quoting Holzman as saying, "I don't believe there is a conflict of interest. I believe there is the appearance of a conflict of interest.").

149 Kristen Schorsch, *Reorder of the Court: Bankruptcy Judge Gets Caught Up in War Over Emerald Casino Crash*, CRAIN'S CHI. BUS. (Apr. 14, 2012, 7:00 AM), https://www.chicagobusiness.com/article/20120414/ISSUE01/304149973/wedoff-removed-from-emerald-casino-case-amid-conflict-allegations.

from him on constitutional grounds.[150]

In 2008, the Nevada Standing Committee on Judicial Ethics and Election Practices was asked the following question:

> May a Nevada judge preside in a case involving substantive challenges to the validity of a proposed statute changing or an existing statute prescribing the rate for the tax on gross gaming revenue given the judge is related to persons who are not parties to the litigation but who are involved in certain transactions with[,] or hold certain property interests associated with[,] the operations of a licensed non-restricted gaming licensee?[151]

After a lengthy review of the facts, the committee concluded that there was no need for recusal "unless the judge knows that the affected family member has more than a *de minimis* interest that could be substantially affected by the proceeding."[152]

In 2014, U.S. District Judge Michael Shipp saw no reason to recuse himself from New Jersey's challenge to PASPA, even though one of the plaintiffs was the NFL and Shipp's brother Marcel was a former NFL player who was looking for an NFL coaching job.[153] In the end, the defendants decided not to file a recusal motion.[154]

IV. OTHER ISSUES

What has been written so far does not exhaust the many ways in which judges can get into gambling-related trouble.[155] In *Matter of Anastasi*, for

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[150] *See In re Emerald Casino, Inc*., 467 B.R. 128, 133, 136 (N.D. Ill. 2012); *see also* Schorsch, *supra* note 149.

[151] Nev. Standing Comm. Jud. Eth. & Elections Prac., Op. JE08-013 (2008), at 1, http://judicial.nv.gov/uploadedFiles/judicialnvgov/content/Standing/Opinions/JE08-013.pdf.

[152] *Id.*

[153] *See* Michael David Smith, *Judge in NJ Gambling Case is Marcel Shipp's Brother, Which Gambling Supporters Say is a Conflict*, NBCSPORTS: PROFOOTBALLTALK (Oct. 31, 2014, 4:42 PM), https://profootballtalk.nbcsports.com/2014/10/31/judge-in-nj-gambling-case-is-marcel-shipps-brother-which-gambling-supporters-say-is-a-conflict/.

[154] *See* David Porter, *Jets Hire Brother of Judge in New Jersey Sports Betting Suit*, AP NEWS (Jan. 28, 2015), https://www.apnews.com/f8c119fd3cab4ab090e0e5e9bd2a821f. The issue became moot when the U.S. Supreme Court reversed Shipp's ruling upholding PASPA. *See* Murphy v. National Collegiate Athletic Ass'n, 138 S. Ct. 1461, 1485 (2018).

[155] Judicial campaigns, for example, are a frequent source of gambling-related problems. In addition to remarks that might cause them to later be viewed as biased for or against gambling litigants, *see supra* Part III.A. of this article, judicial

example, Richard V. Anastasi, a New Jersey municipal court judge, sent a letter on his official stationery to the state's racing commission asking it to reconsider its decision to deny his "good friend" a license.[156] Finding this act to be inconsistent with his duties as a judge, the New Jersey Supreme Court publicly reprimanded Anastasi.[157]

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candidates often want to hold raffles as fundraisers. Not only do such undertakings violate the CJC, *see, e.g.,* SUPREME COURT OF APPEALS OF W. VA., JUDICIAL INVESTIGATION COMM'N, ANNUAL REPORT 11 (2012), http://www.courtswv.gov/legal-community/JICAnnualRepo rts/2012.pdf. ("A Magistrate candidate may not sell raffle tickets or food, collect money for a 50-50 drawing or call numbers."), they also may be illegal. Minnesota's *Judicial Candidate Handbook* (2018), for example, advises: "Raffles could be considered charitable gambling and might not be legal for a political fundraiser." *See* MINN. CAMPAIGN FIN. & PUBLIC DISCLOSURE BD., JUDICIAL CANDIDATE HANDBOOK 44 (2018), https://www.leg.state.mn.us/docs/2018/other/180933.pdf; *see also* Ethics Comm. of the Ky. Jud., Formal Op. JE-46 (1983), https://courts.ky.gov/commissionscommitte es/JEC/JEC_Opin ions / JE_046.pdf (concluding that such raffles constitute illegal lotteries).

