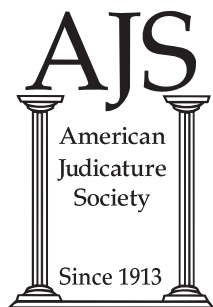


A STUDY OF STATE JUDICIAL DISCIPLINE SANCTIONS

BY CYNTHIA GRAY



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INTRODUCTION

After determining that a judge has committed misconduct, the state judicial conduct commission and supreme court must “address the more difficult task of determining an appropriate sanction.” *In re Krepela*, 628 N.W.2d 262, 271 (Nebraska 2001). Decisions regarding sanctions have been described as “institutional and collective judgment calls,” resting on an assessment of the individual facts of each case, as measured against the code of judicial conduct and the prior precedents. *In the Matter of Duckman*, 699 N.E.2d 872, 878 (New York 1998) (citations omitted). Choosing the proper sanction in judicial discipline proceedings “is an art, not a science, and turns on the facts of the case at bar.” *Furey v. Commission on Judicial Performance*, 743 P.2d 919, 930 (California 1987).

The question of the appropriate sanction in a judicial discipline case presents special challenges of fairness, consistency, and accountability because there is a wide range of possible judicial misconduct – from taking a bribe to accepting an award at a fund-raising dinner for a charity – and a wide range of possible sanctions – from informal adjustments and private reprimands to removal. The problem of making the sanction fit the misconduct is exacerbated in judicial discipline cases because most states have at most one or two formal cases a year, giving the disciplinary authorities little precedent to use as guidance, a “fortunate circumstance” in serious cases that nonetheless complicates the determination. *In the Matter of Drury*, 602 N.E.2d 1000, 1010 (Indiana 1992).

Although it is probably impossible to change the sanction determination from an art to a science, this study attempts to help commissions and courts bring more structure to the decision and remove some of the guesswork by analyzing cases and reporting the factors that have been identified as relevant to imposing standards in judicial discipline cases. The study begins with a brief overview of the state judicial discipline systems, supplemented by tables that identify the sanctions available in each state. Next, all cases (approximately 110) from 1990 through 2001 in which judges have been removed from office as a result of judicial discipline proceed-

ings are described, categorized by the type of misconduct at issue. The study focuses on removal cases because the sanction decision is usually more thoroughly explained when a judge is being removed than when a reprimand or censure is being imposed.

The discussion of removal from judicial office also covers provisions in some states for automatic removal of a judge following final conviction for certain crimes and the collateral consequences of removal such as ineligibility for further service and disbarment. The possible reasons for the significantly larger number of judges removed in New York compared to other states and the option of suspension without pay are also examined.

The study then considers the cases in which there has been disagreement about the appropriate sanction, either between the commission and the state supreme court or among the members of the supreme court as reflected in dissents. The study also catalogs the factors supreme courts and conduct commissions have listed as relevant in determining the appropriate sanction. The study then analyzes these cases to discuss issues such as the importance of the judge’s reputation in the sanction decision and the role remorse plays. Finally, the study makes recommendations for states to consider in pursuing the goal of fair, effective judicial discipline.

OVERVIEW OF JUDICIAL DISCIPLINE

Each of the 50 states and the District of Columbia has established a judicial conduct organization charged with investigating and prosecuting complaints against judicial officers. Depending on the state, the judicial conduct organization is called a commission, board, council, court, or committee, and is described by terms such as inquiry, discipline, qualifications, disability, performance, review, tenure, retirement, removal, responsibility, standards, advisory, fitness, investigation, or supervisory. This study will use the term “judicial conduct commission” when referring generally to the organizations. For more information on the state judicial discipline process, see Gray, *How Judicial Conduct Commissions Work* (AJS 1999).

Most complaints filed with judicial conduct commissions — generally more than 80% — are dismissed, many because they claim that the judge made an incorrect finding of fact, misapplied the law, or abused his or her discretion, which is usually a matter not for discipline but for appellate remedy. Many other complaints are resolved each year through informal or private remedies. Each year, however, approximately 100 judges are publicly sanctioned in state judicial discipline proceedings. See discussion at page 3, *infra*.

THE PURPOSE OF JUDICIAL DISCIPLINE

Supreme courts have repeatedly stated that the purpose of discipline in judicial conduct cases is not to punish a judge. See, e.g., *In re Peck*, 867 P.2d 853, 857 (Arizona 1994); *Adams v. Commission on Judicial Performance*, 897 P.2d 544, 569 (California 1995); *Summe v. Judicial Retirement and Removal Commission*, 947 S.W.2d 42, 48 (Kentucky 1997); *In re Huckaby*, 656 So. 2d 292, 300 (Louisiana 1995); *In the Matter of Seitz*, 495 N.W.2d 559, 300 (Michigan 1993); *In the Matter of Seaman*, 627 A.2d 106, 121 (New Jersey 1993); *In the Matter of Duckman*, 699 N.E.2d 872, 878 (New York 1998); *In the Matter of Crawford*, 629 N.W.2d 1, 10 (Wisconsin, 2001). Instead, the general purpose of judicial discipline

proceedings is preserving the integrity of the judicial system and public confidence in the system and, when necessary, safeguarding the bench and the public from those who are unfit. More specific reasons include:

- Impressing upon the judge the severity and significance of the misconduct (*In re Hathaway*, 630 N.W.2d 850, 861 (Michigan 2001)).
- Deterring similar conduct by the judge and others (*In re Peck*, 867 P.2d 853, 857 (Arizona 1994); *In re Hathaway*, 630 N.W.2d 850, 857 (Michigan 2001); *In re Krepela*, 628 N.E.2d 262, 271 (Nebraska 2001)).
- Reassuring the public that judicial misconduct is not tolerated or condoned (*In the Matter of Seaman*, 627 A.2d 106, 121 (New Jersey 1993); *In re Krepela*, 628 N.E.2d 262, 271 (Nebraska 2001)).
- Fostering public confidence in the self-policing system (*In re Peck*, 867 P.2d 853, 857 (Arizona 1994)).

THE STANDARD FOR REMOVAL

“Removal from office is not the price exacted for every incident of judicial misconduct.” *In re Lowery*, 999 S.W.2d 639, 661 (Special Court of Review Appointed by Texas Supreme Court 1998). Courts frequently reiterate that a judge need not “fear removal after every misstep. It would be unreasonable and unfair to expect every judge in our courts to be without occasional error or misjudgment, perfection not being typical of the human condition.” *In re Baber*, 847 S.W.2d 800, 805 (Missouri 1993). Courts do not “lightly remove someone from judicial office” (*Inquiry Concerning Graham*, 620 So. 2d 1273, 1276 (Florida 1993)) or remove a judge for “mere error[s] in judicial activity or professional activities” (*In the Matter of Seaman*, 627 A.2d 106, 122 (New Jersey 1993)) or an exercise of poor judgment, even extremely poor judgment (*In the Matter of Mazzei*, 618 N.E.2d 123, 126 (New York 1993)). Removal is a drastic measure, “generally reserved for very serious or repeated violations of the code” (*In the Matter of Crawford*, 629 N.W.2d 1, 11 (Wisconsin 2001)); for those instances where the conduct is “truly egregious” (*In the Matter of Mazzei*, 618 N.E.2d 123, 126 (New York 1993)); or for “misconduct flagrant and severe” (*In the Matter of Williams*, 777 A.2d 323, 330 (New Jersey 2001)).

