

# Ethical Approach to the Bench

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## Judicial Discretion

- Judicial discretion exists when a judge's effective limits on his or her power leave the judge free to make a choice among possible courses of action or inaction.
- The emphasis here is on the limits of one's effective power, not what is proper (Margaret Evans, 1978).
- The range of decisions available to a judge may be legal or illegal; ethical or unethical.
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## Ethical Systems

- **Religion**

What is good is that which conforms to God's will

We know God's will from:

- the Bible or other sacred texts
- Religious authorities
- Faith

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Let's take a look at this initial appearance

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- Was the judge's reactions throughout the appearance proper?
- How important is it for a judge to enforce some level of respect and decorum directed at the court?

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## Judicial Ethics and Discretion

- One's personal ethical worldview will shape how they perform their duties on the job.
- In the case of those involved in the judicial system, there is a lot of opportunity for discretionary decision-making.
- Although limited by legal jurisdiction and rules of practice, there is an unlimited number of ways that one's ethics will inform one's behavior on the bench.

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## Ethical Systems – cont.

### • Ethical Formalism

Most associated with philosopher Immanuel Kant

What is good is that which conforms to doing one's duty and the categorical imperative.

What is the categorical imperative?

- to act in such a way that one would will it to be a universal law
- to treat each person as an "end" and not a "means"

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## Ethical Systems – cont.

### • Utilitarianism

aka "consequentialism"

Most associated with philosopher Jeremy Bentham

What is good is that which results in the greatest benefit for the greatest number.

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## Ethical Systems – cont.

- **Egoism**

What is good is that which results in the greatest benefit for me.

The notion that if everyone acts in their self interests, we will get a moral and just society.

This can include being nice to others because doing so benefits me.

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## What behaviors would be considered unethical for a JP?

- Poor judicial temperament?
- Favoritism?
- Gratuities?
- Other?

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## In my time on the Minnesota Board on Judicial Standards...

- I served on the board from 2012-2015.
- My first full year was 2013. In that year, the board handled 108 complaints. Here's the breakdown....

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## Complaints investigated

• Bias, discrimination or partiality	60
• General demeanor and decorum	49
• Delay in handling court business	28
• Conflict of interest	23
• Abuse of authority	19
• Ex parte communication	16
• Improper influence, ticket fixing	16
• Failure to follow law or procedure	10
• Failure to perform duties	8
• Reputation of judicial office	8
• Administrative irregularity	7

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## Complaints investigated – cont.

• Criminal behavior	6
• Improper conduct on the bench	6
• Loss of temper	6
• Attorney unethical conduct prior to office	3
• Chemical dependency	2
• Corruption, bribery	1
• Financial activities or reporting	1
• Health, physical or mental capacity	1
• Incompetence as a judge	1
• Unassigned	1
• Willful misconduct in office	1
• Other	2

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## Dispositions of the complaints

- Most of the complaints were dismissed either due to insufficient evidence (56%) or because they were unfounded (24%).
- However, 1 judge was publicly reprimanded, 2 received private admonitions, and 4 received letters of caution.
- One judge was ultimately removed by the Minnesota Supreme Court, but that didn't happen until the subsequent year.

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## Complaints in 2022

- Interestingly... in 2022, the board received 336 distinct complaints.
- This is a 42% increase over their 2021 figure of 237, and a 211% increase over the 2013 figure.
- Why the increase in complaints over the last decade?

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## Ethical dilemmas

(Joy Polluck, 2022)

- Ethical dilemmas are personal situations in which one must choose a behavior.
- The “right choice” may not be clear, or might be difficult or costly.
- Sometimes, one must choose between two “correct” choices.

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## Resolving Ethical Dilemmas

- Ask 3 Questions:

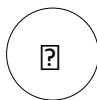
How would you feel if your actions appeared on the front page of the newspaper?

How will you feel about your action looking back on it?

Would you consider your action fair if you were each of the other parties involved?

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## CONTACT INFO



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