

Fourteenth Annual Judicial Symposium

Judicial Excellence in the 21st Century

Presented by

NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

July 20–21, 2018
Loews Chicago Hotel
Chicago, Illinois



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, lawyers (as officers of the court) have an even keener interest in this.

It was with this in mind that DRI created the National Foundation for Judicial Excellence (NFJE) in 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 fourteen years, NFJE has successfully produced a first-rate symposium, hosting over 1,500 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:

- Tremendous faculty. Outstanding in their own right but their synergy creates a wealth of insight that is both informative and thought provoking.
- I was extremely impressed with the quality of the faculty and their discussion of the topics in a way useful to state appellate judges.
- 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 noblest search of today is the search for excellence.”

Lyndon B. Johnson, April 1964

The quest for excellence lasts a lifetime. Self-improvement is central to our better natures, personally and professionally. The theme of the 2018 NFJE Symposium is judicial excellence. Join over 150 of your fellow appellate judges from across the country in discussions about the noble quest to attain, and maintain, judicial excellence.

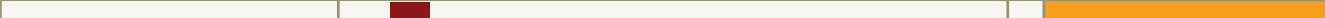
The twenty-first century has introduced a number of exciting changes to the judicial process and administration. For instance, technology has revolutionized case management by hyperlinking case briefs to legal authorities available on the internet. Press coverage of the judiciary is now available in real time. Public interest in judicial opinions is at an all-time high through blogs, Twitter feeds, and podcasts. And with 50 appellate systems to draw from, new ideas and innovations are sparking efforts to improve the operation of our state courts.

This year's symposium is designed to harness this energy. We are also thrilled to bring the hosts of *First Mondays*, the most popular podcast on the U.S. Supreme Court, to review and preview high-court precedent in a new, fast-paced format. We have assembled an outstanding faculty, who also will address other cutting-edge topics:

- Using technology to improve case management
- Innovations in judicial administration by American appellate courts
- Ways to improve oral argument
- Crafting opinions in cases with high public interest
- Selecting better cases for the discretionary docket
- How internet resources intersect with judicial ethics and decision making

The symposium begins Friday afternoon, July 20, with a keynote presentation by Georgetown Law Professor Randy Barnett, one of America's foremost constitutional law scholars. The symposium continues on Saturday, July 21, with discussions by appellate judges and renowned scholars on judicial administration and the process of judging.

Please join us at the 2018 NFJE Symposium as we explore various ways to attain judicial excellence.



Schedule of Events

Friday, July 20

- 4:00–5:00 p.m. Registration
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- 5:00–6:00 p.m. *Keynote*
Professor Randy E. Barnett, *Georgetown University Law Center, Washington, D.C.*
-
- 6:00–7:15 p.m. Welcome Reception
-
- 7:30 p.m. Dine-Arounds
Join colleagues and friends at selected restaurants for dinner (on your own). Please check your registration confirmation for the link to sign up.

Saturday, July 21

- 7:30–8:15 a.m. Continental Breakfast
-
- 8:15–8:30 a.m. *Welcome and Introductions*
Robert W. Shively, NFJE President
Scott Burnett Smith, 2018 Symposium Program Chair
-
- 8:30–9:10 a.m. *Using Technology to Improve Case Preparation*
The U.S. Court of Appeals for the Fifth Circuit developed the federal courts’ pilot project on using technology to improve case preparation and docket management. The developer of the Fifth Circuit’s software will explain how the Briefcase app automatically hyperlinks factual and case citations in every brief and allows judges to access case files and even enter orders from their smart phones.
Kenneth Russo, *U.S. Court of Appeals for the Fifth Circuit, New Orleans, LA*
-
- 9:10–9:30 a.m. Break
-
- 9:30–10:40 a.m. *Best Practices for Judicial Administration, or What Is the Best New Idea that Your Court Has Adopted in the Last Five Years?* (breakout table discussions)
This panel will explore best practices being utilized in state and federal courts that address the challenges of judicial administration. They will discuss new and emerging strategies for improving civil case management to promote the adjudication of matters in a speedy, inexpensive, and fair way. The audience members will then engage in a breakout discussion and share their experiences and ideas with the panel through an “open mic” session.
Moderator | Brittany M. Schultz, *Ford Motor Company, Dearborn, MI*
The Honorable Jerome B. Abrams, *Dakota County District Court, First District, Hastings, MN*
Professor Linda Sandstrom Simard, *Suffolk University Law School, Boston, MA*
-
- 10:40–11:30 a.m. *How to Improve Oral Argument*
The value of oral argument is increasingly questioned in an era of exploding dockets, yet its importance to achieving a just result may actually be greater than ever before. Our panel will examine the hidden social forces that can affect oral argument and various ways that appellate courts can enhance the quality of oral argument.

