

Fifteenth Annual Judicial Symposium

The Science of Deciding:

*Using Nobel Prize-Winning Social Science to Understand, Evaluate,
and Improve Decisions of Appellate Courts*

Presented by

NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

July 19–20, 2019
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 15 years, the NFJE has successfully produced a first-rate symposium, hosting over 1,800 appellate court judges from over 40 states.

Judges' responses to the programs have been overwhelmingly enthusiastic:

- *"This is one of the best organized and informative seminars that I have ever attended. Keep up the good work."*
- *"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 was the best presentation I have ever attended."*
- *"It was perfect."*
- *"Best program I have ever attended."*
- *"I don't like to say that 'everything' was great—but everything was great."*
- *"It's already the best judicial CLE."*



This Year's Symposium

The Science of Deciding: Using Nobel Prize-Winning Social Science to Understand, Evaluate, and Improve Decisions of Appellate Courts

From the groundbreaking research of behavioral economists Amos Tversky and Nobel laureate Daniel Kahneman popularized in Michael Lewis's *The Undoing Project*, to twenty-first century jury science research, to *Freakonomics*, psychologists, economists, and other behavioral scientists have learned that human beings are—at least sometimes—far less rational than they seem. This year's NFJE symposium will provide fascinating insights into the human mind's decision-making processes and abilities—and the subconscious shortcuts that drive decisions. The audience of appellate judges will be invited to participate in real-time tests and demonstrations of “the science of deciding.” Leading experts on persuasion and decision-making analysis will equip the audience with the tools and terminology to apply advanced social science to review trial court decisions, as well as to evaluate their own courts' deliberations and outcomes more thoroughly.

This year's program will include a joint session with the DRI Appellate Advocacy Seminar. On Friday afternoon, before the NFJE keynote address, the DRI Appellate Advocacy Committee and NFJE will present a joint session titled *Judicial Ethics: Disqualification and Recusal*, with James J. Alfini of the South Texas College of Law, Judge Eliot Prescott of the Connecticut Court of Appeals, and Judge Beth Andrus of the Washington Court of Appeals.

Please join us with your peers from state appellate courts throughout the country at the 2019 NFJE Symposium.



The Science of Deciding: *Using Nobel Prize-Winning Social Science to Understand, Evaluate, and Improve Decisions of Appellate Courts*

Schedule of Events

Friday, July 19, 2019

- 3:00–4:00 p.m. **Registration**
-
- 4:00–5:00 p.m. **Judicial Ethics: Disqualification and Recusal**
This ethics presentation will focus on what practitioners should know about judicial disqualification and recusal on appeal, including when to consider seeking a recusal. The panelists will address the applicable standards and procedures primarily through discussion of real and hypothetical scenarios.
Moderator | Jason W. Anderson, Carney Badley Spellman PS, Seattle, WA
James J. Alfini, South Texas College of Law, Houston, TX
The Honorable Beth M. Andrus, Washington Court of Appeals, Seattle, WA
The Honorable Eliot D. Prescott, Connecticut Court of Appeals, Hartford, CT
-
- 5:00–6:00 p.m. **Keynote: The Science of Deciding**
From *homo rationalis* to heuristics: hear how modern social science and behavioral economic studies have changed our understanding of logic, reasoning, and human decision making, including our understanding of judicial decisions.
Professor Jeffrey J. Rachlinski, JD, PhD, Cornell Law School, Ithaca, NY
-
- 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 20, 2019

- 7:30–8:15 a.m. **Continental Breakfast**
-
- 8:15–8:30 a.m. **Welcome and Introductions**
L. Gino Marchetti, NFJE President
William F. Ray, 2019 Symposium Program Chair
-
- 8:30–10:00 a.m. **Mind Games, Part 1: The Audience Decides**
Our audience of experienced appellate judges will be invited to participate in decisions, evaluations, and observations with real-time results evaluated and explained by a stellar team of social scientists. These experts in the field of decision-making science, together with other symposium faculty, will present real-world examples of decisions including appellate review, and then demonstrate through audience participation the effect of cognitive processes and logic patterns of decision-making, in real time.
Daniel Wolfe, JD, PhD, DecisionQuest, Chicago, IL
John D. Gilleland, PhD, DecisionQuest, Chicago, IL
Andrea Krebel, PhD, DecisionQuest, Chicago, IL