REMOVING AN ELECTED JUDGE

Courts acknowledge that removal of “a duly elected member of the judiciary is a serious undertaking which should only be borne with the utmost care so as not to unduly disrupt the public’s choice for service in the judiciary.” *In re Huckaby*, 656 So. 2d 292, 295 (Louisiana 1995). The “power to remove those holding elected constitutional office should be used only in extreme circumstances” (*In re Peck*, 867 P.2d 853, 861 (Arizona 1994)) and the people’s choice “should not be ‘lightly set aside’” and removal should be “sparingly applied.” *In the Matter of Turco*, 970 P.2d 731, 744 (Washington 1999) (citations omitted).

However, the state supreme courts also conclude that their decision on a judge’s fitness for office is dispositive regardless whether the judge has been elected. Where the state’s constitution creates a removal process, “the electorate itself has approved this limitation on its ability to elect the judge of its choosing.” *In re Lowery*, 999 S.W.2d 639, 662 (Special Court of Review Appointed by Texas Supreme Court 1998). “Judicial misconduct deemed so severe by an appropriate review tribunal as to require removal or prohibition from holding judicial office” does not disenfranchise the electorate. *Id.* A constitutional removal process vests the supreme court “with the duty to preserve the integrity of the bench for the benefit of that same public by ensuring that all who don the black robe and serve as ministers of justice do not engage in public conduct which brings the judicial office into disrepute.” *In re Huckaby*, 656 So. 2d 292, 298 (Louisiana 1995).

In removing a judge from office, the Florida Supreme Court noted that he “had been popularly elected and reelected to his position” but concluded “if a judge commits a grievous wrong which should erode confidence in the judiciary, but it does not appear that the public has lost confidence in the judiciary, the judge should nevertheless be removed.” *Inquiry Concerning Graham*, 620 So. 2d 1273, 1276 (Florida 1993) (citation omitted). In *Doan v. Commission on Judicial Performance*, 902 P.2d 272, 296 (California 1995), the California Supreme Court rejected the judge’s invocation of her re-election to office, noting that the voters apparent-

ly “had only limited knowledge of her improprieties” and that “the formal proceedings against her remained confidential until after the election.” The court concluded, “In any event, it is our determination that is dispositive. And our determination is removal.” 620 P.2d at 296.

Similarly, in *In the Matter of Drury*, 602 N.E.2d 1000 (Indiana 1992), the court stated it was mindful that the voters had most recently re-elected the judge after 14 years on the bench, but noted that at the time the judge “was re-elected, the fact finding process was in its seminal stages.” Noting even the judge recognized the court’s constitutional power to discipline judges, the court concluded:

A judge has obligations beyond satisfying the voters of his county, as the Code of Judicial Conduct makes clear. When a person assumes judicial office in this state, he or she accepts the responsibility of becoming familiar with and complying with the Code of Judicial Conduct and of upholding the integrity of the judiciary.

602 N.E.2d at 1009.

STANDARD OF REVIEW FOR JUDICIAL DISCIPLINE SANCTIONS

In all states but one, a reviewing court (usually the supreme court) makes the final decision regarding what sanction will be imposed in judicial discipline proceedings. The court reviews the commission’s findings of fact to see if they are supported by the evidence (the standard in most states is “clear and convincing evidence,” although some states use the lower “preponderance of the evidence” standard). The court also reviews the commission’s conclusions of law and determines whether its sanction decision or recommendation is justified. The court may adopt the commission’s findings, conclusions, and sanction; may reject them; may adopt some and reject others; or may adopt the findings of fact and conclusions of law but impose a different sanction. In most states, the court acts upon the recommendation of the commission; in others, the court reviews a decision by the commission that is final unless the judge asks for review. *See* Appendix II.

The court is not bound by the specific recommendations of the commission. Thus, the ultimate authority to determine the appropriate sanction rests with the reviewing court. The court independently evaluates the record and reviews the recommendation *de novo*. The reviewing court independently fashions an appropriate remedy and is not limited to merely approving or rejecting the commission’s recommendation but may impose either a higher or lower sanction. *See, e.g., In re Inquiry Concerning a Judge*, 788 P.2d 716 (Alaska 1990); *In re Lorona*, 875 P.2d 795 (Arizona 1994); *In re Peck*, 867 P.2d 853 (Arizona 1994); *In the Matter of Vaughn*, 462 S.E.2d 728 (Georgia 1995); *In the Matter of Holien*, 612 N.W.2d 789 (Iowa 2000); *In the Matter of Jenkins*, 465 N.W.2d 317 (Michigan 1991); *Commission on Judicial Performance v. Jenkins*, 725 So. 2d 162 (Mississippi 1998); *In re Jones*, 581 N.W.2d 876 (Nebraska 1998); *In re Barr*, 13 S.W.3d 525 (Special Court of Review Appointed by Texas Supreme Court 1998); *In the Matter of Anderson*, 981 P.2d 426 (Washington 1999); *In the Matter of Crawford*, 629 N.W.2d 1 (Wisconsin, 2001). Even in states where the commission decision is final unless appealed, the

reviewing court exercises its independent judgment to determine the appropriate penalty. *See In the Matter of Davis*, 946 P.2d 103, 1047 (Nevada 1997); *In the Matter of Skinner*, 690 N.E.2d 484 (New York Court of Appeals 1997). Alabama is an exception to this rule. *See Boggan v. Judicial Inquiry Commission*, 759 So. 2d 550 (Alabama 1999) (if the record shows by clear and convincing evidence that the charges have been committed, supreme court does not have the authority to reduce or reject the sanction imposed by the Court of the Judiciary).

The commission recommendation or decision regarding sanction is given deference, variously referred to as great deference (*In re Barr*, 13 S.W.3d 525, 560 (Special Court of Review Appointed by the Texas Supreme Court 1998); *In re Peck*, 867 P.2d 853, 860 (Arizona 1994)), some deference (*In the Matter of Crawford*, 629 N.W.2d 1, 4 (Wisconsin, 2001); weight (*In re Empson*, 562 N.W.2d 817, 832 (Nebraska 1997)); great weight (*Commission on Judicial Performance v. Willard*, 788 So. 2d 736, 746 (Mississippi 2001)), or serious consideration (*In the Matter of Anderson*, 981 P.2d 426, 432 (Washington 1999)). *But see In re Schenck*, 870 P.2d 185, 209 n.24 (Oregon 1994) (the Commission's recommendation does not receive "any deferential consideration" but "to the extent that it is well reasoned, it can be a useful referent for the court"); *In re Worthen*, 926 P.2d 853, 865 (Utah 1996) (no deference granted to Judicial Conduct Commission's decision as to what constitutes an appropriate sanction).