Moderator | Michael B. King, *Carney Badley Spellman PS, Seattle, WA*
David C. Frederick, *Kellogg Hansen Todd Figel & Frederick PLLC, Washington, D.C.*
Professor Tonja Jacobi, *Northwestern University Pritzker School of Law, Chicago, IL*

11:30 a.m.–1:00 p.m. Luncheon

1:00–2:00 p.m. *U.S. Supreme Court Update by the First Mondays Podcast*
First Mondays is an entertaining podcast about the U.S. Supreme Court, co-hosted by Ian Samuel and Dan Epps. Professor Epps and Professor Samuel will summarize significant decisions from October Term 2017 and preview the blockbusters on the docket for October Term 2018.
Professor Daniel Epps, *Washington University School of Law, St. Louis, MO*
Professor Ian Samuel, *Harvard Law School, Cambridge, MA*

2:00–2:20 p.m. Break

2:20–3:10 p.m. *Writing Opinions with an Eye to the Public and the Press*
Appellate written opinions have many consumers, including the litigants, the legal profession, the media, and the general public. Should judges seek to draft opinions that are easily understood by these diverse audiences, and if so, how is that best accomplished? This panel will discuss the benefits of writing opinions so that the public—usually through the press—can understand them, and techniques for satisfying the public’s demand for greater judicial transparency.
The Honorable Carlton W. Reeves, *U.S. District Court for the Southern District of Mississippi, Jackson, MS*
Zoe Tillman, *BuzzFeed News, Washington, D.C.*

3:10–3:50 p.m. *How to Select Better Cases for the Discretionary Docket*
Appellate judges exercise tremendous power through simply deciding which cases they will decide. Hear from one of Washington, D.C.’s most recognized U.S. Supreme Court practitioners regarding effective decision making for the discretionary docket.
John P. Elwood, *Vinson & Elkins LLP, Washington, D.C.*

3:50–4:45 p.m. *Whose Case Is It Anyway: Can Judges Conduct Independent Research to Resolve a Pending Controversy?*
Consider this paradigm: at trial and for appeal, the record for resolving a dispute is the one made by the parties. And parties are bound by the record on penalty of waiver and cannot go outside it. Does that paradigm bind trial and appellate courts as well, or are courts free to go “outside the record” in their decision making?
Moderator | Scott Burnett Smith, *Bradley Arant Boult Cummings LLP, Huntsville, AL*
The Honorable Raymond J. McKoski, *John Marshall Law School, Chicago, IL*

4:45 p.m. Adjourn

4:45–6:00 p.m. Closing Reception

6:00 p.m. Dinner on your own

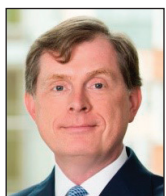
Speakers



Jerome B. Abrams is a Minnesota State district court judge who came to the bench in 2008, after 27 years of a busy civil trial practice. He is also on the board of directors of the National Center for State Courts. He has served on the Minnesota Civil Justice Reform Task Force and its predecessor group that recommended major changes in the civil justice system recently adopted. He also served as a member of the Conference of Chief Justices Civil Justice Improvements Committee and as the chair of that committee's Rules/Litigation Subcommittee. He is also an invited participant at the United Nations Judicial Integrity Initiative.



Randy E. Barnett is the Carmack Waterhouse Professor of Legal Theory at the Georgetown University Law Center, where he teaches constitutional law and contracts and is the director of the Georgetown Center for the Constitution. After graduating from Northwestern University and Harvard Law School, he tried many felony cases as a prosecutor in the Cook County States' Attorney's Office in Chicago. A recipient of a Guggenheim Fellowship in Constitutional Studies, Professor Barnett has been a visiting professor at Penn, Northwestern, and Harvard Law School. Professor Barnett's publications includes 12 books, more than one hundred articles and reviews, and numerous op-eds.



