Attachment Eleven

TESTIMONY OF CHARLES G. GEYH
ON H. RES. 1448 (2008), INQUIRING INTO THE IMPEACHMENT OF
DISTRICT JUDGE G. THOMAS PORTEOUS

December 15, 2009

My name is Charles G. Geyh (pronounced "Jay"). I am the Associate Dean for Research and the John F. Kimberling Professor of Law at the Indiana University Maurer School of Law. I am the co-author of over forty books, book chapters and articles on judicial conduct, ethics, independence, accountability, and administration, including the treatise "Judicial Conduct and Ethics" (4th Ed. 2007) (with Alfini, Lubet & Shaman); the book "When Courts & Congress Collide: The Struggle for Control of America's Judicial System" (2006); and the forthcoming monograph "Judicial Disqualification: An Analysis of Federal Law" (2d Edition, Federal Judicial Center, forthcoming 2010). I have previously served as Reporter to the American Bar Association's Joint Commission to Evaluate the Model Code of Judicial Conduct; Director of and Consultant to the American Bar Association's Judicial Disqualification Project; Assistant Special Counsel to the Pennsylvania House of Representatives, on the Impeachment and Removal of Pennsylvania Supreme Court Justice Rolf Larsen; consultant to the National Commission on Judicial Discipline and Removal; and counsel to the House Judiciary Committee's Subcommittee on Courts, Intellectual Property and the Administration of Justice (under Subcommittee Chairman Robert W. Kastenmeier). The views expressed in my testimony today are my own, and not necessarily those of the organizations with which I am or have been affiliated.

My testimony today will be directed at the ethical implications of Judge Porteous's alleged conduct, with a focus on the Code of Conduct for United States Judges. The analysis of judicial ethics is context dependent - whether a judge did or did not run afoul of an ethical directive will almost always turn on the facts surrounding that judge's conduct. In preparation for my testimony today, I have reviewed the following materials: the House Judiciary Committee's Impeachment Task Force hearing transcripts from November 17 and December 8, 2009; the Report and Recommendations of the Judicial Conference Committee on Judicial Conduct and Disability, dated June, 2008 and forwarded to the House of Representatives on June 18, 2008; the Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit, together with accompanying exhibits and a concurring/dissenting Report, dated November 20, 2007; and an undated Hearing Memorandum to the House Judiciary Committee's Impeachment Task Force prepared in anticipation of its November 17, 2009 hearing. My analysis of Judge Porteous's conduct is based on information derived from these materials. I do not, however, presume to make my own findings of fact concerning Judge Porteous's conduct. Whenever possible, therefore, I have predicated my ethics analysis upon facts as found and summarized by the Judicial Conference in its June, 2008 Report. Although the findings of fact in the Judicial Conference Report impress me as consistent with testimony in the hearing record, I draw

no conclusions in that regard. Accordingly, my testimony throughout refers to the judge's "alleged" conduct.

The Porteous matter is complicated, spanning many years and featuring a number of episodes. I will orient my testimony around those episodes, beginning with the most problematic. In so doing, however, it is critically important not to lose the forest for the trees. As egregious as the judge's alleged conduct was in several episodes viewed in isolation, the whole exceeds the sum of its parts. Taken together, the actions that Judge Porteous is reported to have taken as a state and federal judge reflect a cynical and contorted view of judicial service as an opportunity to be exploited; of judicial power as a thing to be abused for personal gain; and of legal and ethical constraints on judicial conduct as obstacles to be circumvented. Measured against the directive of the first canon in the Code of Conduct - the canon articulating a judge's primary ethical duty - that he "uphold the integrity and independence of the judiciary," such conduct represents a grave and extreme abrogation of the judge's ethical responsibilities.

The Liljeberg Case and its Antecedents

Judge Porteous's reported conduct in the *Liljeberg* case raises ethical concerns of the most extreme sort, and culminated years of problematic behavior. To fully appreciate the severity of his ethical transgressions in *Liljeberg*, however, it is necessary to review the history of his relationship with the lawyers who represented the parties in that case, and the ethical problems that arose in the course of that relationship.

