

Syllabus

Chief Justice:
Clifford W. Taylor

Justices:
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman

This syllabus was prepared by the Reporter of Decisions.

Reporter of Decisions
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In re HALEY

Docket No. 127453. Argued December 14, 2005 (Calendar No. 1). Decided July 31, 2006.

The Judicial Tenure Commission (JTC) filed a complaint with the Supreme Court against Judge Michael J. Haley of the 86th District Court, alleging impropriety or the appearance of impropriety in the judge's acceptance of football tickets from the attorney of a criminal defendant while the judge was on the bench presiding over a court session that involved the defendant. The Supreme Court appointed retired Circuit Judge Casper O. Grathwohl to act as master in the matter. Judge Grathwohl subsequently concluded that, while Judge Haley's actions were improper, they did not constitute judicial misconduct. The examiner who conducted the proceeding on behalf of the JTC objected. The JTC heard oral argument on the objection, found judicial misconduct, and issued a recommendation and order of discipline. Seven of the nine members of the JTC recommended public censure and two recommended public censure and a suspension without pay for 30 days. Judge Haley appealed.

In an opinion by Justice YOUNG, joined by Chief Justice TAYLOR and Justices CORRIGAN and MARKMAN, the Supreme Court *held*:

The respondent violated Canon 5(C) of the Code of Judicial Conduct. The tickets did not fall within any of the listed exceptions for gifts. The acceptance of the tickets was not an instance of "ordinary social hospitality." The misconduct of the respondent significantly harmed the public's perception of the judiciary and warrants a public censure.

1. The determination whether the acceptance of a particular gift is consistent with ordinary social hospitality requires an objective analysis regarding how a reasonable observer would view the gift.

2. Social hospitality, for purposes of the phrase "ordinary social hospitality," requires a social context. Here, the context of the acceptance of the tickets was a judicial context, not a social context. The fact that the gift was offered in open court by a litigant in a pending case excludes the possibility that the event can objectively be characterized as ordinary social hospitality.

3. The more general "appearance of impropriety" standard of Canon 2 does not govern an act of judicial conduct when a specific canon or court rule controls and explicitly either

authorizes or prohibits that act. Where there is no specific canon or court rule that pertains to a particular act, the "appearance of impropriety" standard of Canon 2 may be used to determine whether a judge engaged in an act of misconduct.

4. Public censure is a proportionate measure of discipline in this matter where the respondent failed to uphold a specific canon in the Code of Judicial Conduct and jeopardized public confidence in the integrity and impartiality of the judiciary by his inappropriate lapse in ethical judgment.

Justice CAVANAGH, concurring, agreed with the result reached by Justice KELLY in her concurring opinion, namely, that the tickets qualify as ordinary social hospitality but that Judge Haley's acceptance of the tickets in open court gave rise to an appearance of impropriety. In light of Judge Haley's exemplary record and long history of distinguished service, Justice CAVANAGH would have preferred the JTC to have resolved this matter involving Judge Haley's exercise of poor judgment without the issuance of a complaint. However, public censure appears to be an appropriate discipline in light of Const 1963, art 6, § 30 and MCR 9.205.

Justice WEAVER, concurring, agreed with the majority's decision to adopt the JTC's recommendation of a public censure for Judge Haley. She stated, however, that the majority errs in rejecting consideration of whether the judge also violated Canon 2(A) of the Code of Judicial Conduct by creating an appearance of impropriety and in refusing to consider the JTC's findings of seven additional instances of judicial misconduct. Each violation of a canon is its own breach of judicial duty and needs to be determined and recognized as a reason for the discipline imposed.

Justice KELLY, concurring, would hold that the gift of the tickets was ordinary social hospitality within the meaning of Canon 5(C)(4)(b). In making a determination on this question, the gift itself should be analyzed, not the situation surrounding the gift-giving. The circumstances surrounding the gift-giving should be analyzed under the appearance of impropriety standard of Canon 2. A judge's acceptance of a gift while on the bench during a regular court proceeding gives the appearance of impropriety under an objective test that considers what a reasonable person would believe. A judge must scrupulously observe the canons of judicial ethics when accepting gifts, and under no circumstances should a judge accept a gift while on the bench adjudicating a proceeding. Because the misconduct in this case was spontaneous, public censure is sufficient discipline.

Public censure ordered.