

Tenth Annual Judicial Symposium

THE ART OF JUDGING

Presented by

NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

July 18–19, 2014
Westin Chicago River North
Chicago, Illinois



NATIONAL
FOUNDATION
FOR JUDICIAL
EXCELLENCE

CELEBRATING TEN YEARS

PROMOTING EXCELLENCE AFFIRMING JUSTICE

A strong, independent, responsive judiciary adhering to the rule of law is one of the hallmarks of a democratic society. Although every citizen has an interest in the maintenance of an effective judicial system, as an officer of the court, the lawyer's obligation in this regard is of paramount importance.

It was with this in mind that DRI created the National Foundation for Judicial Excellence (NFJE) on October 7, 2004. NFJE is an independent, 501(c)(3) charitable foundation that provides judges with educational programs and other tools to enhance the rule of law and administration of justice.

For ten years, the NFJE has successfully produced a first-rate symposium hosting nearly 400 appellate court judges from 44 states.

Judges' responses to the programs have been universally enthusiastic, and many have expressed appreciation for the high caliber and balanced nature of the program. Comments include:

- This was a fantastic program—intellectually stimulating and thorough.
- The speakers were excellent and the topics were timely. I anticipate next year's symposium.
- Thanks to everyone for a great program. I already look forward to next year's program.
- This is one of the best organized and informative seminars that I have ever attended. Keep up the good work.
- The program and the entire experience were excellent. I encourage the Foundation to continue this long into the future.
- The program was well planned and of high intellectual caliber.
- Bravo! Keep up the good tradition for which you have laid a sound foundation.
- Thank you for providing us with an opportunity to get together and compare notes with judges from other states.



This Year's Symposium

The task of judging has never been more complex. Modern judges face a broad spectrum of tasks in their capacities as judicial officers and public servants. Yet the judiciary remains a place where skill, diligence, and knowledge combine to produce logic and reason. Modern appellate jurists must employ the technical skill and creativity of a writer, the insight of a philosopher, and the soul of an artist.

The 2014 National Foundation for Judicial Excellence Symposium explores how jurists engage in the “Art of Judging.” To perfect the critical skills required in today’s appellate courts, symposium topics include several practical challenges faced by today’s appellate judges: psychological and other influences on judicial decision-making; the hard work and drafting choices that lead to cogent, persuasive opinions that shape the law for future jurists and litigants; the nuances of judicial finance and the impact financial pressures impose on the judiciary; the role of and right to judicial free speech; and the fight to preserve the independence of our judiciary.

This year’s symposium features leading judges from state and federal appellate courts, as well as noted scholars in areas as diverse as constitutional law, public finance, political science, and the psychology of decision-making. The symposium begins on Friday, July 18, with a presentation by Professor Barry Friedman, the author of *The Will of the People*, a critically acclaimed new book on the American judicial system.

Please join our nationally recognized panel of judges, attorneys and scholars as we explore the “Art of Judging.”



THE ART OF JUDGING

Schedule of Events

Friday, July 18

2:00 – 5:30 p.m. Registration

3:15 – 4:15 p.m. ***The Role of the Judiciary***
Professor Friedman speaks on the role of the judiciary in America and his book, *The Will of the People*, which the *New York Times* calls a “thought-provoking and authoritative history of the Supreme Court’s relationship to popular opinion.” This is the concluding presentation of the DRI Appellate Advocacy Seminar, which all NFJE attendees are invited to attend.
Prof. Barry E. Friedman, *New York University School of Law, New York, New York*

4:15 – 5:15 p.m. ***Court Funding: The New Normal***
The Great Recession created a financial crisis for courts. Although recovery is underway, a return to past funding and practices in most states will not be possible. How will courts deal with the new normal? Can reform of civil procedures assist? What is the role of court performance standards and measures? How can the business and legal communities help?
Robert Baldwin, *National Center for State Courts, Williamsburg, Virginia*

6:00 – 7:00 p.m. ***Tenth Anniversary Celebration***
Trump International Hotel & Tower Chicago, 401 N. Wabash Avenue, Chicago, Illinois 60611
7:00 p.m. Cocktail Reception
Dinner Keynote Presentation—*Qualities of a Good Judicial Opinion*
Chief Judge Diane P. Wood, *United States Court of Appeals for the Seventh Circuit, Chicago, Illinois*

