

Be part of the next generation of legal research



# New York Law Journal

ALM Properties, Inc.

Page printed from: <http://www.nylj.com>

[Back to Article](#)

## Memo Outlines Factors Courts Will Consider on Moonlighting

Noeleen G. Walder

10-18-2010

State judges may get a chance to boost their income by moonlighting, but Chief Administrative Judge Ann Pfau ([See Profile](#)) cautioned last week that the "core principles affecting outside employment will still apply."

Judge Pfau wrote in an [Oct. 13 memo to the system's 1,300 judges](#) that the Office of Court Administration would consider several factors in deciding whether to approve proposals for outside employment. She said the agency's counsel will scrutinize whether an outside job:

- "interferes" with the judge's full-time duties or obligations;
- "creates any conflict of interest or calls into question the Judge's impartiality in a matter that is or may be before the judge";
- "appears to rely on the prestige of the judicial office or refers to the judicial office"; or
- "impacts on the dignity" of the office.

"As you are aware, there are constitutional prohibitions against a Judge holding another public office, practicing law, serving as an arbitrator, referee or compensated mediator, or doing business that interferes with the performance of judicial duties," the memo states.

Last month, Chief Judge Jonathan Lippman announced that he and Judge Pfau were taking measures to ease judges' financial burden, including temporarily suspending the rules limiting outside employment ([NYLJ, Sept. 28](#)). State judges have not had a pay raise since January 1999.

While no one rule bars judges from accepting outside employment, a number of rules place restrictions on their ability to moonlight.

For example, §100.4 of the Rules of the Chief Administrative Judge states that judges who engage in extra-judicial activities must avoid "casting reasonable doubt on their impartiality" and precludes most full-time judges from serving as an "active participant" in any business entity.

Judge Pfau told the Law Journal last month that these rules will be more "loosely interpreted," but added that all requests to pursue outside employment will be reviewed for potential conflicts by the counsel's office.

"Because this is a complex area, the conflicts check will have to be done on a case-by-case basis, with the specific facts of the possible outside employment determinative of the outcome of the check," the Oct. 13 memo says.

As of Friday, David Bookstaver, a court system spokesman, said that two judges had requested permission to secure outside employment. He declined to disclose the identity of the judges or the types of jobs they are seeking.

According to Judge Pfau's memorandum, judges requesting a conflict check must describe their judicial assignment and provide a "complete discussion of the outside employment under consideration, taking into account the core principles described above."

Her memo promises a written response within two weeks.

Prior to Judge Lippman's relaxation of the rules, judges who wished to seek outside employment had to seek guidance from the

Advisory Committee on Judicial Ethics.

Judge Pfau's memo warns that a "conflict review by Counsel's Office does not provide the same presumption that follows" an opinion issued by the advisory committee.

Judiciary Law §212(2)(l) provides that any action a judge takes in accordance with a formal advisory opinion of the ethics committee is "presumed proper" for purposes of any subsequent investigation by the New York State Commission on Judicial Conduct.

In June, the advisory committee concluded in [Joint Opinion 09-192/09-231](#) that judges could receive compensation for "occasional" outside artistic endeavors.

In an interview Friday, Acting Brooklyn Supreme Court Justice Matthew D'Emic ([See Profile](#)), who is in a band that is set to play at Brooklyn Law School on Oct. 21, said he thought the process for the conflict check laid out by Judge Pfau "makes sense because it's an uncharted course that the judiciary's taking."

"It involves so many potential pitfalls that the only way to proceed is very carefully," he said. "It's a shame it had to come to this, but once it did there has to be a procedure in place to make sure it doesn't affect the public's confidence" in the judiciary.

Meanwhile, Justice D'Emic said his band is playing for free at Brooklyn Law, which is his alma mater, but he might attempt to charge once they have more songs.

If he is lucky, the judge joked, he hopes to recoup the \$600 he recently laid out for a Fender Jazz bass guitar.

@Noeleen G. Walder can be reached at [nwalder@alm.com](mailto:nwalder@alm.com).

**Alleviate Discovery Pain:**

Wednesday, June 22, 2011  
1 PM EDT / 10 AM PDT

**IRON MOUNTAIN**

Copyright 2011. ALM Media Properties, LLC. All rights reserved.