10:00–10:30 a.m.	Break
10:30–11:30 a.m.	Mind Games, Part 2: Evaluating the Audience Responses Professor Rachlinski and Dr. Wolfe will evaluate the results of this morning’s real-time audience participation session, including comments, questions, and input from the audience. Professor Jeffrey J. Rachlinski, JD, PhD, Cornell Law School, Ithaca, NY Daniel Wolfe, JD, PhD, DecisionQuest, Chicago, IL
11:30 a.m.–12:50 p.m.	Luncheon
1:00–2:00 p.m.	Emotion, Angry Judges, and “Dispassionate” Decision-Making Professor Maroney will present her groundbreaking scholarship in the area of judicial emotion, the concept of “dispassionate” decision making, and whether emotions—and even anger—have a valuable role in the judicial process. Judge Mann will offer initial reflections from a judicial point of view before the floor is opened for questions. Moderator Michael B. King, Carney Badley Spellman PS, Seattle, WA Professor Terry A. Maroney, JD, Vanderbilt University Law School, Nashville, TN The Honorable David S. Mann, Washington Court of Appeals, Seattle, WA
2:00–3:00 p.m.	Bracketing, Group Dynamics, and the “Dangerous Shift”: Does Interaction and Collaboration Improve—or Damage—Decision-Making? Is a decision from a three-judge panel more “reasoned” than a decision from a single judge? Are decisions from courts comprised of seven or more judges or courts sitting en banc “better” than those from smaller panels? Does greater collaboration always occur with larger panels and, if so, does it always lead to better results? Moderator Mark A. Fahleson, Remboldt Ludtke LLP, Lincoln, Nebraska The Honorable William B. Cassel, Nebraska Supreme Court, Lincoln, NE Professor Chad M. Oldfather, JD, Marquette University School of Law, Milwaukee, WI
3:00–3:15 p.m.	Break
3:15–4:05 p.m.	Judicial Panel Discussion: A View from the Bench of the Social Science and the Law Moderator James C. Martin, Reed Smith LLP, Pittsburgh, PA The Honorable Bernice B. Donald, U.S. Court of Appeals for the Sixth Circuit, Memphis, TN The Honorable Michael B. Hyman, Illinois Court of Appeals, Chicago, IL The Honorable Andrew J. Wistrich (Ret.), U.S. District Court for the Central District of California, Los Angeles, CA
4:05–4:45 p.m.	Closing Session: Open Discussion with the Faculty and the Audience The faculty and audience will be invited to participate in open-mic discussions about using the lessons of the symposium to promote excellence in the judiciary and justice system.
4:45–5:00 p.m.	Closing Comments and Adjourn Dan D. Kohane, NFJE Vice President
5:00 p.m.	Closing Reception
6:00 p.m.	Dinner on Your Own

Speakers



Tillman J. Breckenridge is the immediate past chair of the DRI Appellate Advocacy Committee. He has represented companies, individuals, and governments in the Supreme Court of the United States, as well as in every federal circuit and several state appellate courts. Mr. Breckenridge is also the St. George Tucker Adjunct Professor of Law at William & Mary Law School, where he teaches appellate advocacy and manages the school's Appellate and Supreme Court Clinic. He is a member of NFJE Board of Directors and is the 2019 NFJE Symposium vice program chair.



The Honorable William B. Cassel of O'Neill, Nebraska, is one of the seven members of the Nebraska Supreme Court. He has served for seven years on that court, after serving eight years on the Nebraska Court of Appeals, and twelve years as a general jurisdiction trial judge. Judge Cassel is a recognized leader in the use of technology, and has chaired the Nebraska Supreme Court's Committee on Technology since 2004.