Saturday, July 19

7:15 – 8:30 a.m. Continental Breakfast

8:30 – 8:45 a.m. **Welcome and Introductions**
John H. Martin, NFJE President
Brooks R. Magratten, 2014 Symposium Program Chair

8:45 – 10:15 a.m. ***Financial Influences on the Judiciary***
Our judiciary is subject to many influences, some of which are individual to each judge, and others affect every judge. Financial influences fall into the second category. This discussion will cover court funding, the costs of achieving a judicial office, amicus funding, judicial salaries, and other financial considerations shaping the manner in which justice is served.
Honorable Wallace B. Jefferson, *Alexander Dubose Jefferson Townsend LLP, Austin, Texas*
Steven M. Puiszis, *Hinshaw & Culbertson LLP, Chicago, Illinois*

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10:15 – 10:30 a.m.	Break
10:30 – 11:45 a.m.	<p><i>How Judges Decide Cases</i> Professor Corey Rayburn Yung and Dr. Carol Tavis will discuss judicial behavior and the decision-making process, including key findings from psychological science—notably, cognitive biases and cognitive dissonance—that illuminate the subtle but powerful influences on how judges make up their minds. They will explain a new approach that questions fundamental premises of predominant theories of judicial decision-making. Dr. Carol Tavis, <i>Los Angeles, California</i> Corey Rayburn Yung, <i>University of Kansas School of Law, Lawrence, Kansas</i></p>
11:45 – 1:00 p.m.	Lunch
1:00 – 2:15 p.m.	<p><i>The Art of Crafting Opinions</i> Law professor Fred Rodell said: “There are two things wrong with almost all legal writing. One is style. The other is its content.” While perhaps an overstatement, this quip focuses on an important issue: if the rule of law is to remain viable in a democratic society, it must be readable. Judge Posner and Justice Liu will discuss their respective approaches to the art of crafting readable opinions. Honorable Richard A. Posner, <i>U.S. Court of Appeals for the Seventh Circuit, Chicago, Illinois</i> Associate Justice Goodwin Liu, <i>California Supreme Court, San Francisco, California</i></p>
2:15 – 2:30 p.m.	Break
2:30 – 3:45 p.m.	<p><i>The Tension Between Freedom from Influence and Freedom to Speak</i> From elections to opinions, the First Amendment’s guarantee of free speech has taken on new dimensions, affecting the role of judges. Dean Chemerinsky will address the changing landscape and the effect that the tension between free speech concerns and the desire to avoid political and financial influence may have on future actions by judges and those who wish to be judges. Dean Erwin Chemerinsky, <i>University of California, Irvine School of Law, Irvine, California</i></p>
3:45 – 4:55 p.m.	<p><i>Speaker Panel</i> All of our speakers will engage in a lively discussion of topics generated from the audience as well as among themselves. Moderator: Tristan L. Duncan, <i>Shook Hardy & Bacon, LLP, Kansas City, Missouri</i></p>
4:55 – 5:00 p.m.	<p>Closing Remarks John H. Martin, NFJE President</p>
5:00 – 6:00 p.m.	Closing Reception
6:30 p.m.	Dinner on your own

Speakers



Robert N. Baldwin joined the National Center for State Courts (NCSC) as executive vice president and general counsel in April 2005. In this position, Mr. Baldwin is responsible for coordinating the work of NCSC’s major program divisions: Research/Technology, Court Consulting, International, and the Institute for Court Management, as well as serving as the Center’s in-house legal counsel. Mr. Baldwin retired in 2005, after 30 years as the chief administrative officer for the Virginia court system. Over the years, Mr. Baldwin has served on numerous boards, commissions, and task forces including serving as president of the Conference of State Court Administrators, as a presidential appointee to the board of the State Justice Institute, director and vice chair of the National Center for State Courts Board of Directors and as a board member of the American Judicature Society. He is a fellow of the Virginia Law Foundation.



Dean Erwin Chemerinsky is the founding dean and distinguished professor of law, and Raymond Pryke Professor of First Amendment Law, at the University of California, Irvine School of Law, with a joint appointment in Political Science. His areas of expertise are constitutional law, federal practice, civil rights and civil liberties, and appellate litigation. He is the author of seven books and nearly 200 articles in top law reviews. He frequently argues cases before the nation’s highest courts, and also serves as a commentator on legal issues for national and local media.