The need for money often leads judicial candidates to accept donations from special interests. This has long been a problem in Nevada:

> The state's casinos are among the biggest contributors to the campaigns of Nevada Supreme Court justices. . .. Casinos began spending more money in Nevada Supreme Court elections after a 2003 court ruling allowed the state legislature to raise taxes on casinos and other big businesses, but these conflicts of interest are nothing new to lower courts.

Billy Corriher & Jake Paiva, *State Judicial Ethics Rules Fail to Address Flood of Campaign Cash from Lawyers and Litigants*, CENTER FOR AMERICAN PROGRESS (last updated June 6, 2014), https://www.americanprogress.org/issues/courts/reports/2014/05/07/89068/state-judicial-ethics-rules-fail-to-address-flood-of-campaign-cash-from-lawyers-and-litigants-2/. In Las Vegas Downtown Redevelopment Agency v. Eighth Jud. Dist. Ct., so many lower court judges recused themselves because they had taken campaign money from casinos that the Nevada Supreme Court was forced to enter an order reinstating the original judge. 5 P.3d 1059, 1060 (Nev. 2000); *see also* Ivey v. Eighth Judicial Dist. Ct., 299 P.2d 354, 359 (Nev. 2013) (fact that poker star Phil Ivey had contributed to the re-election campaign of District Court Judge William Gonzalez did not entitle Luciaetta Ivey to a new judge in her suit for increased alimony); DALE PETERSON & JANE GOODALL, VISIONS OF CALIBAN: ON CHIMPANZEES AND PEOPLE 176-77 (2000) (criticizing the *Las Vegas Review-Journal* after the newspaper brushed off Judge Myron Leavitt's various conflicts in a high-profile defamation case brought by a casino entertainer by writing, "there's probably not a District Court judge in town who hasn't accepted a campaign contribution from the Boyd [Gaming] Group.").

To avoid Nevada's experience, some states prohibit these sorts of contributions. In 2018, however, the Pennsylvania Gaming Control Board's ban was struck down on First Amendment grounds in a case brought by Pasquale Deon Sr., a shareholder in the Sands Bethlehem casino. *See* Deon v. Barasch, 341 F. Supp. 3d 438, 454 (M.D. Pa. 2018).

156 *In re Anastasi*, 388 A.2d 620, 621 (N.J. 1978).

157 *Id.* at 622. For another such case, *see* In re Ramirez (N.Y. Comm'n Jud. Conduct 2017), *reprinted in* NEW YORK STATE COMM'N ON JUD. CONDUCT,

In *In re Leon*, Florida Circuit Court Judge Richard E. Leon was accused of sullying his office by going on gambling junkets.[158] The Florida Judicial Qualifications Commission eventually dropped the charge because "it was not established by clear and convincing evidence that the judge brought disrespect upon the court" by such behavior.[159]

ANNUAL REPORT 235-35, 234–41 (2018) http://cjc.ny.gov/Publications/AnnualReports/nyscjc.2018Annualreport.pdf (reprimanding Civil Court Judge Leticia M. Ramirez for, among other things, using her court stationery to write a letter supporting her childhood baby sitter's effort to vacate her 2004 misdemeanor gambling conviction).

In *In re Marullo*, the Louisiana Supreme Court declined to sanction Criminal District Court Judge Frank A. Marullo Jr. for providing a character reference on his official stationery for a friend who was awaiting sentencing in federal court on a gambling conspiracy charge. According to the court, "[this was an] isolated and technical violation of the Code of Judicial Conduct, a blemish on an otherwise clean professional slate." In re Marullo, 692 So. 2d 1019, 1021, 1023–24 (La. 1997).