John P. Elwood is an appellate partner in the Washington, D.C., office of Vinson & Elkins LLP and adviser to the University of Virginia School of Law's Supreme Court Litigation Clinic. Mr. Elwood has argued nine cases in the U.S. Supreme Court and appeared before most federal courts of appeals.



Daniel Epps is an associate professor of law at Washington University Law School in St. Louis. A nationally recognized expert on the Supreme Court, Professor Epps is the co-host of *First Mondays*, a popular podcast that covers the Court's work on a weekly basis. He is an experienced Supreme Court litigator; most recently, he served as co-counsel for the defendant in *Ocasio v. United States*, 136 S. Ct. 1423 (2016), which addressed the scope of criminal conspiracy liability for public-sector extortion.



David C. Frederick is a partner with the firm of Kellogg Hansen Todd Figel & Frederick PLLC. Mr. Frederick practices principally in appellate courts. He has argued over 100 appeals, including 50 in the Supreme Court, in every U.S. court of appeals, and in five state supreme courts. Before the Supreme Court he has represented individuals, investors, immigrants, classes of consumers, farmers, Native Americans, small corporations, trade associations, large companies, several states, the United States, foreign governments, and the European Community.



Tonja Jacobi is a professor at Northwestern Pritzker Law School. She specializes in judicial behavior and strategy in public law, Supreme Court oral arguments, criminal procedure, and constitutional law. She has published in over 40 peer review and law review journals. Her current projects include an empirical study of Supreme Court oral arguments over time, a formal model of certiorari, and an experiment on understandings of police coercion.





Michael B. King is a principal of Carney Badley Spellman PS, in Seattle, where his practice focuses on appellate litigation. Mr. King has argued over 150 cases to full merits panels, and he has represented clients before state and federal appellate courts across the United States. Mr. King is a fellow of the American Academy of Appellate Lawyers, and a past chair of DRI's Appellate Advocacy Committee. He has spoken on appellate practice issues at conferences around the country.



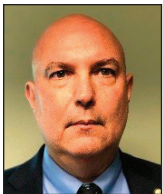
The Honorable Raymond J. McKoski is a retired Illinois trial judge. As an adjunct professor at the John Marshall Law School, he teaches Evidence and Jury Selection. He also serves on judicial ethics advisory committees for the ABA, National Center for State Courts, and Illinois Bar Association. He has authored a dozen law review articles on judicial and legal ethics. His book, *Judges in Street Clothes: Acting Ethically Off-the-Bench*, was released in the fall of 2017. He lectures on judicial ethics at state, national, and international conferences and law school symposia.



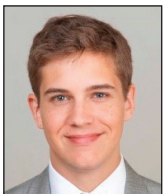
William F. Ray has practiced law with Watkins & Eager PLLC in Jackson, Mississippi, for over 30 years. Mr. Ray's practice is focused on commercial litigation and arbitration in the financial services industry. He is a member of NFJE Board of Directors, served as NFJE chair of development, and is the 2018 NFJE Symposium program vice chair.



The Honorable Carlton W. Reeves is a graduate of the University of Virginia School of Law. He served as a law clerk for the first African-American judge to serve on the Supreme Court of Mississippi. After working in private practice and for the U.S. Attorney's Office, he was appointed by President Obama to the U.S. District Court for the Southern District of Mississippi in 2010. His notable decisions include judgments striking Mississippi's ban on same-sex marriage, preventing Mississippi's Religious Liberty Accommodations Act from going into effect, and dismissing a lawsuit seeking to alter the Mississippi state flag, which contains the Stars and Bars emblem of the Confederacy.



Kenneth Russo is the chief of technology for the United States Court of Appeals for the Fifth Circuit. Winner of the Director's Award for Technical Leadership in 1998 for his efforts in bringing the internet to the federal judiciary, he has been providing custom software solutions to his court and the rest of the federal judiciary for 28 years.



Ian Samuel is the Climenko Fellow and Lecturer on Law at Harvard Law School. His areas of scholarly interest focus on cyberlaw and security, especially as they intersect with criminal law and procedure, constitutional law, and intellectual property. Mr. Samuel formerly served in the United States Department of Justice, in the Office of the Solicitor General and on the appellate staff of the Civil Division. He was lead counsel in *Lowenstein v. Department of Homeland Security*, 626 F.3d 678 (2d Cir. 2010), a FOIA case concerning "Operation Front Line"—a program designed to identify and prevent terrorist attacks targeting the 2004 presidential election and inauguration.