Tristan L. Duncan, co-chair of Shook Hardy & Bacon LLP’s Energy Law and Constitutional Law Practice Groups, has expertise in class actions, multidistrict litigation, and constitutional law. She has successfully defended energy retailers, wholesalers, and refiners in state and class actions across the nation. Recently, the Association of Corporate Counsel recognized Ms. Duncan as a “Value Champion” for her “innovative approach” to litigation defense. Her educational background includes a B.A. in Political Science from Duke University; a J.D. with distinction from University of Iowa; and post-doctoral scholarship at Yale Law School.



Prof. Barry E. Friedman is the Jacob D. Fuchsberg Professor of Law at the New York University School of Law. He is one of the country’s leading authorities on constitutional law and the federal courts. Professor Friedman teaches a wide variety of courses and writes extensively about judicial review, constitutional law and theory, federal jurisdiction, and judicial behavior. He graduated from the University of Chicago and received his law degree *magna cum laude* from Georgetown University Law Center.



Hon. Wallace B. Jefferson comes from a rather remarkable background. He is the great, great, great grandson of a slave who was owned by a Texas judge before the Civil War. Justice Jefferson graduated from James Madison College at Michigan State University, and from the University of Texas School of Law. Prior to becoming a member of the Texas Supreme Court, and eventually its chief justice, Justice Jefferson was an outstanding appellate lawyer, and early in his career had argued two cases before the United States Supreme Court by age 35. He retired from the Texas court in October 2013.





Hon. Goodwin Liu is an associate justice on the California Supreme Court. Before joining the state's highest court in 2011, Justice Liu was professor of law at the UC Berkeley School of Law (Boalt Hall). His primary areas of expertise as a law professor included constitutional law, education law and policy, and the U.S. Supreme Court. He has published widely on these subjects in books, law reviews, and the general media. His 2006 article, "Education, Equality and National Citizenship, won the Steven S. Goldberg Award for Distinguished Scholarship in Education Law, conferred by the Education Law Association. Prior to teaching, Justice

Liu clerked for U.S. Supreme Court Justice Ruth Bader Ginsburg, and worked in the appellate practice group of O'Melveny & Myers.



Brooks R. Magratten is the partner in charge of Pierce Atwood LLP's Providence, Rhode Island, office. He concentrates on insurance, ERISA, and commercial litigation and represents financial services companies nationally. He is a past director of DRI and serves on its Law Institute. He is the editor of the ABA's *2014 ERISA Survey of Federal Circuits*. He chairs the Program Committee of the NFJE. Mr. Magratten is an adjunct faculty member of the Roger Williams University School of Law. He is also a member of the International Association of Defense Counsel, the Federation of Defense and Corporate Counsel, and the

Association of Defense Trial Attorneys.



John H. Martin is a partner at Thompson & Knight LLP in Dallas. He concentrates his practice on mass tort and catastrophic injury, aviation, pharmaceutical, professional liability, and general business and commercial litigation. He is the current president of the NFJE and a past president of DRI, the Texas Association of Defense Counsel, and Lawyers for Civil Justice. He is a fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers. He is a member of the DRI Aviation Law, Commercial Litigation, Drug and Medical Device, Diversity, Product Liability, and Professional Liability

Committees and a member of the International Associate of Defense Counsel.



Hon. Richard A. Posner is a judge on the U.S. Court of Appeals for the Seventh Circuit. Prior to joining the bench in 1981, Judge Posner was a law clerk to U.S. Supreme Court Justice William J. Brennan, an assistant to the solicitor general of the United States, and a law professor at both Stanford Law School and the University of Chicago Law School. He is the recipient of multiple honors and awards, including honorary degrees from leading American and foreign universities, the 2003 Research Award from the Fellows of the American Bar Foundation, the Learned Hand Medal for Excellence in Federal Jurisprudence

from the Federal Bar Council in 2005, and the Ronald H. Coase Medal from the American Law and Economics Association in 2010. Judge Posner is a prolific writer, both of judicial opinions and articles. He has written a number of books, including *Economic Analysis of Law* (8th ed., 2011) and *How Judges Think* (2008), as well as many articles in legal and economic journals and book reviews in the popular press.