AVAILABLE SANCTIONS

Each year, complaints against many judges are resolved through informal or private dispositions such as counseling, letters of caution, private admonishments, or appearances before the commission. Not all commissions have the authority to dispose of complaints in such a fashion. *See* Table I, Appendix I. Those that do have the authority often use private dispositions more often than public sanctions. For example, in 2001, the California Commission on Judicial Performance had 6 public sanctions, but issued 5 private admonishments and 19 advisory letters. *See* <http://cjp.ca.gov/2001cases.htm>. Similarly, in 2001, the Arizona Commission on Judicial Conduct conducted two formal proceedings and issued 42 informal sanctions (25 advisory letters; 6 private admonishment, and 11 private reprimands). *Arizona Judicial Conduct & Ethics Bulletin*, No. 13 (May 2002) (www.supreme.state.az.us/cjc/).

Approximately 100 judges are publicly sanctioned in state judicial discipline proceedings each year, many times with the consent of the judge. Although not every sanction is available in every jurisdiction, the sanctions range from public warning, reprimand, admonishment (also called admonition), or censure; to a fine; to suspension without pay; to removal. *See* Tables II & III, Appendix I. Conditions on judicial service (such as further education or mentoring) may also be imposed in most states, and sanctions can be imposed in combination; for example, a censure may include a suspension or fine plus conditions.

For example, in 2001, approximately 104 judges or former judges were publicly sanctioned in state judicial discipline proceedings. In approximately 47 of the cases, the discipline was imposed pursuant to the consent of the judge or former judge or based on stipulated facts. Eight were removed (one removal also included a monetary sanction), and an additional 6 resigned pursuant to agreements with judicial conduct commissions. Fourteen were suspended (one suspension also included a censure), with the length of the suspensions ranging from 15 days to 1 year. There were 73 judges publicly censured, publicly admonished, publicly reprimanded, or publicly warned; 3 of those cases also included fines (for \$100, \$1500, and \$756). Two former judges were suspended from the practice of law for misconduct as a judge.

REMOVAL FROM JUDICIAL OFFICE

INTRODUCTION

From January 1990 through December 2001, 110 judges or former judges were removed as a result of judicial discipline proceedings. Forty-one of those judges were from New York; 8 were from Florida; 7 from Mississippi; 6 from Pennsylvania; 5 from California; 4 each from Georgia and Texas; 3 each from Arizona, Louisiana, Michigan, Nevada, and New Jersey; 2 each from Illinois, Indiana, Nebraska, New Mexico, Rhode Island, and Washington; and 1 each from Alabama, Arkansas, Delaware, Iowa, Kentucky, Missouri, North Carolina, and South Carolina. See Appendix II.

For several reasons, those statistics do not completely or accurately reflect the work of conduct commissions nation-wide or of specific commissions in ensuring that those unfit to hold judicial office do not continue to sit as judges.

First, in several states (Maine, Massachusetts, Tennessee, Vermont, and West Virginia), removal is not an option in judicial discipline proceedings. See Appendix I. Judges in those states may be removed only through impeachment or address.

Second, the statistics do not reflect dispositions other than removal that can exclude an unfit judge from the bench. For example, an additional 19 judges resigned during that period pursuant to public agreements with conduct commissions. See Appendix III. Moreover, the statistics do not include judges who involuntarily retired from office due to a disability, senior judges or former judges barred from further service, and judges suspended until the end of their terms. See Appendix III.

Third, many judges — approximately 625 from 1990 through 1999, for example — resigned, retired, were defeated for re-election (or did not run), or died while complaints about them were pending with the judicial discipline commission, eliminating in many states the commission's authority to continue with removal proceedings. It is impossible to quantify how many of those judges would have been removed had proceedings continued through fact-finding and review.

In many states, if a judge leaves office, the judicial

conduct commission loses jurisdiction altogether or the case or question of removal is considered moot.¹ In other states, the commission may only impose (or recommend) a sanction other than removal for a former judge.² In some states, the commission does not lose jurisdiction to remove former judges, and at least 12 of the 110 removal cases involved former judges.³ However, in a particular case, the commission or court may choose not to proceed in order to conserve its limited resources for investigation and prosecution of judges who remain in office.

1. See, e.g., *In the Matter of Moroney*, 914 P.2d 570 (Kansas 1996) (dismissing as moot recommendation that judge be removed from office after judge resigned); *In re Blanda*, 624 So. 2d 431 (Louisiana 1993) (dismissing as moot recommendation that judge be removed after judge's resignation).

2. For example, the California Commission on Judicial Performance had to change its removal of a judge for malingering to censure of a former judge (and a bar from receiving appointments) when it learned that the judge's letter of resignation had reached the governor the day before the Commission issued its decision. *Inquiry Concerning Murphy*, No. 157, Decision (California Commission on Judicial Performance May 10, 2001) (cjp.ca.gov/pubdisc.htm). From January 1990 to December 2001, the South Carolina Supreme Court publicly reprimanded 23 former judges, noting in most cases that a reprimand was the strongest punishment it could give someone who was no longer a judge. See, e.g., *In the Matter of Loop-er*, 548 S.E.2d 219 (South Carolina 2001).

3. *Inquiry Concerning Hapner*, 718 So. 2d 785 (Florida 1998) (resigned); *Commission on Judicial Performance v. Dodds*, 680 So. 2d 180 (Mississippi 1996) (had not been a candidate for re-election); *Goldman v. Commission on Judicial Discipline*, 830 P.2d 107 (Nevada 1992) (voluntarily abandoned office); *In the Matter of Pepe*, 607 A.2d 988 (New Jersey 1992) (resigned); *In the Matter of Imbriani*, 652 A.2d 1222 (New Jersey 1995) (resigned); *In the Matter of Wray*, Determination (New York Commission on Judicial Conduct November 6, 1991) (resigned); *In the Matter of LoRusso*, Determination (New York Commission on Judicial Conduct June 8, 1993) (resigned); *In the Matter of Backal*, 660 N.E.2d 1104 (New York 1995) (resigned); *In re Chesna*, 659 A.2d 1091 (Pennsylvania Court of Judicial Discipline 1995) (resigned); *In re Larsen*, No. 4 JD 94, Opinion (Pennsylvania Court of Judicial Discipline December 31, 2000), Order (February 2, 2000) (impeached); *In re Melograne*, No. 1 JD 99, Order (Pennsylvania Court of Judicial Discipline September 29, 2000) (resigned); *In re Lallo*, 768 A.2d 921 (Rhode Island 2001) (retired).

TYPES OF MISCONDUCT FOR WHICH JUDGES HAVE BEEN REMOVED

Sixty-nine out of 110 removal cases involved misconduct entirely or substantially related to a judge's duties or power. Thirteen cases involved multiple types of misconduct, including both conduct related to judicial duties and off-the-bench conduct (sometimes pre-bench conduct). Only 28 cases in which judges were removed from office involved exclusively off-the-bench, personal conduct. For longer summaries of these cases, see Appendix II.

