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Raymond J. McKoski
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The Resource Page



PUBLICATIONS

RAYMOND J. MCKOSKI, *JUDGES IN STREET CLOTHES: ACTING ETHICALLY OFF-THE-BENCH* (Fairleigh Dickinson University Press, 2017). 265 pp. (\$110). www.fdupress.org.

The ABA Model Code of Judicial Conduct fairly well defines ethical conduct while on the bench. This heavily footnoted book by retired Judge Raymond McKoski explores judicial ethics issues in a myriad of less clear off-the-bench activities. Some examples: Is it permissible for a judge to be the concession stand cashier at her child's basketball game? (pages 178-179, fns. 654-667). Does it violate the Code to meet with three Rotary Club members in chambers to discuss where to hold the Club's meetings next year? (page 70, footnotes 127-129). What is the important difference between using a courthouse phone to ask my spouse what groceries to pick up for dinner and using the same phone to ask what groceries to pick up for dinner if my law clerk joins us? (pages 198-200, fns. 783-796).

After 25 years on the Illinois bench, Judge McKoski (who now is an adjunct professor at John Marshall Law School) adds this volume to his law review and journal publications. Like his other works, this one is eminently readable. There are hundreds of examples of ethical conundrums in this well organized, rule-by-rule exposition of (sometimes conflicting) appellate cases, disciplinary decisions, and state and federal ethics advisory board opinions. A particularly interesting aspect of the book is how Professor McKoski traces the individual Rules from the original 1924 ABA Canons of Judicial Ethics through the 1972, 1990, and 2007 ABA Model Rules of Judicial conduct. Tracing the changes and the reasoning behind them is especially valuable in analyzing earlier ethics opinions, which may no longer apply in light of a subtly changed Rule.

The constitutional tension between First Amendment freedoms and govern-

ment restrictions on judges' activities is addressed all through the book. The early chapters identify state interests in restricting speech, association, and other off-the-bench conduct. The following chapters consider specific applications of individual rules and the constitutional justification for their limitations on judicial conduct. After immersing the reader in the details of each Rule and fact-intensive ethics rulings, the final chapter (pages 201-229, fns. 1-199) contains brave predictions about which Rules likely will withstand constitutional scrutiny.

TRENDS IN STATE COURTS 2018, National Center for State Courts, www.ncsc.org/trends.

This annual collection of articles provides a host of ideas and inspiration for state court judges. The lead article, New York State's Opioid Intervention Court by the Honorable Jane DiFiore, Chief Judge of the New York Court of Appeals, was particularly interesting and timely. In it, Judge Fiore outlines the process by which the Buffalo City Court takes addicts at risk of an overdose who consent to participation out of the jail and into treatment within 48 hours. In the first phase of the process, those who receive outpatient treatment or are released from inpatient treatment go through a 12-week stabilization and intensive monitoring process with daily testing. During this time, defense counsel and the prosecutor investigate the case and negotiate. Even if defendants do not progress to phase two, a drug court program, they benefit from participating in treatment and going through withdrawal in a safe, controlled manner. The program is made possible by an agreement from the District Attorney to suspend prosecution for those undergoing treatment. Started in May 1, 2017, the program currently handles 45 to 60 people at a time and is on its way to doubling its original goal of 200 participants per year. Only one person among the first 204 participants died from an overdose. The volume also includes a report from Florida about a new type of problem-solving court focusing on infants

and toddlers and on the court response to human trafficking, a discussion of "peacemaking programs," and a look at the evolving relationship between state courts and immigration authorities.



PODCASTS

Ear Hustle, Hosted and Produced by Nigel Poor and Earlonne Woods, www.earhustlesq.com.

This podcast, now in its third season, is hosted by an inmate at San Quentin State Prison in California, and a Bay Area visual artist. The voices of the inmates take the listener inside the prison with stories that are funny, brutally honest, and deeply human. This is a beautifully crafted podcast that has something to teach judges and anybody else who cares about our incarcerated citizens.

More Perfect, Hosted by Jad Abumrad <https://www.wnycstudios.org/shows/radiolabmoreperfect/>.

This podcast, a spinoff of the brilliant RadioLab, offers an in-depth look at the U.S. Supreme Court, uncovering the stories behind some of the Court's most famous decisions and taking a hard—and, at times, humorous—look at the way the Court works both internally and as the highest level of the third branch of the federal government. It has covered such topics as *Batson* (a fascinating tale), the Court's surprising early years, the death penalty, *Baker v. Carr*, the Commerce Clause, and interruptions during oral argument.

Criminal, Hosted by Phoebe Judge, <https://thisiscriminal.com>.

This podcast considers crime from every angle—historical, anthropological, sociological, medical—with top-notch writing and sound design. The stories range from famous crimes and unsolved mysteries to the nitty gritty of forensics and how trauma doctors handle shooting victims.