Two years later, the Louisiana Supreme Court reached a similar result in *In re Thibodeaux*. Louisiana Court of Appeals Judge Ulysses Thibodeaux wrote a thank you letter on his official stationery to the general manager of the Players Island Casino, where Thibodeaux recently had held his wedding reception. In refusing to impose any punishment, the court wrote:

> [I]n our view, the evidence fails to prove that Judge Thibodeaux's "thank you" note to the casino regarding the wedding was written to advance the interests of his wife (or Judge Thibodeaux). . .especially in light of the fact that the recipient of the letter was already well aware that Judge Thibodeaux was an appellate judge, Judge Thibodeaux sought no favor by the letter, and [there was no way for Judge Thibodeaux to know] that a dispute would [later] arise regarding the food and beverages provided at the reception.

In re Thibodeaux, 737 So. 2d 1284, 1285, 1288 (La. 1999).

[158] In re Leon, 440 So. 2d 1267, 1268 (Fla. 1983).

[159] *Id.* During the investigation, the newspaper reporter who broke the story was called to testify but invoked his First Amendment rights to protect his sources. *See* Tribune Co. v. Green, 440 So. 2d 484, 485 (Fla. App. Dist.).

Leon is not the only judge to have gotten into trouble for going on a gambling junkets. As explained *supra* note 2, in 1974 Florida Chief Justice Carlton was forced to resign after he was filmed on a gambling junket.In 2005, Georgia Senior Superior Court Judge James Oxendine was criticized for participating in a gambling junket organized by Randall Dixon, an engineer contractor:

> Oxendine, who does fill-in work for the courts, acknowledged last week he took the trip for free, paying only for his gambling.Dixon said Oxendine, a longtime friend, gives his company free legal advice.
>
> The state's judicial conduct code advises judges against taking gifts from anyone who could come before their court. The State Judicial Qualifications Commission, which enforces the

In *Commission on Judicial Performance v. Chinn*, Mississippi Justice Court Judge Robert "C.O" Chinn Jr. was removed from office for regularly ignoring the law, including on one occasion failing to forfeit gambling proceeds.[160] In recounting this incident, the Mississippi Supreme Court wrote: "This is another example where Judge Chinn failed to consult the statutes before blindly applying the law according to Chinn rather than dispensing justice, according to the law of the state."[161]

In *Matter of Gumaer*, the Arizona Supreme Court suspended William M. Gumaer, a justice of the peace, for 90 days without pay for, among other violations, "act[ing] as an intermediary between an acquaintance from Mexico and the owner of a Laughlin, Nevada casino with respect to the establishment of gambling operations south of the border."[162]

In *Matter of Carver*, the Wisconsin Supreme Court suspended Circuit Court Judge William Carver for 15 days after he turned his courtroom into a soapbox.[163] Carver was under investigation for illegal sports betting at the time and in his comments he

> …minimized the seriousness of the offense charged and questioned the legitimacy of the investigation and prosecution

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> code, also has warned senior judges not to practice law even though they serve only part time. The commission said in a 1995 opinion it would "inevitably lead to an appearance of impropriety."
>
> Oxendine defended the trip and his arrangement with Precision Planning Inc., last week, saying he would recuse himself from any case involving the company or Dixon. He also said he got clearance from the commission's executive director, Cheryl Fisher Custer, to advise Precision Planning on business matters.
>
> Reached Tuesday, Custer seemed unfamiliar with Precision Planning and Oxendine's relationship with the company. She said the commission is barred by law from talking about its work but that she would ask commissioners whether they could confirm Oxendine's claim that he got prior approval. Custer did not return a follow-up call Wednesday.
>
> Dixon said Oxendine did nothing wrong. "He can give advice. I don't pay him for it," he said.
>
> Dixon routinely organizes trips to casinos in Mississippi and Las Vegas for employees, clients and buddies, he said. The February trip to the Golden Moon Hotel and Casino was a chance for 23 friends and associates to blow off steam.

Duane D. Stanford, *Dixon: Bannister Paid for Casino Jaunt*, ATLANTA J.-CONST., Feb. 24, 2005, at J1.

160 Miss. Com'n on Jud. Perf. v. Chin, 611 So. 2d 849, 853 (Miss. 1992).

161 *Id.*

162 In re Gumaer, 867 P.2d 850, 850–51 (Ariz. 1994).

163 *In re Carver*, 531 N.W.2d 62, 63 (Wis. 1995).