Misconduct related to a judge's duties or power

Not surprisingly, a majority of the removal cases — 69 out of 110 — involved misconduct entirely or substantially related to a judge's duties or power. "Misconduct related to a judge's duties or power" includes demeanor and statements on the bench, on-bench abuse of authority (including misuse of the contempt power), conduct toward court staff (including sexual harassment), off-bench abuse of office, failure to disqualify, administrative malfeasance, ex parte communications, and failure to cooperate with the conduct commission. Most cases also involved more than one act of misconduct, and most involved more than one category.

- In 1 case a judge was removed for lack of competence to handle the duties of the office. *In re Baber*, 847 S.W.2d 800 (Missouri 1993).

- One case arose out of the judge's failure to comply with a sobriety monitoring contract. The Pennsylvania Court of Judicial Discipline removed a judge who had violated the conditions of probation set forth in a sobriety monitoring contract. His substance abuse problem apparently had led to neglect of duties. *In re Timbers*, 692 A.2d 317 (Pennsylvania Court of Judicial Discipline 1997).

- One case involved a judge's failure to disqualify from a case. In *Pekarski v. Judicial Inquiry and Review*

Board, 639 A.2d 759 (Pennsylvania 1994), the Pennsylvania Supreme Court ordered a judge removed from office for failing to recuse from at least 33 cases involving close personal friends from whom the judge's husband had borrowed \$15,000 to be used in a bar business owned jointly by the judge and her husband or the lender's company and presiding in at least the preliminary stages of a drunk driving charge involving the son of close personal friends who had lent her \$16,666 during the proceedings.

- One case involved the misuse of the powers of the office to benefit a family member. The South Carolina Supreme Court removed a judge who had issued an arrest warrant at the request of his daughter and released the arrested man from jail after the arrestee paid his daughter \$500. *In the Matter of McKinney*, 478 S.E.2d 51 (South Carolina 1996).

- One case involved filing false travel vouchers. In *In re Ritchie*, 870 P.2d 967 (Washington 1994), the Washington Supreme Court removed a judge who had filed travel vouchers for out-of-state trips where his judicial business was minimal and wholly incidental to the personal nature of the trips and the reimbursement sought went beyond that needed for the judicial activities in which he engaged.

- In 2 cases, a non-lawyer judge was removed for failing to successfully complete the required training. *In the Matter of Holcomb*, 418 S.E.2d 63 (Georgia 1992); *In the Matter of Yusko*, Determination (New York State Commission on Judicial Conduct March 7, 1995) (www.scjc.state.ny.us/yusko.htm).

- One judge was removed for lack of regard for the most elementary procedural rules and rights of individuals in two cases. In *In the Matter of Hamel*, 668 N.E.2d 390 (New York 1996), the New York Court of Appeals accepted the determination of the State Commission on Judicial Conduct that a judge should be removed from office for two incidents in which he improperly jailed individuals for their purported failure to pay fines and restitution obligations that he had imposed.

- One judge was removed for frequent, unexplained absences. The California Supreme Court removed from office a retired judge who had been

absent from work for 96 1/2 days in approximately four and one-half months. *Kennick v. Commission on Judicial Performance*, 787 P.2d 591 (California 1990).



- In 6 cases from New York, the State Commission on Judicial Conduct removed judges from office for consistent failure to remit court funds and report cases to the state comptroller as required by state law and/or to deposit court funds into an official account and failure to cooperate with the Commission in its investigation. See *In the Matter of Schwarting*, Determination (New York State Commission on Judicial Conduct March 15, 1991) (www.scjc.state.ny.us/schwarting.htm); *In the Matter of Armbrust*, Determination (New York State Commission on Judicial Conduct December 16, 1993) (www.scjc.state.ny.us/armbrust.htm); *In the Matter of Driscoll*, Determination (New York State Commission on Judicial Conduct March 20, 1996) (www.scjc.state.ny.us/driscoll.htm); *In the Matter of Carney*, Determination (New York State Commission on Judicial Conduct September 19, 1996) (www.scjc.state.ny.us/carney.htm); *In the Matter of Miller*, Determination (New York State Commission on Judicial Conduct January 19, 1996) (www.scjc.state.ny.us/miller.htm); *In the Matter of Coble*, Determination (New York State Commission on Judicial Conduct February 5, 1998) (www.scjc.state.ny.us/coble.htm).

- In 8 cases, the judges were removed for neglect or improper performance of administrative duties.

1. In *Boggan v. Judicial Inquiry Commission*, 759 So. 2d 550 (Alabama 1999), the Alabama Supreme Court affirmed the decision of the Court of the Judiciary to remove a judge who had (1) deposited a \$23,000 personal check in the probate court account after examiners made a charge back, but, during the same transaction, withdrew \$23,000 from the official account and deposited it back into his personal account; (2) showed the slip indicating the \$23,000 deposit to the state examiner's employee to prove that the judge had paid the examiner's charges; (3) cashed eight personal checks from court funds that were

returned by the judge's bank because he had insufficient funds in his account and failed to pay them for more than three years; (4) filed his state ethics form for 1996 more than a year late; and (5) failed to properly administer his office.

In 8 cases, the judges were removed for neglect or improper performance of administrative duties.

2. In *Inquiry Concerning Johnson*, 692 So. 2d 168 (Florida 1997), the Florida Supreme Court removed a judge who had ordered her clerk to back-date convictions in 47-52 DUI cases.

3. In *Inquiry Concerning O'Neal*, 454 S.E.2d 780 (Georgia 1995), the Georgia Supreme Court removed a magistrate from office for an uncooperative working relationship with the county board of commissioners.

4. The special court of review appointed by the Texas Supreme Court removed from office a judge who had (1) altered and fabricated criminal docket sheets, official receipts for fines, and monthly reports of collection, (2) furnished those false documents to the State Commission on Judicial Conduct, (3) failed to report money he collected to the county auditor as required, (4) cashed certain checks and money orders but failed to remit the monies to the county treasurer, and (5) failed to forward an abstract of the record of convictions in six cases to the department of public safety. *Judge Lewie Hilton*, Judgment (Special Court of Review Appointed by Texas Supreme Court February 7, 1991).

5. The New York Commission determined that removal was the appropriate sanction for a judge who had (1) failed to deposit court funds into his official account within 72 hours of receipt as required by statute, (2) failed to remit court funds to the state comptroller by the tenth

day of the month following collection as required by statute, (3) failed to notify the Department of Motor Vehicles of the disposition of 272 traffic tickets as required by statute, (4) with respect to 170 traffic tickets, failed to notify the Department of Motor Vehicles of the defendants' failure to appear in court or otherwise answer the charges or to pay fines imposed by the court, (5) failed to respond to letters sent certified mail by Commission counsel, and (6) failed to appear to give testimony before the Commission even though he was notified by letter that his appearance was required by law. *In the Matter of Tiffany*, Determination (New York State Commission on Judicial Conduct January 26, 1994) (www.scjc.state.ny.us/tiffany.htm).

