

Workers Comp
It Matters

What Non-Lawyers Can Tell Lawyers and Judges About Legal and Judicial Ethics

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Scenario #1

- Bob Smith & Dave Jones are law partners in a rural TN county
- Born and raised in that same rural county
- Know and interact socially and professionally with the employees in the Court Clerk's office
- Several years ago, Smith began delivering small Christmas gifts to those employees

Does anyone see any problems with these gifts?

Scenario #2

- Smith & Jones worked together for 20 years
- Families vacationed together
- They handled their own cases but shared labor and fees on large cases that had a potential value of over \$50K
- Met weekly to evaluate cases & develop strategies

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Scenario #2

- Smith ran for Judge and Jones served as his campaign treasurer
- Smith won his election and became 1 of 3 judges in the local court
- Smith recused himself from hearing Jones' cases for 1st year and for all cases that were active during their partnership
- After that 1st year, Smith began hearing Jones' cases

Does anyone see any problems with Smith hearing Jones' cases?

Does the fact that Jones served as Smith's campaign treasurer impact your answer?

Scenario #3

- Smith was 1 of 3 judges in the court that Jones would file the best personal injury case he ever had
- Jones got a new case that he evaluated at over \$1M on a close but unresolved legal issue
- Jones thought he would reach a large settlement without a trial if the case survived summary judgment
- Over the years, Smith & Jones had discussed how to withstand summary judgment
 - Jones knew Smith's thinking about being averse to dismissals on summary judgment

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Scenario #3

- Jones believed that the two other judges were more likely to enter a summary judgment than Smith was
- Jones knew that the Clerk's office assigned cases randomly—giving him a 1 in 3 chance to get Smith
 - Jones wanted to improve his odds
 - Jones went hunting with Homer, the husband of Mary, an employee of the Clerk's office. While hunting, Homer mentioned wanting to take their family to Gatlinburg, but couldn't afford to.
 - Jones offered him the use of his personal cabin there—for free.

Does anyone see any problems with letting Homer & Mary's family use the cabin?

Scenario #3

- A couple of days later, Jones stopped by the Clerk's office and Mary made a special effort to thank him for use of the cabin
- Jones said he was glad to do so and casually mentioned having a case he needed to file. They also discussed other things, but he mentioned that he had a case that he hoped would be assigned to Smith, as he would know more about that kind of case than the other two judges.
- Jones knew Mary assigned cases, but didn't ask for any special treatment

Does anyone see anything wrong with Jones telling Mary that he hoped Smith would get this case?

Scenario #4

- A couple weeks later, Jones filed his case, handing Mary the papers and saying “Well, this is my big case. Who’s the next judge up?”
- Mary replied, “I don’t know.” since she assigns cases at the end of the day.
- Mary uses three rotations when assigning cases. The first rotation would not have it assigned to Smith, the second rotation would. Since it is her discretion, she used the second rotation since Jones had been so nice to her.

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Scenario #4

- Jones was elated with the assignment
- A couple of weeks later, Mary asked what Jones thought about the assignment and he replied that it was the best outcome due to Smith's familiarity with these kinds of cases
- Mary replied, "Just consider it my little gift to you."

Should Jones ask her what she meant or report what she said to Judge Smith and/or the defense lawyer on the case?

Scenario #5

- Mike Johnson is the defense attorney on this case. He had several cases with Smith & Jones before Smith became a judge.
 - He expressed regret when learning that Smith had been assigned the case.
 - He wished another judge had the case since both were former defense attorneys and more likely to dismiss on summary judgment
- Johnson had litigated with Jones in Smith's court before and saw no evidence of partiality in Jones' favor. Still, this was a large case best defended on summary judgement.

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Scenario #5

- Johnson wondered whether he should bring up the former relationship between Smith & Jones on a motion to recuse
 - He could argue that their close relationship might reduce the public's (and his client's) confidence in the fairness of Judge Smith's ruling

Does anyone have a problem with Johnson arguing that Judge Smith should recuse himself because of his close relationship with Jones?

Scenario #6

- Johnson decided to not file the motion—for now
 - As the case progressed, Jones sent Johnson a letter asking to discuss a possible settlement
 - Johnson replied that his client instructed him to file a motion for summary judgment, but that a discussion about settlements might occur if the motion was denied
 - Jones responded, “There’s no need to wait.” as both attorneys knew that Smith believed in trying, not dismissing, cases
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Scenario #6

- Johnson responded with a letter that included “I remind you that you thought you would win the non-jury trial that Judge Smith decided in my client’s favor. I suggest that Judge Smith, like many other relatively new judges, may be developing the tendency to decide cases in a manner that will discourage lawyers from saying that he has a bias based on his previous practice and affiliations. My client will take its chances with the summary judgment motion.”

Does anyone have a problem with lawyers speaking about a judge as the lawyers did above?

Scenario #7

- Judge Smith finished court early one day and walked across the square to his old office to chat with Jones. He did not talk about pending cases.
 - While there, a long-time paralegal stuck her head in and greeted the Judge, who asked her if she was working hard.
 - She replied by saying “Ole Johnson told Jones that he thinks you’re becoming defense-oriented, so people won’t think you have a plaintiff bias.”
 - Jones told her that they couldn’t discuss pending cases.
 - Smith replied, “I can’t believe Johnson would say something like that.”
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Scenario #7

- Jones just shrugged
- Smith said, "I'll see you later. Where do you think the wives will want to go to eat tonight?"

Does anyone have a problem with Judge Smith stopping by Jones' office to chat?

Should Smith and Jones and their wives visit socially?

What are Smith's and Jones' obligations, if any, be after the comment by the paralegal?

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