Steven M. Puiszis is a partner with Hinshaw & Culbertson LLP in Chicago. Mr. Puiszis is the secretary-treasurer of DRI, serves on the DRI Board of Directors, and is a past chair of the DRI Judicial Task Force. He was the editor of DRI's whitepaper, *Without Fear or Favor in 2011: A New Decade of Challenges to Judicial Independence and Accountability*. Mr. Puiszis has spoken and written about the need for lawyers to protect judicial independence and to support full funding of our state court systems. His publications include *Illinois Governmental Tort and Section 1983 Civil Rights Liability* (Matthew Bender, Third Edition). Mr. Puiszis received

his J.D. from Loyola University, Chicago. He is a fellow of the American Bar Foundation and is a past president of the Illinois Association of Defense Trial Counsel. Mr. Puiszis serves as Hinshaw's deputy general counsel, which received *U.S. News & World Reports* 2014 Best Firm Award for Ethics and Professional Responsibility.



Carol Tavis has a Ph.D. in social psychology. She has spoken frequently on the difference between testimony based on good psychological science and that based on pseudoscience and subjective clinical opinion. Her audiences have included the Council of Chief Appellate Judges; judicial education programs; forensic investigators; and conferences of criminal defense attorneys. She is the author, with Elliot Aronson, of *Mistakes Were Made (But Not by ME)*, about the psychology of self-justification, among other books and psychology textbooks. She is a fellow of both the American Psychological Association and the Association

for Psychological Science, and she serves on the board of the Council for Scientific Clinical Psychology and Psychiatry and the editorial board of *Psychological Science in the Public Interest*.



Hon. Diane P. Wood is the Chief Judge of the United States Court of Appeals for the Seventh Circuit and a Senior Lecturer in Law at the University of Chicago Law School. Judge Wood attended the University of Texas at Austin, earning her B.A. in 1971 (highest honors), and her J.D. in 1975 (Order of the Coif). After graduation from law school, she clerked for Judge Irving L. Goldberg on the U.S. Court of Appeals for the Fifth Circuit (1975-76), and for Justice Harry A. Blackmun of the U.S. Supreme Court (1976-77). She then spent a brief period at the Office of the Legal Adviser in the U.S. Department of State. In 1980, she began

her career as a legal academic at Georgetown University Law Center. She moved to the University of Chicago Law School in 1981, serving as a full-time professor until 1995 and as Associate Dean from 1989 through 1992. In 1990, she was named to the Harold J. and Marion F. Green Professorship in International Legal Studies, becoming the first woman to hold a named chair at the school. From 1993 until she was appointed to the Seventh Circuit in 1995, she served as Deputy Assistant Attorney General in the Antitrust Division of the U.S. Department of Justice. Judge Wood is a Fellow of the American Academy of Arts & Sciences and is on the Council of the American Law Institute. She became Chief Judge on October 1, 2013.