Four cases involved exclusively demeanor findings, including abuse of contempt power and other abuse of power.

6. In *In the Matter of Sohns*, Determination (New York State Commission on Judicial Conduct October 19, 1998) (www.scjc.state.ny.us/sohns.htm), the New York Commission determined that removal was the appropriate sanction for a judge who had (1) failed to fulfill his statutory duties to report dispositions and remit court funds to the comptroller, (2) failed to maintain a docket of motor vehicle cases, (3) failed to maintain a docket of criminal cases, (4) failed to maintain a cashbook, (5) failed to issue duplicate receipts, and (6) in 111 cases, failed to send fine notices to defendants who had pleaded guilty by mail, failed to schedule trial for defendants who had pleaded not guilty, or failed to suspend the driving privileges of defendants who had not answered summonses, paid fines, or appeared for trial.

7. The New York Commission determined that removal was the appropriate sanction for a judge who had neglected his judicial duties and failed to

cooperate in the Commission's investigation. *In the Matter of Gregory*, Determination (New York State Commission on Judicial Conduct March 23, 1999) (www.scjc.state.ny.us/gregory.htm).

8. In *In the Matter of Kosina*, Determination (New York State Commission on Judicial Conduct November 9, 1999) (www.scjc.ny.us/kosina.htm), the New York Commission determined that removal was the appropriate sanction for a judge who had (1) failed for over three years to file reports and remit court funds to the state comptroller by the tenth of the month following collection as required by statute; (2) failed to issue receipts for fines, complete dockets of his cases, or report cases and remit court funds to the comptroller for the matters that he had handled; and (3) in a small claims case, sent a summons to the defendant that stated that a warrant would be issued for his arrest if he did not appear in court in response to the claim.



- Four cases involved exclusively demeanor findings, including abuse of contempt power and other abuse of power.

1. In *In re Keith*, No. 93-CC-1, Order (Illinois Courts Commission January 21, 1994), the Illinois Courts Commission removed from office a judge who consistently, brazenly, and outrageously evinced a complete lack of judicial temperament and demeanor, a disrespect for judicial process and procedures, and a deep-seated personal contempt and disrespect for citizens appearing in his courtroom.

2. Affirming the decision of the Commission on Judicial Discipline, the Nevada Supreme Court held that removing a judge was warranted by his abuse of his contempt power in 6 cases. *Goldman v. Commission on Judicial Discipline*, 830 P.2d 107 (Nevada 1992).

3. The New York Court of Appeals accepted the determination of the Commission on Judicial Conduct that removal was the appropriate sanction for a judge who had displayed bias and improper

demeanor in a number of cases, including commenting to his court clerk, that “every woman needs a good pounding now and then,” and stating to his clerk and another judge that he felt that orders of protection “were not worth anything because they are just a piece of paper,” that they are “a foolish and unnecessary thing,” and that they are “useless” and of “no value.” *In the Matter of Roberts*, 689 N.E.2d 911 (New York 1997).

4. In *In re Woods*, Findings of Fact, Conclusions of Law, and Final Order (Kentucky Judicial Conduct Commission June 27, 2000), the Kentucky Judicial Conduct Commission removed a district judge from office for a disturbing course of judicial tyranny in the two weeks after losing his candidacy for circuit judge.



- Three cases involved sexual harassment

1. In *In re Spurlock*, No. 98-CC, Order (Illinois Courts Commission December 3, 2001), the Illinois Courts Commission removed a judge who had engaged in “intimidating and sexually inappropriate behavior” in the courtroom and chambers toward four assistant state’s attorneys and twice had sexual intercourse in his chambers with a court reporter.

2. The Indiana Supreme Court removed from office a judge who had a participatory role in harassment directed toward a court employee and her family, including a letter sent to the employee that contained a used condom. *In the Matter of McClain*, 662 N.E.2d 935 (Indiana 1996).

3. The New York Commission determined that removal was the appropriate sanction for a former judge who had subjected subordinate women in the court system to uninvited sexual activity, touching, and crude and suggestive comments and engaged in in a series of sexual encounters with his young court reporter and secretary. *In the Matter of LoRusso*, Determination (New York State Commission on Judicial Conduct June 8, 1993) (www.scjc.state.ny.us/lorusso_2.htm).

- One judge was removed following conviction of a felony related to his judicial duties. Based on stipulations of fact in lieu of a trial, the Pennsylvania Court of Judicial Discipline removed a former judge from office and disbarred him for his conviction on the federal felony charge of conspiracy to violate civil rights based on a conspiracy to fix cases before the statutory appeals division of the court of common pleas. *In re Melograne*, No. 1 JD 99, Order (Pennsylvania Court of Judicial Discipline September 29, 2000).

- Three cases involved criminal conduct related to judicial duties, although the cases do not indicate if criminal charges were filed against the judges.

1. The New Mexico Supreme Court removed a municipal court judge who had received money from two defendants in exchange for dismissing traffic citations pending against them. *In the Matter of Casaus*, No. 19,578, Order (New Mexico Supreme Court January 30, 1991).

2. In *In the Matter of Jenkins*, 465 N.W.2d 317 (Michigan 1991), the Michigan Supreme Court removed a judge who had (1) routinely solicited and accepted bribes in return for improperly disposing of matters before him (generally traffic citations), (2) engaged in routine improper ex parte communications, (3) routinely accepted and failed to report improper gifts, favors, and loans from litigants, (4) personally retained a close friend as an attorney to prepare a writ of habeas corpus for an incarcerated person the judge believed to be the friend of another close friend and who signed the writ releasing the individual without being fully informed of the facts, (5) intentionally misrepresented his residential address on an automobile insurance application to defraud the insurance company, and (6) solicited an individual to commit perjury in a federal investigation of the judge.

3. The New York Commission determined that removal was the appropriate sanction for a judge who had converted \$6,150 in court funds to his personal use. *In the Matter of Sterling*, Determination (New York State Commission on Judicial

Conduct September 8, 1995) (www.scjc.state.ny.us/sterling.htm).



- Multiple acts of a variety of misconduct but all related to judicial duties resulted in removal in 35 cases.

1. The Arizona Supreme Court removed a judge based on findings that: (1) the judge had reinstated charges brought by two friends against his election opponent, issuing a summons requiring the opponent to appear in his court; (2) after a private meeting with a defendant's family and employer, the judge had told the investigating police officer that he had strong reason to believe this was a case of mistaken identity; (3) at a time when the judge claimed a married couple owed him about \$300 in unpaid rent, plus damages, for breaching a lease for office space in a building owned by the judge, the judge issued a summons on an unrelated criminal complaint against the wife; and (4) the judge presided over a landlord-tenant dispute in which the defendant was an individual who had previously filed a criminal complaint against the judge, accusing him of fraudulently registering to vote in violation of state law. *In re Peck*, 867 P.2d 853 (Arizona 1994).