The Honorable Bernice B. Donald was appointed to the U.S. Court of Appeals for the Sixth Circuit in 2011. Prior to service on the U.S. Court of Appeals, she served on the U.S. District Court for more than 15 years. She received her law degree from the University of Memphis Cecil C. Humphreys School of Law and has obtained a Masters of Judicial Studies from Duke University School of Law. She has been active in the American Bar Association, the National Association of Women Judges, and her state and local bar associations. Judge Donald is a frequent lecturer at judicial seminars.



Mark A. Fahleson is a partner with Rembolt Ludtke LLP in Lincoln, Nebraska, where he practices management-side employment and labor law. He also serves as an adjunct professor at the University of Nebraska College of Law teaching Employment Law and Employment Discrimination. Mr. Fahleson is a past chair of the DRI Employment and Labor Law Committee and past member of the DRI Law Institute.



John D. Gilleland, PhD, is vice president of DecisionQuest. He obtained his PhD in Social Psychology from the University of California, Santa Barbara. He has extensive knowledge in group decision-making processes, and is an expert on research methodology and attributional reasoning. He has been widely published on a variety of topics relating to jurors and jury research and is an active member of the American Psychological Association, the American Bar Association, and the American Society of Trial Consultants.



The Honorable Michael B. Hyman is a justice on the Illinois Appellate Court, First District. Justice Hyman is a former president of the Illinois Judges Association, the Chicago Bar Association, and the Decalogue Society of Lawyers. He also is a frequent lecturer, speaker, and writer on subjects ranging from law to Abraham Lincoln. He currently has a quarterly column in the *Chicago Lawyer* magazine, "Judging History" and in the *Illinois Bar Journal*, "Judging Your Writing." He has been editor-in-chief of the CBA's flagship magazine, the *CBA Record*, for more than 20 years, and writes a column for it as well, "Editor's Briefcase."





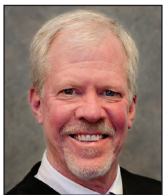
Michael B. King is a principal of Carney Badley Spellman PS, in Seattle, where his practice focuses on appellate litigation. Mr. King has argued over 160 cases to full merits panels, and has represented clients before state and federal appellate courts across the United States. Mr. King is a fellow of the American Academy of Appellate Lawyers, and a past chair of the DRI Appellate Advocacy Committee. He has spoken on appellate practice issues at conferences around the country.



Dan D. Kohane is a senior member of Hurwitz & Fine PC, in Buffalo, New York, and chair of the firm's Insurance Coverage and Extra Contractual Practice Team. He is a founding fellow of the American College of Coverage Counsel, vice president of the National Foundation for Judicial Excellence, past president of the Federation of Defense & Corporate Counsel, and former member of the DRI Board of Directors.



Andrea Krebel, PhD, is a senior research associate of DecisionQuest. Dr. Krebel obtained her PhD in Applied Social Psychology from Loyola University Chicago. She applies social science research methods in conducting litigation focus groups, and also analyzes qualitative data and performs statistical analyses on quantitative data to provide insight and recommendations to clients. Her research interests and experience include small group decision making and the jury decision-making process.



The Honorable David S. Mann is currently serving as the acting chief judge for Division I of the Washington State Court of Appeals and is a member of the Washington Board of Judicial Administration. For 26 years before joining the court, Judge Mann was a trial and appellate lawyer with a practice focused on state and federal environmental law, chemical exposure and trespass, land-use, property disputes, and administrative law. In 2010, Judge Mann argued and prevailed before the U.S. Supreme Court on behalf of a local community activist seeking records from the U.S. Navy under the Freedom of Information Act.