Conduct as a State Judge

Attorneys Jacob Amato and Leonard Levinson (who represented defendant in *Liljeberg*) and Donald Gardner (who represented plaintiff) each testified that they were longtime friends of Judge Porteous, and that during his years as a state judge, they took Judge Porteous to lunch innumerable times - often at expensive restaurants. Rarely, if ever, did Judge Porteous pay for his meals. Codes of conduct permit judges to accept "social hospitality" without running afoul of restrictions on the gifts judges may receive,[1] and friends and former colleagues who take each other to lunch can be a conventional form of social hospitality. This, however, was not ordinary "social hospitality." These lawyers reportedly paid Judge Porteous's lunch bills countless times for years with no meaningful reciprocation by the judge. Moreover, this one-way payment practice appears to be what Judge Porteous wanted and expected: Former state judge Ronald Bodenheimer testified that when Bodenheimer became a judge, Porteous told him that, once a judge, he would "never have to buy lunch again. . . There will always be somebody to take you to lunch." In other words, Judge Porteous was trading on his position as a judge in contravention of the ethical principle that a judge should not "lend

[1] Regulations of the Judicial Conference of the United States Under Title III of the Ethics Reform Act of 1989 Concerning Gifts, §3 ("'Gift' . . . does not include (a) social hospitality based on personal relationships;" *see also*, ABA Model Code of Judicial Conduct (Hereafter "Model Code") Rule 3.13(B)(3) (exempting "ordinary social hospitality").

the prestige of judicial office to advance the private interests of the judge."[2] Similarly, Amato's partner, Robert Creely, testified that he took Porteous on numerous, all expense-paid-hunting and fishing trips during his years as a state judge, which further exceeds traditional notions of "social hospitality," and lends additional support to the suspicion that Judge Porteous was exploiting his station for personal gain.[3]

In addition to meals and trips, the Judicial Conference Report noted that "much of the available evidence concerns Judge Porteous's solicitation and receipt of cash payments from a law firm, Amato & Creely [which was] . . . a relationship begun when Judge Porteous was a state court judge." According to Amato and Creely, Judge Porteous solicited tens of thousands of dollars from them over a period of years. These lawyers testified that they were good friends of the judge and were simply acting out of a desire to help a friend who was in a seemingly constant state of financial distress, and not because they were seeking or receiving favors. It is possible to credit this testimony completely and still conclude that Amato and Creely would not have shown such magnanimity to Porteous were he not a judge. Judges are important and powerful people in their communities, and it is understandable that lawyers would want to remain in their good graces, which is why ethics rules limit the gifts judges can receive and prohibit judges from exploiting their positions for personal gain.

Even more troubling, however, the Judicial Conference Report states that when the firm "indicated to Judge Porteous that it was unhappy with having to bear the expense of repeated payments to him . . . Judge Porteous frequently appointed the firm to curatorship proceedings and, at Judge Porteous's suggestion, received in return a portion of the fees paid." Such conduct is unethical in the extreme. Code of Conduct Canon 3B3 states that "a judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism and favoritism."[4] While Judge Porteous clearly exhibited favoritism in his assignment of curatorships, he did so less for the benefit of friends than himself. His conduct thus entailed a gross abuse of judicial power that manifested a fundamental disregard for core ethical directives that a judge "should avoid impropriety and the appearance of impropriety in all activities;" "should uphold the integrity . . . of the judiciary" and should not abuse the prestige of his office for personal gain.[5]

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[2] Code of Conduct for United States Judges, Canon 2B (2009) (hereafter "Code of Conduct(2009)");. State rules are comparable. ABA Model Code of Judicial Conduct, Rule 1.3 (2007) (hereafter "Model Code". The Code of Conduct for United States Judges was substantially revised in July, 2009. The Judicial Conference Report evaluated Judge Porteous's conduct with reference to predecessor Code. Differences between the two Codes do not affect the analysis of Judge Porteous's conduct, but in my testimony, I cite to both.