2. In *In the Matter of Carpenter*, 17 P.3d 91 (Arizona 2001), the Arizona Supreme Court removed a judge for (1) falling asleep during court proceedings; (2) making inappropriate comments and circulating inappropriate materials, some of which were racist, sexist, or obscene; (3) ex parte communications; failure to recuse and otherwise creating an appearance of bias; (4) inappropriate uses of his judicial position; (5) failure to respect the rights of parties appearing before him; (6) failure to adequately perform his judicial responsibilities; and (7) misrepresenting facts to the Commission on Judicial Conduct.

3. In *Fletcher v. Commission on Judicial Performance*, 968 P.2d 958 (California 1998), the California Supreme Court removed a judge from office for 16 findings of conduct prejudicial to the administration of justice and willful misconduct,

including ex parte communications with litigants and their families; entering a judgement against a non-party in a case; comments about an attorney; having a group photograph taken of court staff and others who appeared before him that was used in a political advertisement without the permission of those photographed; telling a court employee she was in contempt when she refused to sit down and talk to him about quitting; improperly delegating the question of diversion to the district attorney; directing alteration of a minute order to support his explanation after receiving a letter of inquiry from the Commission on Judicial Performance, and submitting a copy of the minute order to the Commission without disclosing that he had had it altered; failing to disqualify; telephoning defendants 25 to 30 times, including defendants he knew, for whom bench warrants had been issued to advise them to come to court; prejudging a potential witness's testimony; refusing to allow a public defender to represent a defendant after she expressed a desire to disqualify him; and asking a sheriff's deputy to inquire and advise the judge whether the pastor of the judge's church, with whom the judge had had a number of disputes, was licensed as a counselor.

4. The Florida Supreme Court removed a judge for (1) sexual harassment of a judicial assistant, (2) engaging in ex parte communications, and (3) intentional abuse directed toward a public defender. *In re McAllister*, 646 So. 2d 173 (Florida 1994).

5. The Florida Supreme Court removed a judge who had (1) repeatedly used his position to make allegations of official misconduct and improper criticisms against fellow judges, elected officials, and others, without reasonable factual basis or regard for their personal and professional reputations; (2) exceeded and abused the power of his office by imposing improper sentences and improperly using the contempt power; (3) acted in an undignified and discourteous manner toward litigants, attorneys, and others appearing in his court; (4) acted in a manner that impugned the public perception of the integrity and impartiality of the judiciary; and (5) closed and attempted to close public proceedings. *Inquiry*

Concerning Graham, 620 So. 2d 1273 (Florida 1993).

6. In *Inquiry Concerning Shea*, 759 So. 2d 631 (Florida 2000), the Florida Supreme Court removed a judge who had engaged in a pattern of conduct in which he acted with hostility towards attorneys, court personnel, and fellow judges.

Multiple acts of a variety of misconduct but all related to judicial duties resulted in removal in 35 cases.

7. In *In the Matter of Vaughn*, 462 S.E.2d 728 (Georgia 1995), the Georgia Supreme Court removed a judge who had: (1) refused to set appeal bonds for two misdemeanor defendants when the law clearly obligated her to do so, (2) issued bench warrants for the arrests of two misdemeanor defendants when their attorney had been late even though the defendants themselves had been in court, and (3) forced a defendant to enter a plea of guilty in the absence of his counsel.

8. The Indiana Supreme Court removed a judge who had (1) solicited and accepted a \$2,000 loan from an attorney, failed to report the loan on his statement of economic interest, failed to disclose the loan to the other parties and attorneys in lawsuits over which the judge presided that involved the attorney's law firm, and failed to disqualify himself from those cases; (2) falsely represented on his statement of economic interest the source of a loan from one of his girlfriends; (3) failed to report loans from one of his girlfriends and her mother; (4) solicited a large loan from his court reporter; and (5) intimidated and retaliated against his ex-girlfriend and her mother for cooperating in the investigation by the Commission on Judicial Qualifications. *In the Matter of Drury*, 602 N.E.2d 1000 (Indiana 1992).

9. The Iowa Supreme Court removed a judge who had (1) conducted initial appearances in her office, preventing others from being present; (2) clearly violated procedural requirements when conducting arraignments; and (3) had frequent conflicts with almost all of the people with whom she came in contact. *In the Matter of Holien*, 612 N.W.2d 789 (Iowa 2000).

10. In *In re Jefferson*, 753 So. 2d 181 (Louisiana 2000), the Louisiana Supreme Court removed from office a judge who had (1) abused his contempt power three times, (2) banned a prosecutor from his courtroom and then dismissed 41 cases when the prosecutor did not appear, (3) participated in a case as counsel for four years after becoming a judge, and (4) deliberately disobeyed orders of the administrative judge.

11. The Michigan Supreme Court removed a judge for (1) jailing the superintendent of a youth center for refusing to obey an order that conflicted with a directive of the chief judge; (2) intemperate conduct with respect to court personnel and his insistence that his secretary/court reporter treat them in the same fashion; (3) willful neglect of the adoption docket and refusal to respond to requests by the administrative office; and (4) failure to file reports on undecided matters as required by court rules. *In the Matter of Seitz*, 495 N.W.2d 559 (Michigan 1993).

12. The Mississippi Supreme Court removed a judge who had (1) called an officer with the Bureau of Narcotics an s.o.b., knowing that the statement was likely to be published in the newspaper; (2) allowed clerks and other officials to dismiss tickets without an adjudication; (3) regularly failed to timely sign dockets; and (4) entered into plea negotiations by dismissing tickets in exchange for information on other crimes. *Commission on Judicial Performance v. Hopkins*, 590 So. 2d 857 (Mississippi 1991).

13. The Mississippi Supreme Court removed a judge who had (1) engaged in ticket fixing; (2) failed in over a dozen cases to sentence criminals in accordance with statute; (3) dismissed seven mis-

demeanor cases without requiring the payment of court costs as required by statute; (4) failed to require the forfeiture of money seized in a gambling raid as required by statute; (5) amended a sentence after part of the sentence was served in response to ex parte communications with the father of the defendant; (6) in three cases assigned to other judges, sought favorable treatment for the defendants; (7) on 27 occasions, ordered a party to pay a judgment in installments, in some instances ordering payment within five days from judgment, thereby not allowing appeals within the statutory ten-day period; and (8) had a highway patrol officer the judge thought had filed a complaint with the Commission on Judicial Performance arrested for contempt of court for returning to the courthouse after leaving at the judge's order. *Commission on Judicial Performance v. Chinn*, 611 So. 2d 849 (Mississippi 1992).

14. The Mississippi Supreme Court removed a judge who had (1) during a dispute between a pastor and several members of his church, issued an ex parte temporary restraining order against the pastor without notice, had the pastor arrested on several occasions, and refused to allow the pastor to press charges against church members as a result of a disturbance; (2) fixed tickets; (3) signed an execution of judgment without authority; (4) handled fine and bond money received from litigants contrary to statute and loaned litigants money; (5) allowed a defendant originally charged with driving while his license was suspended and driving under the influence second offense to plead to lesser charges although he did not have the authority to do so; and (6) circulated an order, after being served with a formal complaint by the Commission on Judicial Performance, to the constables and members of the justice court staff demanding that they deliver to him official and unofficial notes and evidence relating to the allegations against him and threatening punishment for failure to abide by his orders. *Commission on Judicial Performance v. Dodds*, 680 So. 2d 180 (Mississippi 1996).