L. Gino Marchetti, Jr., was born in Nashville, Tennessee, and was admitted to the Tennessee bar in 1977. He received his undergraduate degree from Vanderbilt University and JD from the University of Tennessee. He is the managing member of Taylor Pigue Marchetti & Blair PLLC. His primary areas of practice include commercial and business litigation, employment law, bankruptcy and creditors rights, and tax-exempt entities. He currently serves as the president of the National Foundation for Judicial Excellence and served as president of Lawyers for Civil Justice (2011–12) and the International Association of Defense Counsel (2007–08).



James C. Martin is a partner in Reed Smith LLP, whose practice emphasizes appeals and complex litigation. He has briefed and argued hundreds of appeals in federal and state courts across the country. He is a fellow and past president of the American Academy of Appellate Lawyers and a member and former president of the California Academy of Appellate Lawyers. Mr. Martin has written widely on appellate and various substantive legal topics, including in CEB's *Civil Appellate Practice Manual*, PBI's *Third Circuit Appellate Practice Manual*, and CEB's *California Expert Witness Guide*.



Terry A. Maroney serves as professor of law and professor of medicine, health and society at Vanderbilt University, where she has been selected as a Chancellor's Faculty Fellow. Her research focuses on the role of emotion in law. As a fellow of the Center for Advanced Study in Behavioral Sciences at Stanford University, she pursued a theoretical and empirical investigation on the role of emotion in judicial behavior and decision-making; she continues that work at Vanderbilt University. Her scholarship on judges' emotions has been widely read by both judges and scholars of judicial behavior. Professor Maroney's work relies heavily on interdisciplinary research, particularly psychology.



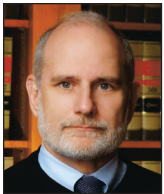
Chad M. Oldfather is professor of law at Marquette University Law School. He teaches Constitutional Law, Criminal Law, Evidence, and State Constitutional Law, and conducts seminars on Constitutional Theory, as well as Judging and the Judicial Process. His scholarship relates primarily to the judicial process, and his current projects include articles examining the parallels between judges in law and their counterparts in aesthetic sports such as gymnastics and figure skating, a consideration of the U.S. Supreme Court and celebrity culture, and an exploration of the extent to which the federal judicial role is a proper model for state court judges.



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 2019 NFJE Symposium program chair.



Jeffrey J. Rachlinski, PhD, is an innovator both in administrative law and social psychology and the law. Since joining the Cornell Law School faculty in 1994, less than a year after receiving a PhD in Psychology and a JD from Stanford University, Professor Rachlinski has offered new perspectives on the influence of human psychology on decision-making by courts, administrative agencies, and regulated communities. Professor Rachlinski's unique analytical viewpoint has led him to explore varied topics in legal practice, such as litigation strategies, punitive damages, administrative law, environmental law, and product liability.



The Honorable Andrew J. Wistrich was a magistrate judge of the United States District Court for the Central District of California. Subsequently, he was a visiting fellow at the Institute of Advanced Legal Studies of the University of London. Judge Wistrich received undergraduate degrees in philosophy and political science from the University of California at Berkeley. Judge Wistrich is the author or co-author of more than two dozen articles and book chapters regarding civil procedure and judicial decision making. He received his law degree from the University of Chicago.