> in the case before him and in three other cases of sports gambling pending in other branches of Winnebago County Circuit Court and he suggested to the public and to his fellow judges that minimum sentences should be imposed for such crimes.[164]

After serving his suspension, Carver returned to the bench and continued to hear cases until 2010, when he retired.[165] In a 2004 interview, he claimed that the investigation into his gambling had been political payback for refusing to join forces with District Attorney Joseph Paulus.[166]

In 1995, the Florida Committee on Standards of Conduct Governing Judges was asked by a judge "whether [the judge] may participate as a team member in on-going bingo games at a local Senior Citizen's Center as a fund-raising project for Kiwanis International."[167] The committee responded:

The eight participating members of the Committee unanimously felt that you should not personally participate as a team member of the bingo games. One concurring judge added, "I also suggest that there would be an appearance of impropriety for official participation through an organization in bingo, which the public may associate with activity unbecoming a judge."[168]

In 1999, Delaware's Judicial Ethics Advisory Committee fielded a somewhat similar question. A judge inquired

> …whether, consistent with the Delaware Code of Judicial Conduct, [the judge could] serve on the Charitable Gaming Task Force created by House Resolution No. 39 of the Delaware General Assembly. The synopsis of that resolution states that the task force is "to study and make recommendations on Delaware's Charitable Gaming and Regulations and the reasons for declining charitable revenues."
>
> The resolution states that the task force is to "study Delaware's charitable gaming laws and regulations and the reasons for declining revenues, if any, and to make recommendations thereon including the permitted use of video lottery machines in charitable and fraternal organization non-

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164 *Id.*

165 *See* Jennifer K. Woldt, *Carver Hopes He's Left a Record of Fairness*, POST-CRESCENT (Appleton, WI), Aug. 1, 2010, at A7.

166 *See* Dee J. Hall, *Several Paulus Critics Say He Damaged Them*, WIS. ST. J., May 10, 2004, at A1.

167 Fla. Comm. on Standards of Conduct Governing Judges, Formal Op. 95-22 (1995), http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/ninet5/95-22.html.

168 *Id.*

> profit facilities under the supervision of the Delaware lottery," with written findings to be submitted to the General Assembly on or before January 15, 2000.[169]

After considering the matter, the committee found two reasons to answer "no":

> Because the Committee does not believe that the matters to be addressed by the Charitable Gaming Task Force fall within the parameters permitted by Canon 5.G [limiting extra-judicial appointments to those aimed at improving the law, the legal system, or the administration of justice] and because the matters to be addressed by the task force have the potential of becoming controversial, the Committee concludes that your service on the Charitable Gaming Task Force would not be advisable. While the Committee appreciates your interest in contributing to the well-being of the community, it recommends against your service on the Charitable Gaming Task Force.[170]

Although not technically a gambling case, *In re Salcido* deserves a brief mention. The California Commission on Judicial Performance publicly reprimanded San Diego Circuit Court Judge Deann M. Salcido after she used one of her court sessions to audition for the starring role on a proposed television show.[171] On the day of the taping, Salcido intentionally adopted an outsized persona and in one encounter repeatedly asked the defendant whether he was a "gambling man":

> Around 2:44 p.m., after defendant Stephen Stoflitt admitted a probation violation and requested reinstatement in a domestic violence program, the judge told him that she could sentence him to 60 days in jail instead. When he said that he would prefer to do the program, she warned him twice that if he returned with another excuse, she would slam him "like a tidal wave." The judge asked him if he understood that he was "going to do double or nothing" and whether he was "a gambling man." When the defendant replied that he was not a

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[169] Del. Judicial Ethics Advisory Comm., Formal Op. 1999-3 (1999), https://courts.delaware.gov/forms/download.aspx?id =78388 (paragraphing altered for improved readability).

[170] *Id.*

[171] Ca. Comm. on Judicial Performance, Formal Op. 189 (2010), https://cjp.ca.gov/wp-content/uploads/sites/40/2016/08/Salcido_DandO_11-10-10.pdf.