[3] The extent to which these meals and trips were offered at times when the lawyers at issue had matters pending before Judge Porteous is unclear, for which reason I have not factored that concern into the analysis here, although it is highly relevant later, in *Liljeberg*.

[4] The predecessor Code is comparable, providing that "A judge should not make unnecessary appointments and should exercise that power only on the basis of merit, avoiding nepotism and favoritism." Code of Conduct for United States Judges, Canon 3B4 (2008) (hereafter "Code of Conduct (predecessor)." See ABA Model Code, Rule 2.13.

[5] Code of Conduct Canons 1, 2 (2009); *See also*, Model Code, Canon 1.

Although the Judicial Conference Report discussed Judge Porteous's conduct as a state judge to provide context, it did not factor such conduct into its recommendation that "consideration of impeachment may be warranted." It seems clear to me, however, that Congress is well within its rights to consider such conduct when evaluating Judge Porteous's continuing fitness to serve. By way of an extreme example, suppose that a federal judge is found to have committed a multiple homicide while a state judge ten years earlier. It is difficult to imagine that such conduct would be off limits in an impeachment inquiry simply because it predated the judge's ascension to the federal bench. Without getting into standards for impeachment (which other witnesses will address), the better question is whether the judge's conduct as a state judge affects his fitness to serve as a federal judge. In state court systems, for example, it is relatively well settled that a judge's conduct in a prior term, in a different judicial office, or even in private practice, may be the subject of judicial conduct proceedings.[6]

Conduct as a federal judge

The Judicial Conference Report states:

> It is undisputed that Judge Porteous solicited and received cash and other things of value from law firms and attorneys who appeared before him in litigation. These included, at a minimum, cash payments, numerous lunches, payments for travel, meals, and hotel rooms in Las Vegas, and payments for the expenses of a congressional externship for Judge Porteous's son.

These meals, trips and payments that Judge Porteous received from Amato, Levinson , Gardner and Creely continue a course of conduct begun when he was a state judge, and raise the same ethical problems detailed above. They likewise implicate an additional provision in the Code of Conduct for United States Judges, which provides that "A judge should refrain from financial and business dealings that . . . exploit the judicial position."[7] The *Liljeberg* case, however, added a new dimension because in that case three of these same lawyers appeared before Judge Porteous as counsel in a major piece of commercial litigation. Of particular interest is the appearance of attorneys Jacob Amato and Leonard Levenson, who were retained as counsel for defendant under unusual circumstances described in the Judicial Conference Report:

> [H]is [Judge Porteous's] friends Jacob Amato and Lenny Levenson appeared as counsel after the case was assigned to him. Amato had given money to Judge Porteous. Levenson had helped pay Judge Porteous's son's living expenses during an externship in Washington, D.C. and had treated Judge Porteous to lunch while he had matters pending before Judge Porteous. Although Amato and Levenson did not typically practice in federal court or frequently handle complex litigation, they were brought into Liljeberg with an 11% contingency fee to represent a client seeking a judgment of $110 million. Moreover, they

[6] JAMES ALFINI, STEVEN LUBET, JEFFREY M. SHAMAN, & CHARLES GARDNER GEYH, JUDICIAL CONDUCT AND ETHICS §§1.08, 1.09 (4th Ed. 2007) (hereafter ALFINI et al.)

[7] Code of Conduct, Canon 4D1(2009); Code of Conduct, Canon 5C1 (predecessor).

> had joined the case 39 months after it was originally filed just two months before it was to go to trial.

After Amato and Levenson appeared as counsel for the defendant, plaintiff moved to disqualify Judge Porteous, who denied the motion, explaining that "Courts have held that a judge need not disqualify himself just because a friend, even a close friend, appears as a lawyer." Shortly thereafter, plaintiff retained Donald Gardner as counsel, because as co-counsel for plaintiff testified, Gardner was another friend of Judge Porteous, whose presence in the case would "level the playing field."