Brittany M. Schultz is an attorney in Ford Motor Company’s Office of the General Counsel. She is in Ford’s litigation and regulatory group. She handles product liability, intellectual property, international, credit, and consumer litigation, as well as discovery and government investigations. Ms. Schultz joined Ford in 2015, after a career as a trial lawyer and partner at the Dykema firm in Bloomfield Hills, Michigan. She has tried numerous cases to verdict. Ms. Schultz attended the University of Michigan–Ann Arbor for her undergraduate studies and earned a law degree from Wayne State University Law School.



Robert W. Shively is the founding member of Shively Law Group, PC, LLO, in Lincoln, Nebraska. He is the President of the NFJE, and is a past Director of DRI. Mr. Shively is a member of FDCC, ADTA, and IADC, and has held numerous leadership positions in defense organizations, bar associations, and community groups. His practice focuses on the defense of personal injury and wrongful death cases, including motor vehicle, premises liability, and product liability matters. Mr. Shively also has an active mediation practice, and is a member of the National Academy of Distinguished Neutrals.



Linda Sandstrom Simard, professor and former associate dean of Suffolk University Law School, is an active participant in national, international, and state civil procedure organizations. Professor Simard has played an active role in the Association of American Law Schools, having been elected chair of the civil procedure section and serving as a member of the executive committee. She was appointed to the Civil Justice Improvements Committee by the Conference of Chief Justices, a committee comprised of leaders of the bench, bar, and academy, to draft a national plan to reduce cost and delay in state courts around the country. Professor Simard’s teaching and scholarship focus on civil procedure and federal courts.



Scott Burnett Smith is the founder and chair of the appellate litigation group at Bradley Arant Boult Cummings. He is a fellow of the American Academy of Appellate Lawyers. He has been involved in over 190 appeals to the U.S. Courts of Appeals for the Third, Fourth, Fifth, Sixth, Ninth, Tenth, Eleventh, D.C., and Federal Circuits, the Alabama Supreme Court and Court of Civil Appeals, the Arkansas Supreme Court, the Georgia Supreme Court and Court of Appeals, the Minnesota Supreme Court and Court of Appeals, and the Nevada Supreme Court. Mr. Smith lives and practices in Huntsville, Alabama, where he was born and raised. He is the 2018 NFJE Symposium program chair.