15. The Mississippi Supreme Court removed a judge who had (1) engaged in ex parte communications; (2) demonstrated outrageous, erratic con-

duct and hostile demeanor toward litigants, court staff, witnesses, lawyers, and others; (3) failed to perform his duties; and (4) sexually harassed court staff. *Commission on Judicial Performance v. Spencer*, 725 So. 2d 171 (Mississippi 1998).

16. The Mississippi Supreme Court removed a judge for at least 30 counts of misconduct including ex parte communications; improperly dismissing traffic citations for four defendants who did not appear in court; conducting court business at his tire and pawn shop; utilizing a criminal process to collect a civil debt; issuing a citation for contempt of court without providing any notice or advising of rights; convicting a defendant without creating a file and without notice or hearing; sentencing the court clerk to contempt without notice and refusing her requests for an attorney; and interfering with the administrative functions of the justice court by refusing to allow the clerk or deputy clerk to appear in court when the judge was conducting court. *Commission on Judicial Performance v. Willard*, 788 So. 2d 736 (Mississippi 2001).

17. The Nebraska Supreme Court removed a judge who had (1) on a regular basis, and contrary to previous supreme court opinions, conducted disposition hearings without providing for a verbatim record to discourage appellate review; (2) improperly ordered parties out of the courtroom, prevented the attorney from the department of social services from making a record and excluded her from meetings, and received information out of court that affected his decision; and (3) ordered law enforcement officers to take two juveniles into custody and place them in the custody of the county administrator, instead of designated youth detention facilities or probation officers, as a way of prompting the county board of commissioners to provide a county juvenile detention facility and as a retaliatory move in a dispute over parking spaces. *In re Staley*, 486 N.W.2d 886 (Nebraska 1992).

18. The Nebraska Supreme Court removed a judge who had (1) consistently used intemperate, threatening language over a long period of time; (2) sent a death threat to another judge and ignited firecrackers in that judge's office; (3) used false signatures and odd bond amounts on court docu-

ments; and (4) had close contacts with people placed on probation. *In re Jones*, 581 N.W.2d 876 (Nebraska 1998).

19. In *In the Matter of Fine*, 13 P.3d 400 (Nevada 2000), holding that the decision of the Commission on Judicial Discipline to remove a judge was supported by the record, the Nevada Supreme Court concluded that clear and convincing evidence supported the Commission's findings that the judge had (1) engaged in numerous and repeated *ex parte* communications with experts retained by the parties or appointed by her in child custody proceedings after having been previously disciplined for *ex parte* communications, and (2) appointed her first cousin as the mediator in a case without informing the parties of their relationship and accorded her cousin favorable treatment after the parties failed to pay.

20. The New Mexico Supreme Court removed a judge for (1) harassing and interfering with a court administrator, (2) refusing to obey legitimate orders of the chief judge; (3) verbally abusing a deputy sheriff, (3) using profanity, and being discourteous, undignified, and disrespectful; (4) deliberately failing to devote the number of hours required of a district judge; (5) treating a hearing officer with discourtesy and disrespect and acting without dignity, and (6) his relationship with a not-for-profit organization. *In the Matter of Castellano*, 889 P.2d 175 (New Mexico 1995).

21. The New York Court of Appeals accepted the determination of the Commission on Judicial Conduct that a family court judge should be removed for (1) frequently addressing parties and attorneys in an intemperate manner, (2) indicating that he presumed unproven allegations to be true, (3) using racially charged language on two occasions, (4) neglecting to inform litigants of their rights, (5) exerting undue pressure on parties to make damning admissions, and (6) sentencing one person to six months in jail based solely on an *ex parte* letter. *In the Matter of Esworthy*, 568 N.E.2d 1195 (New York 1991).

22. The New York Commission determined that removal was the appropriate sanction for a

town court justice who had (1) in three cases, committed defendants to jail without setting bail, in violation of a state statute; (2) in three cases, committed defendants to jail in lieu of bail without considering their community and family ties as required by state statute; (3) failed to disqualify himself in 11 cases in which his son was the arresting officer, complaining witness, and representative of the prosecution; (4) in six cases, failed to advise defendants of their right to assigned counsel if they could not afford a lawyer, in violation of state statute; (5) coerced guilty pleas in three cases, two of them involving the same unrepresented, 19-year-old defendant; (6) left an 18-year-old defendant charged with traffic infractions in jail for 26 days in lieu of bail by failing to set a date for his return to court; (7) summarily held three defendants in criminal contempt and sentenced them to jail for their behavior at arraignment on other charges without following proper statutory procedures and without completing the arraignments; and (8) handled 23 cases over which he had no jurisdiction. *In the Matter of Winegard*, Determination (New York State Commission on Judicial Conduct September 26, 1991) (www.scjc.state.ny.us/winegard.htm).

23. Accepting the determination of the Commission, the New York Court of Appeals removed a judge who had (1) mishandled court funds, and (2) failed to recuse himself (or disclose the relevant facts) in several cases in 1988 and 1989 involving an acquaintance from whom the judge had borrowed \$500 between 1983 and 1986. *Murphy v. Commission on Judicial Conduct*, 626 N.E.2d 48 (New York 1993).

24. Accepting a determination of the Commission, the New York Court of Appeals found that removal of a judge was supported by a preponderance of the evidence. The judge had (1) made an inappropriate and derogatory remark about certain ethnic and racial groups during a recess in proceedings in his court; (2) conveyed the appearance that he granted a civil motion pending before him in retaliation against an attorney-town justice; and (3) failed to maintain adequate records and dockets of dispositions of criminal cases in his court, resulting in his failure to report and remit fines and surcharges to the state

comptroller. *In the Matter of Schiff*, 635 N.E.2d 286 (New York 1994).

25. In *In the Matter of Mossman*, Determination (New York State Commission on Judicial Conduct September 24, 1991) (www.scjc.state.ny.us/mossman.htm), the New York Commission determined that removal was the appropriate sanction for a judge who had (1) failed to remove himself from a case in which the complaining witness was a long-time acquaintance and regular customer of a bar owned by the judge's mother, the incident occurred outside the bar where the judge lived, his father was a witness to the incident, and the defendant was a political adversary of the judge's father; (2) issued an arrest warrant and arraigned a defendant on a complaint that was clearly deficient on its face, then attempted to have a valid complaint drawn; and (3) given false testimony at the Commission hearing.

26. In *In the Matter of Mogil*, 673 N.E.2d 896 (New York 1996), accepting the determination of the Commission, the New York Court of Appeals removed a judge who had (1) engaged in a vituperative campaign against a lawyer with whom he had a personal feud by sending numerous harassing, threatening, and disparaging anonymous communications; (2) publicly disseminated a list of "13 suggestions for confrontational or intentionally offensive criminal defense attorneys"; (3) publicly criticized a defense being raised in a pending proceeding before his court; (4) filed a false report to a police official; and (5) given testimony during the Commission's investigation that was false, misleading, and lacking in candor.