Assuming these to be the facts, it is clear that Judge Porteous should have disqualified himself. Under the federal judicial disqualification statute and the Code of Conduct for United States Judges, a judge shall disqualify himself from any proceeding in which the judge's "impartiality might reasonably be questioned."[8] It is a standard that must be assessed from the perspective of an objective lay person fully informed of the circumstances. Under this approach, courts have held that judges need not disqualify themselves simply because a good friend represents a party before the court: a reasonable person would recognize that in a collegial legal community a judge will know most if not all of the lawyers who appear before him, many of whom will be friends and acquaintances from law school and practice. But Amato and Levenson were more than friends: they were long-time benefactors upon whom Porteous had depended for tens of thousands of dollars in quick cash, meals and other favors over many years. Receiving payments and favors of this sort from lawyers who appear before the judge is not ordinary "social hospitality" in any sense of the phrase, and constitutes clear grounds for disqualification.[9] Moreover, the need to disqualify was made even more manifest by the circumstances in which these long-time patrons of the judge were retained, being brought in at the eleventh hour to try a massive case before Judge Porteous in a non-jury trial on a matter outside of the lawyers' normal practice area. Taken together, this confluence of events gives rise to the unshakable suspicion that Judge Porteous was subject to favoritism and could not be counted upon to remain impartial.

Disqualification is both a matter of procedure (hence its inclusion in title 28 of the U.S. Code) and a matter of ethics (hence its inclusion in the Code of Conduct). Ordinarily, when a judge erroneously declines to disqualify himself, the appropriate remedy is a procedural one: reversal. A much more serious problem arises, however, when non-disqualification is willful:

> It has been held that a judge will be subject to discipline for incorrectly failing to disqualify himself only where the failure was willful. The test is an objective one, and therefore a willful failure to disqualify may be present even though a judge states on the record that that he or she does not believe that disqualification is necessary.[10]

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[8] 28 U.S.C. §455(a); Code of Conduct, Canon 3C1.
[9] ALFINI et al., *supra* note 7, at §7.15A (4th Ed. 2007)
[10] ALFINI et al, *supra* note 7, at §4.01.

In this case, the facts as reported lead to the conclusion that Judge Porteous's failure to disqualify was willful. First, Judge Porteous was well aware of undisclosed information that made the need for him to disqualify himself obvious - so obvious that his failure to recuse cannot be attributed to an honest mistake. Second, the judge's statements during the disqualification proceedings were calculatedly misleading. Judge Porteous acknowledged his friendship with Amato and Levenson, without disclosing any of the details that made that "friendship" problematic. He conceded that he had "gone along to lunch" with them without revealing that he had done so countless times, that the lawyers always (or nearly always) paid, and that he had received much more from them than free meals. And when plaintiff's counsel alleged that Amato and Levenson had contributed to the judge's election campaigns, Porteous replied that "[t]he first time I ran, 1984, I think is the only time when they gave me money" - a statement he made with full knowledge that he had solicited many thousands of dollars from Amato over the years for other purposes. The cumulative effect of these statements supports the conclusion that Judge Porteous was willfully concealing information that would have revealed the need for him to disqualify himself. Such conduct is a gross and inexcusable violation of judicial ethics.

The Judicial Conference Report then states that "[a]fter denying the motion [to disqualify], and while a bench verdict was pending, Judge Porteous solicited cash from Amato," delivered "in an envelope picked up at Amato and Creely's office by Judge Porteous's secretary." The Report notes "Creely told Judge Porteous that this was not 'appropriate,'" because he "felt this practice was too 'blatant.'" Even if we credit assertions that the cash was solicited and accepted as a favor, not a bribe, Judge Porteous's misconduct here was of the gravest sort. The current Code of Conduct for United States Judges provides that "A judge should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations."[11] The applicable regulations define "gift" to include gratuities, favors, loans or "similar item(s) having monetary value" and provide that "[a] judicial officer shall not solicit a gift from any person who is seeking official action from or doing business with the court . . . served by the judicial officer."[12] The judge who solicits or receives money from a lawyer who has an important case pending before the court, creates the taint of corruption that the Judicial Conference's gift regulations are designed to prevent; it is thus unsurprising that ethics rules universally condemn the practice.[13] That Judge Porteous was told at the time that the payment was inappropriate, and did not report the payment as a gift, corroborates the view that he intentionally concealed a known impropriety.