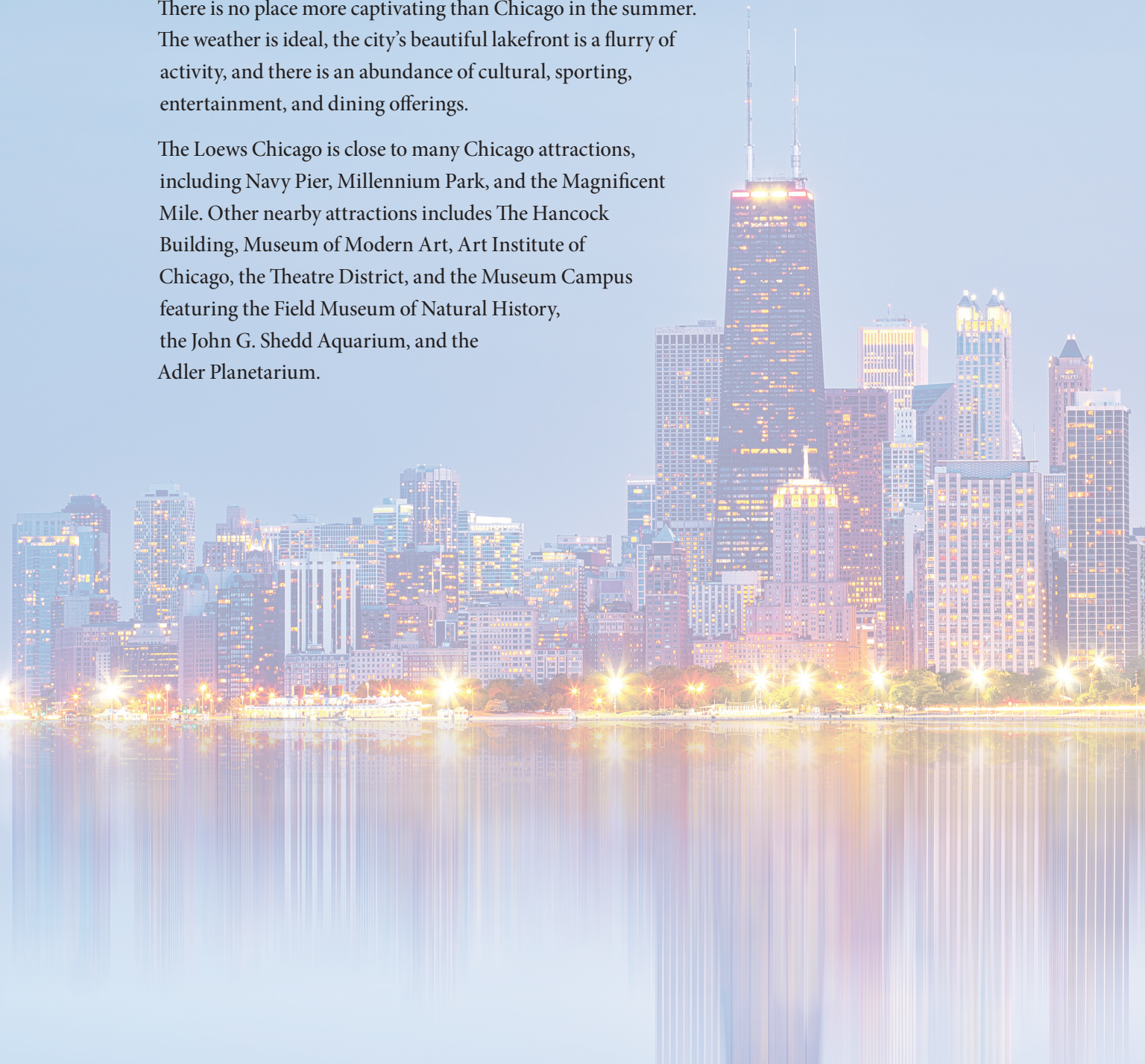


Zoe Tillman is a reporter for BuzzFeed News. Her beat includes litigation, administration of justice issues, judicial nominations, and the Justice Department. She previously worked as a reporter for the *National Law Journal*, where she also covered courts.

Loews Chicago: It's Happening in Chicago

There is no place more captivating than Chicago in the summer. The weather is ideal, the city's beautiful lakefront is a flurry of activity, and there is an abundance of cultural, sporting, entertainment, and dining offerings.

The Loews Chicago is close to many Chicago attractions, including Navy Pier, Millennium Park, and the Magnificent Mile. Other nearby attractions includes The Hancock Building, Museum of Modern Art, Art Institute of Chicago, the Theatre District, and the Museum Campus featuring the Field Museum of Natural History, the John G. Shedd Aquarium, and the Adler Planetarium.



Registration

To register:

Phone 312.698.6230

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 If yes, please indicate his/her name _____

Luncheon I will attend Spouse/guest will attend

Hotel and Travel Arrangements

This program has limited attendance. Registration is on a first-come, first-served basis and is restricted to current members of state appellate courts. 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 20, 2018.

NFJE will pay for the cost of a standard room for the nights of Friday, July 20 and Saturday, July 21, as well as transportation costs (air, rail, ground) not to exceed \$500. When making your travel arrangements, please plan to arrive by 3:00 p.m., Friday, July 20. *If you would like to extend your stay at the hotel, you are welcome to do so at your own expense.*

Loews Chicago Hotel
455 North Park Drive
Chicago, Illinois 60611
Phone: 312.840.6600
www.loewshotels.com/chicago-downtown

Cancellations

If you must cancel your attendance, please do so at least three weeks before the symposium, so a judge on the waiting list may attend. All cancellations must be received in writing via fax (312.795.0748) or email (thiggins@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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National Foundation for Judicial Excellence

55 West Monroe Street, Suite 2000

Chicago, Illinois 60603

Phone: 312.698.6224

Fax: 312.795.0748

Email: nfje@nfje.net

Website: www.nfje.net