> gambling man, she said, "Well, you're gambling, you're gambling right now." When the defendant said that he was "trying to show that I can do what I'm supposed to," Judge Salcido had the audience read aloud a slogan posted in the courtroom, "Do or do not, there is no try." Before reinstating the defendant into the program, she said, "I will put you in jail and we're doing double or nothing now. . .. You're prepared to double down?. . .. Sixty days now or 120 minimum later. You want to take 120 later?"[172]

CONCLUSION

Today, public approval of gambling is at an all-time high,[173] and there even is a web site called "Gambling Judge" that bills itself as "the next authority in iGaming."[174] Despite this fact, the most prudent course for any judge remains heeding Rifkin's 1965 warning about not being a "conspicuous" gambler. As it happens, this is the same advice given by the Bangalore Principles of Judicial Conduct (BPJC), the United Nations' 2002 judicial code.[175] Its Principle 117 ("Gambling") states:

> There is no prohibition against a judge engaging in

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[172] *Id.* at 5.

[173] Since 1938, the Gallup organization has periodically asked Americans how they feel about gambling. In 2018, 69% said they thought gambling was "morally acceptable," the highest figure ever recorded. *See* Jim Norman, *Acceptance of Gambling Reaches New Heights*, GALLUP (June 7, 2018), https://news.gallup.com /poll/235379/acceptance -gambling-reaches-new-heights.aspx.

[174] *See* GAMBLINGJUDGE, https://www.gamblingjudge.com/ (last visited Apr. 15, 2019). The site's logo is a poker chip with a judge's face on it. *Id. See also* TomGJ, *Freshman Forum: Please Review Us. . .Gambling Judge*, GAMING PORTAL WEBMASTERS ASSOC. (Aug. 15, 2016, 3:20 PM), http://www.gpwa.org/forum/ please-review-us-gambling-judge-228612.html ("We would appreciate your feedback on http://www.gamblingjudge.com. We launched at the beginning of 2016 and our scope is to present igaming operator reviews along with their bonuses.").

[175] The BPJC was prepared in 2000-01 by the United Nations' Judicial Group on Strengthening Judicial Integrity. A revised version was adopted at a Round Table Meeting of Chief Justices held at The Hague on November 25-26, 2002. *See* Rep. of the Judicial Group on Strengthening Judicial Integrity, at 29, U.N. Doc. E/CN.4/2003/65 (2002). In 2006, the United Nations Economic and Social Council called on countries to incorporate the BPJC into their domestic judicial systems. *See* Economic and Social Council Res. 2006/23 (July 27, 2006). For a further look at the BPJC's drafting history as well as its text, *see* UNITED NATIONS OFFICE ON DRUGS AND CRIME, COMMENTARY ON THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT (2007), https://www.unodc.org/res/ji/import/international_standards/com mentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_e nglish.pdf.

> occasional gambling as a leisure activity, but discretion should be exercised, bearing in mind the perception of a reasonable observer in the community. It is one thing to pay an occasional visit to the horse races or to a casino when abroad during a holiday, or to play cards with friends and family. It may be quite another for a judge to stand too frequently at the betting windows of racetracks, or to become an inveterate gambler or a dangerously heavy punter.[176]

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[176] UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 175, at 71.

Although it does not mention either Rifkin or the BPJC, a recent French court decision follows both. In the case of "Mr. X," France's Superior Council of the Judiciary rebuked a former judge who, prior to retiring, had allowed his gambling to become too conspicuous:

> Whereas. . .Mr. X. . .requested loans from his neighbors of an average amount of EUR 100 [US $125] in order to wager sums of money in gambling establishments.
>
> Whereas the precautions taken by Mr. X, who went to several institutions to play, sometimes outside [of his home town, were] not enough to prevent some people also attending these institutions to discover his status as a magistrate; [and] Considering that this almost daily gambling practice. . .while Mr. X was living in a very small municipality, has undeniably discredited the appearance of justice; [we conclude that] Mr. X has failed in his duties to the state.

Superior Council of the Judiciary ruling as Disciplinary Board of Magistrates, Jan. 21, 2015, Decision No. S223, (Fr.), http://www.conseil-superieur-magistrature.fr/missions /discipline/s223 (translation by the author).