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[11] Code of Conduct Canon 4D(4) (2009).

[12] Regulations of the Judicial Conference of the United States Under Title III of the Ethics Reform Act of 1989 Concerning Gifts, §§3, 4. *See also*, Code of Conduct, Canon 5C4 (predecessor).

[13] RICHARD C. FLAMM, JUDICIAL DISQUALIFICATION §9.1 (2d Ed. 2007) ("The practice of judges accepting gifts or favors from those who appear before them implicates fundamental policy concerns. Therefore, parties are usually not permitted to give such gifts and judges are not allowed to receive them."); JAMES ALFINI, et al, *supra* note 7, at §7.15A ("Courts tend to look with considerable skepticism at any gifts, favors, or favorable business deals that judges receive from lawyers who appear before them.").

Having improperly solicited thousands of dollars from a lawyer while he was representing a party in a case pending before him, the need for Judge Porteous to disqualify himself was even more plain, rendering his erroneous failure to withdraw more obviously willful. It is utterly inconceivable that a reasonable person would not question the impartiality of a judge who solicited thousands of dollars from a lawyer in a pending matter.[14] That Judge Porteous subsequently decided the case in favor of the defendant and was later reversed in resounding terms only heightens the suspicions that the disqualification and gift rules aim to dispel. If the ethical duty to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" means anything, it means that conduct of this kind is unacceptable.

The Bankruptcy Proceeding

Judge Porteous filed for bankruptcy in 2001, when he was a sitting federal district judge. The Judicial Conference Report summarizes his conduct in connection with the bankruptcy proceeding as follows:

> Judge Porteous filed for bankruptcy under a false name. In sworn court documents, he understated his income, overstated his expenses, and failed to disclose gambling losses and an anticipated tax refund. Likewise, he failed to disclose the existence of various financial accounts, including a credit card. By using this credit card and by taking our markers at various casinos, he continued to accumulate debt in violation of court orders. Finally, he failed to report payments routed through his secretary's checking account to preferred creditors. As a result of the foregoing, his creditors incurred unwarranted losses and he was enriched.

The Judicial Conference report concludes that his conduct violated federal perjury and bankruptcy fraud statutes. The alleged conduct likewise violates the judiciary's core ethical principles. Codes of conduct direct judges to "respect and comply with the law"[15] for obvious and compelling reasons: If we are to trust our judges to honor their oaths to uphold and apply the law in the courtroom, it is critical that they abide by the laws they have sworn to uphold. Unsurprisingly, then, criminal conduct, including fraud, has long been recognized as an extremely serious ethical lapse.[16]

One can argue whether violations of law that do not culminate in a criminal conviction technically qualify as a breach of the ethical duty to "follow the law," but it is settled that such conduct runs afoul of even more elemental norms. The legitimacy of the judiciary as an institution depends on preserving public confidence in the courts. Public confidence in the courts turns on judges behaving honorably on *and* off the bench.

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[14] In the federal system, disqualification has been ordered where the risk of favoritism was far more attenuated. *See, e.g., Pepsico v. McMillen*, 764 F.2d 458 (7th Cir. 1985) (Reversing refusal to disqualify where the judge—anonymously and through a recruiter—was exploring future job opportunities with law firms representing parties in a pending case).

[15] Code of Conduct Canon 2A (2009); Code of Conduct Canon 2A (predecessor); ABA Model Code Rule 1.1.

[16] ALFINI et al., *supra* note 7, at §10.04A.