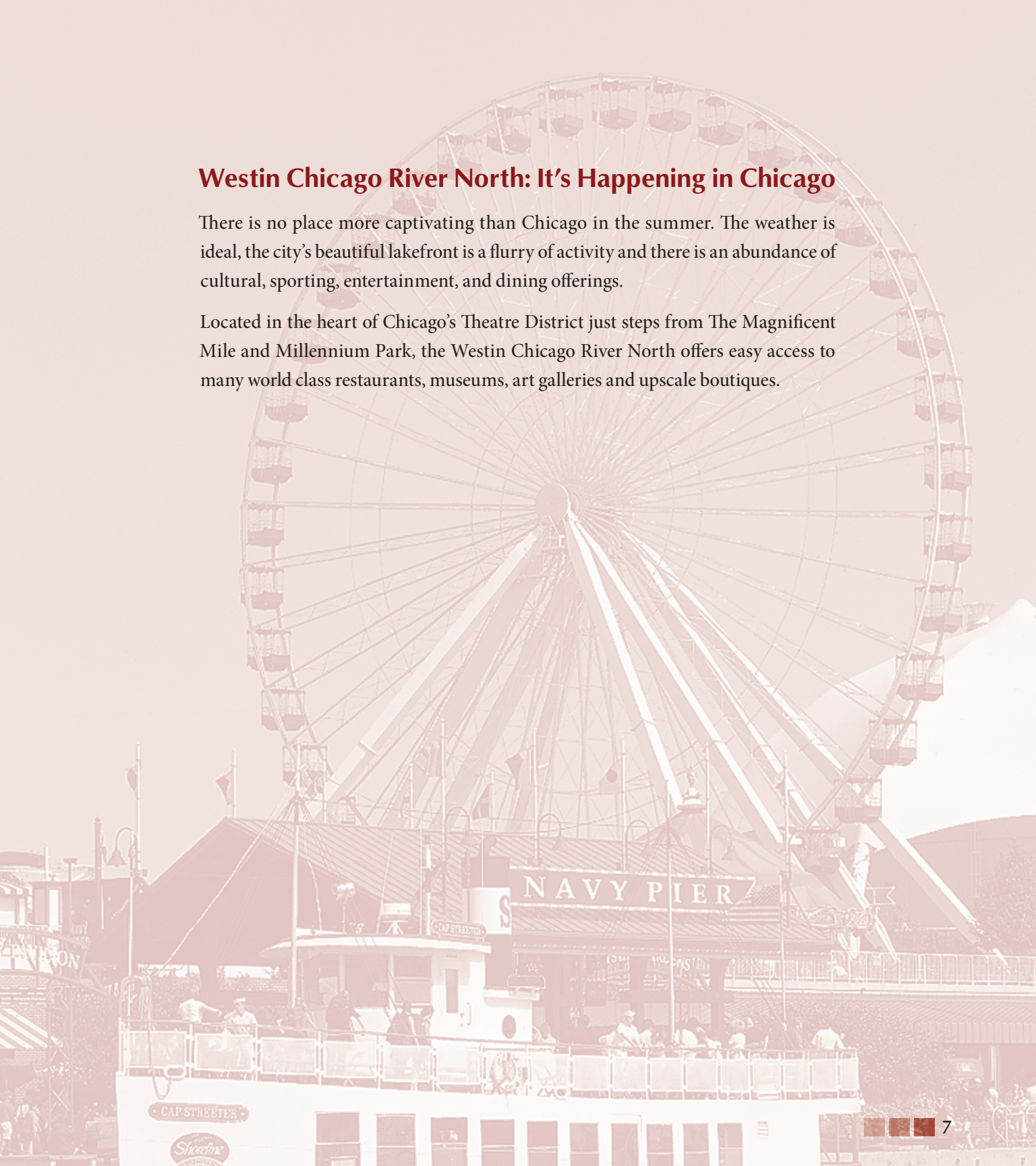
Prof. Corey Rayburn Yung joined the University of Kansas School of Law faculty as a visiting professor in the fall 2011 semester and accepted a full-time position in June 2012. Before he arrived at KU, Prof. Yung was an associate professor for the John Marshall Law School in Chicago, with research focused on criminal law, sex crimes, and judicial decision-making. Before he began his professorial career, he served as an associate for Shearman & Sterling in New York and spent two years clerking for the Hon. Michael J. Melloy of the U.S. Court of Appeals for the Eighth Circuit. He earned a J.D. from the University of Virginia

School of Law and a B.A. from the University of Iowa.

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Fax 312.795.0748
Online www.nfje.net

Contact Information

First Name _____ Middle Initial _____ Last Name _____

Preferred Name _____ Title _____

Court _____

Street (Business) _____ Suite _____

City _____ State _____ Zip Code _____

Telephone (Business) _____ Fax _____ E-mail (required) _____

Will a spouse or guest be traveling with you? Yes No Spouse/guest name _____

Tenth Anniversary Dinner I will attend Spouse/guest will attend

Trump International Hotel & Tower Chicago

401 N. Wabash Avenue, Chicago, Illinois 60611

Hotel and Travel Arrangements

This program has limited attendance. Registration is on a first-come, first-served basis. Once NFJE receives your completed registration form, you will be sent an e-mail confirmation with instructions about making your hotel and travel reservations. Please note: If you do not receive an email confirmation within 48 hours, you will need to contact the NFJE directly. Please be advised you will need to secure your hotel reservations on or before June 18, 2014.

NFJE will pay for the cost of a classic room for the nights of Friday, July 18 and Saturday, July 19, 2014, as well as transportation costs (air, rail, ground) costs not to exceed \$500. When making your travel arrangements, please plan to arrive by 3:00 p.m., Friday, July 18. *If you would like to extend your stay at the hotel, you are welcome to do so at your own expense.*

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320 North Dearborn Street
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Fax: 312.527.2650
www.westin.com/ChicagoRiverNorth

Cancellations

If you must cancel your attendance, please do so at least three weeks prior to the event so a judge on the waiting list may attend. All cancellations must be received in writing via fax (312.252.0593) or email (tcaldwell@dri.org).

The Annual Judicial Symposium is a tuition-free program for state appellate court judges.

Transportation and hotel accommodations are provided at NFJE's expense.

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