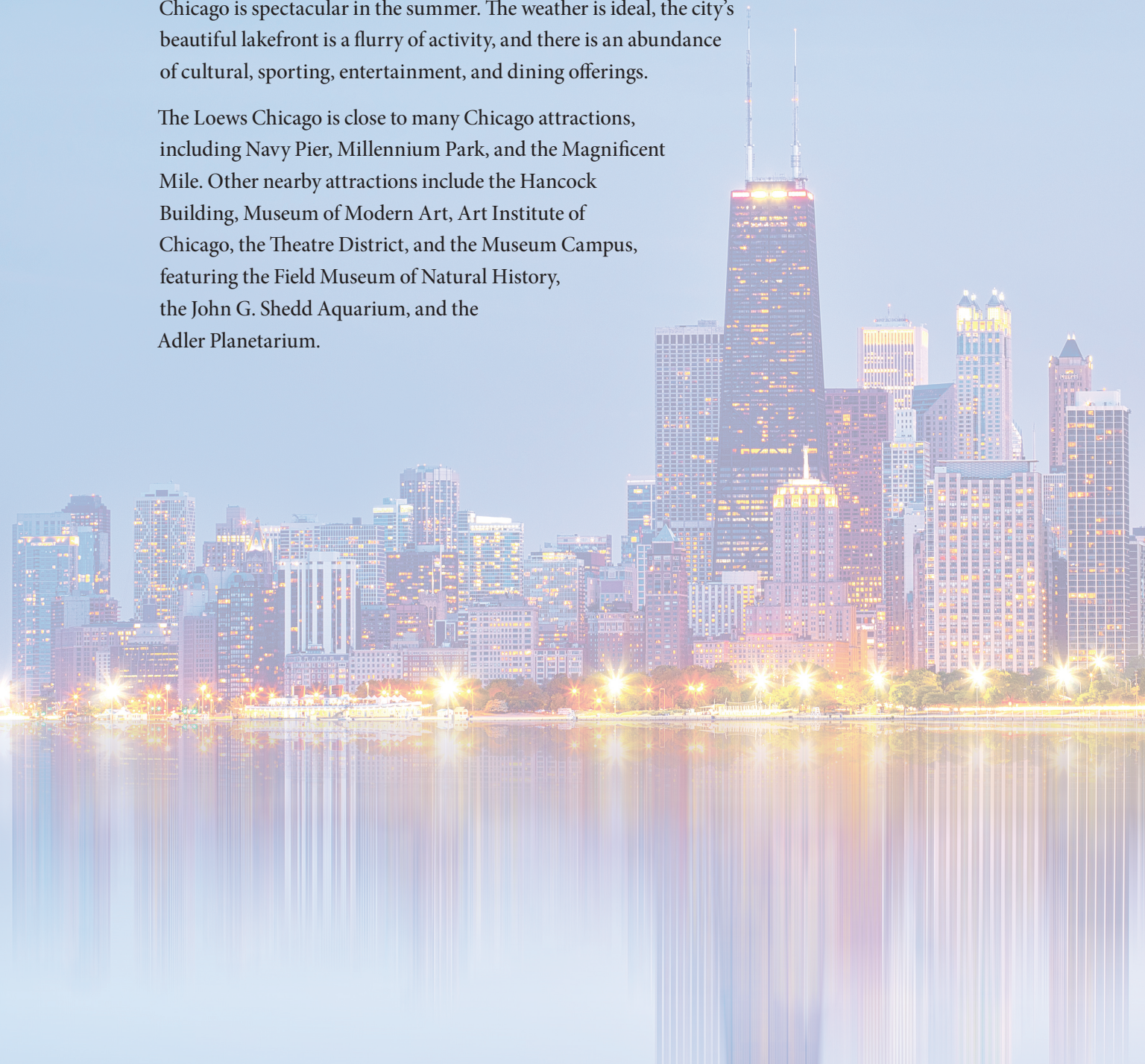
Daniel Wolfe, PhD, is senior vice president of DecisionQuest, a trial consulting and strategic communications firm. He has been in the national spotlight on numerous occasions for his work on high-profile criminal and civil cases involving celebrities and professional athletes. Dr. Wolfe received his JD, and his PhD in law and psychology, from the University of Nebraska. His professional affiliations include the American Psychological Association; the American Bar Association; the American Psychology-Law Society; and the American Society of Trial Consultants, of which he is past president.



Loews Chicago: It's Happening in Chicago

Chicago is spectacular 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 include 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. 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 19, 2019.

NFJE will pay for the cost of a classic room for the nights of Friday, July 19 and Saturday, July 20, 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 19. 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
312.840.6600
www.loewshotels.com/chicago-downtown

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 (312.795.0748) 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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