Accordingly, judges are admonished to "avoid impropriety and the appearance of impropriety in all activities" and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."[17] We therefore explain in our treatise, that "regardless of whether unprosecuted criminal conduct qualifies as a failure to comply with the law, within the meaning of the codes of conduct, it clearly runs afoul of the more general directives that judges must avoid the appearance of impropriety and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."[18]

The Judge's Relationship With Bail Bondsmen

Deposition records and related documents indicate that over a period of years, starting when he was a state judge, Judge Porteous was given things of value from bail bondsmen Louis Marcotte and his sister, Lori Marcotte. They paid for numerous meals at high-end restaurants, paid for the judge's home repairs, paid for his car repairs, and took Judge Porteous (and his secretary) to Las Vegas. In return, Judge Porteous set bonds at the Marcottes' request so as to permit them to maximize their profits; he set aside felony convictions of employees; he helped them form relationships (particularly with other judges) that would assist them in their business; and he interceded on their behalf with other judges before whom the Marcottes had civil litigation pending.

Unlike the relationship between Judge Porteous and attorneys Amato, Creely, Levenson and Gardner, his relationship with the Marcottes was unobscured by longstanding friendships. Rather, as described immediately above, this was a business relationship featuring quid pro quo. Corruption of this magnitude is not addressed in codes of conduct explicitly: A judge's ethical duty not to accept bribes, or take money or other favors in exchange for judicial or administrative action, quite literally goes without saying. As previously discussed, there are strict rules against judges soliciting or accepting favors from lawyers, parties, or others with whom the courts do business: Gift regulations for federal judges prohibit them from "solicit[ing] a gift from any person who is seeking official action from or doing business with the court," and likewise prohibit them from accepting gifts from such persons, subject to exceptions that are inapplicable here.[19] State ethics codes are similar.[20] As an ethical matter, however, the situation becomes "most egregious" when a judge receives improper "gifts" from interested individuals in exchange for official action, which are not really gifts or favors, but bribes and kickbacks .[21] For ethical lapses this extreme, the violations cut to the quick of the core directives that judges must "uphold the integrity and independence of the judiciary;"

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[17] Code of Conduct Canon 2 and 2A(2009); Code of Conduct Canon 2 and 2A(predecessor); Model Code, Canon 1, Rules 1.1, 1.2.

[18] ALFINI et al., *supra* note 7, at §10.04A.

[19] Regulations of the Judicial Conference of the United States Under Title III of the Ethics Reform Act of 1989 Concerning Gifts, §§4, 5.

[20] Model Code, Rule 3.13.

[21] Alfini et al, *supra* note 7, at §7.15B ("A recurring problem is the acceptance of gifts and loans from persons who come before the judge, such as bail bondsmen and receivers. In the most egregious cases, of course, these are not gifts, but kickbacks or bribes.")

"avoid impropriety;" and "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."[22]

After Porteous became a federal judge, Marcotte testified that he continued to include him at expense-paid lunches with state judges. Marcotte did so, he explained, because "whenever I brought Porteous to the table, I brought strength;" "other judges respected him and they listened to him when he talked;" and "he could tell them how great the bail bond business is." If true, such conduct is an almost textbook violation of the ethical duty not to "lend the prestige of judicial office to advance the private interest of the judge or others."[23]

Financial Disclosure

In its report, the Judicial Conference found:

> Judge Porteous's annual financial disclosure forms repeatedly made false statements that were material to the integrity of the office. It is undisputed that Judge Porteous solicited and received things of value from attorneys appearing in litigation before him. It is also undisputed that none of these benefits were listed as "Income," "Gifts," "Loans," or "Liabilities" on his financial disclosure forms, which he signed and attested to as accurate under oath.

To the extent Judge Porteous's conduct violated perjury laws, it likewise signals a violation of his ethical duties to follow the law, to avoid impropriety, and to uphold the integrity and independence of the judiciary, previously discussed in connection with his allegedly false statements under oath in the bankruptcy proceeding.[24] In addition, however, federal judges are under an independent ethical duty to "report the value of any gift, bequest, favor, or loan as required by statute or by the Judicial Conference of the United States."[25]

By itself, filing incomplete or inaccurate gift disclosure forms is highly undesirable, but can be attributed to simple carelessness or lack of time. To that extent, the ethical implications of such conduct are modest. When, however, failure to disclose is - as the Judicial Conference found here - a means for the judge to conceal the receipt of improper gifts and favors, the ethical implications become much more serious. Such conduct violates not just the duty to report gifts as required by applicable codes and regulations, but also the duty to avoid impropriety and to act at all times in a manner that promotes the integrity of the judiciary. It may be noted that the Model Code of Judicial Conduct defines "integrity" in terms of "probity" and "honesty," which underscores why

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[22] Code of Conduct Canons 1, 2 & 2A (2009); Code of Conduct Canons 1, 2 & 2A (predecessor); Model Code, Canon 1; Rule 1.2.
[23] Code of Conduct, Canon 2B (2009); Code of Conduct, Canon 2B (predecessor); Model Code, Rule 1.3.
[24] Code of Conduct, Canons 1, 2 & 2A (2009); Code of Conduct, Canons 1, 2, & 2A (predecessor).
[25] Code of Conduct, Canon 5C6 (predecessor). The current Code is to the same effect. *See* Code of Conduct, Canon 4H3 (2009).

deliberate disregard of reporting requirements to conceal improper gifts undermines judicial integrity.[26]

Hunting Trips and Meals from Oil Rig Companies

The evidentiary record reflects that Judge Porteous was assigned a number of cases in which two oil rig companies - Rowan Companies and Diamond Offshore - were litigants. Diamond and Rowan leased or owned hunting facilities in Texas, and both invited Judge Porteous on all-expense-paid hunting trips to their facilities. Diamond invited Judge Porteous in 2000, 2001, 2003, 2005, 2006, and 2007. The invitation from Diamond came at the suggestion of Judge Porteous's friend, attorney Richard Chopin, who frequently represented Diamond. Rowan invited Judge Porteous to attend hunting trips in 2002, 2004 and 2006. The invitation was extended by Rowan Vice-President Bill Hedrick who had met Judge Porteous on a different social hunting trip.

It is problematic for a judge to accept expense-paid hunting trips from parties in pending proceedings[27] unless the trips qualify as "social hospitality based on personal relationships," which falls outside the regulatory definition of gift.[28] In this case, however, the hospitality was provided not by a person, but by corporations. Accepting that Judge Porteous did not and could not have a "personal relationship" with an artificial entity, accepting the gift is problematic. The objective of a corporation is to make profits (or minimize losses) - not to make friends. Therefore, when a corporation is a regular party in litigation before a given judge, and that corporation extends special hospitalities to the judge on a recurring basis, it raises an unavoidable suspicion that the corporation's underlying motivation is to further its financial self-interest by currying favor. Having accepted inappropriate gifts from parties in litigation before him, disqualification was necessary. Put in terms of the language of the disqualification standard, an objective lay observer fully informed of the relevant circumstances might reasonably question the impartiality of a judge who enjoyed numerous expense-paid hunting trips courtesy of corporations that appeared regularly as parties in litigation.

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[26] Model Code, terminology.

[27] Regulations of the Judicial Conference of the United States Under Title III of the Ethics Reform Act of 1989 Concerning Gifts §5 ("A judicial officer . . . shall not accept a gift from anyone who is seeking official action from or doing business with the court"); see also, Code of Conduct, Canon 5C4 (predecessor) ("A judge should not accept anything of value from anyone seeking official action from . . . the court . . except that a judge may accept a gift as permitted by the Judicial Conference gift regulations.")

[28] Regulations of the Judicial Conference of the United States Under Title III of the Ethics Reform Act of 1989 Concerning Gifts §3 ("'Gift' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value but does not include (a) social hospitality based on personal relationships.")