27. Accepting the determination of the Commission, the New York Court of Appeals removed a judge for a pattern of knowing disregard of the law, intemperate, disparaging name-calling of young prosecutors, and insensitive remarks. *In the Matter of Duckman*, 699 N.E.2d 872 (New York 1998).

28. In *In the Matter of Assini*, 720 N.E.2d 882 (New York 1999), agreeing with the determination of the Commission, the New York Court of Appeals removed a part-time judge who had (1)

made inappropriate, obscene, and sexist remarks about another judge in the course of his judicial duties; (2) neglected his judicial duties by refusing to deal with more than 100 cases over eight months; (3) permitted an attorney with whom he shared office space, a business telephone, and mailing address to appear before him in six criminal cases without disclosing their relationship or inviting objections; (4) permitted a private individual to sit at the bench and make ex parte recommendations with respect to the sentencing of certain defendants; and (5) represented his former court clerk in her action against the town in which he served as a judge.

29. Accepting the determination of the Commission, the New York Court of Appeals concluded that the Commission's removal of a judge was justified by (1) intemperate demeanor, (2) biased behavior against victims of domestic violence, (3) disregard of the law, and (4) an egregious assertion of influence for private gain. *In the Matter of Romano*, 712 N.E.2d 1216 (New York 1999).

30. The New York Commission determined that removal was the appropriate sanction for a judge who had (1) required indigent defendants to pay for assigned counsel by performing community service; (2) failed to advise defendants of their right to counsel and taken action against them without notice to their lawyers when he knew that they were represented; (3) exhibited bias before conviction by threatening defendants with jail and calling them names; (4) repeatedly used intemperate language; (5) jailed without bail defendants who were statutorily entitled to bail; (6) summarily convicted of criminal contempt individuals whom he concluded without trial or guilty pleas had violated some court order; (7) sat on cases in which he was the complaining witness and in which he had knowledge of disputed evidentiary facts; and (8) frequently engaged in ex parte communication. *In the Matter of Buckley*, Determination (New York State Commission on Judicial Conduct April 6, 2000) (www.scjc.state.ny.us/buckley.htm).

31. The New York Court of Appeals accepted the determination of the Commission that a town

court justice be removed for (1) failing to deposit court funds in his official account within 72 hours after receipt, in violation of court rules, (2) failing to remit court funds to the state comptroller by the tenth day of the month following collection, in violation of statutes; (3) his conduct during a disagreement with a local attorney who represented a funeral home in an action against the judge for an unpaid bill; (4) acting in a retaliatory manner toward a second attorney; and (5) suspending a traffic defendant's driver's license out of personal animosity for the defendant's attorney. *In the Matter of Corning*, 741 N.E.2d 117 (New York 2000).

32. In *In the Matter of Going*, 761 N.E.2d 585 (New York 2001), accepting the determination of the Commission, the New York Court of Appeals held that removal was warranted for a judge who had (1) engaged in a course of conduct arising out of a personal relationship with his law clerk that detracted from the dignity of his office, seriously disrupted the operations of the court, and constituted an abuse of his judicial and administrative power, and (2) issued an ex parte order terminating the driver's license suspension of a long-time acquaintance.

33. The Rhode Island Supreme Court removed an active retired judge (and terminated his pension as of the date the court issued its order) for (1) appointing an attorney as a receiver, special master, or similar position in return for payment of approximately 25% of the fees paid to the attorney (approximately \$40,000 in 20 payments); (2) failing to notify all counsel of record in a criminal case that he had business dealings with one of the attorneys of record and with one of the defendants; and (3) although the justice was informed that the defendant in the case was asserting that he had bought the judge, taking no action to deny or discourage that statement. *In the Matter of Almeida*, 611 A.2d 1375 (Rhode Island 1992).

34. In *In re Barr*, 13 S.W.3d 525 (Special Court of Review Appointed by Texas Supreme Court 1998), the Special Court of Review appointed by the Texas Supreme Court removed a

judge who had (1) made sexual comments and gestures to female attorneys appearing in his courtroom; (2) displayed impatience and disrespect to attorneys appearing before him; and (3) had a deputy sheriff confined pursuant to a writ of attachment.

35. In *In re Thoma*, 873 S.W.2d 477 (Special Court of Review Appointed by Texas Supreme Court 1994), the special court of review appointed by the Texas Supreme Court removed a judge from office for (1) conspiring to extort money from a probationer; (2) ex parte alterations of conditions of probation; and (3) granting credit for time served in excess of time actually served.

Combination of misconduct related to judicial duties and off-the-bench misconduct

• Thirteen cases involved multiple types of misconduct that included both conduct related to judicial duties and off-the-bench conduct (sometimes pre-bench conduct).

1. In *Adams v. Commission on Judicial Performance*, 897 P.2d 544 (California 1995), the California Supreme Court removed a judge who had (1) engaged in several business transactions with and accepted a gift from a litigant to whom he had awarded a substantial verdict, (2) advised members of a law firm on cases pending before other judges, (3) received gifts from attorneys whose interests had or were likely to come before him, (4) failed to disqualify himself or make full disclosure of his relationship with those attorneys or their firms when they appeared before him, and (5) made material misrepresentations and omissions to the Commission of Judicial Performance during its investigation.

2. In *Doan v. Commission on Judicial Performance*, 902 P.2d 272 (California 1995), the California Supreme Court removed a judge for conduct displaying moral turpitude, dishonesty, and corruption, including presiding over or trying to influence the outcome of cases involving persons to whom she owed money or their relatives; failing to report several loans in the statement of economic interests that she was required to file annually; failing to list at least six creditors on a petition for voluntary bankruptcy filed with her husband; being habitually tardy in commencing court sessions by an hour to an hour and a half; helping to prepare a petition for writ of habeas corpus on behalf of the husband of someone from whom she had borrowed money; asking material witnesses not to cooperate in the investigation by the Commission on Judicial Performance.

3. In *In re Ford-Kaus*, 730 So.2d 269 (Florida 1999), the Florida Supreme Court removed a judge for (1) mishandling an appeal before becoming a judge; (2) back-dating the certificate of service on a brief; (3) making serious and substantial falsehoods in a deposition she gave in the

malpractice suit arising out of her mishandling of the appeal; (4) overcharging her client and misrepresenting to her client how much work she preformed on the appeal; (5) depositing some of the cash payments from the client into her own operating account and spending the money rather than depositing it into a trust account as a credit against future fees and services; and (6) failing to advise parties when an attorney who represented the judge in pending, personal civil litigation appeared before her.

Thirteen cases involved multiple types of misconduct that included both misconduct related to judicial duties and off-the-bench misconduct (sometimes pre-bench).

4. In *Inquiry Concerning McMillan*, 797 So. 2d 560 (Florida 2001), the Florida Supreme Court removed a judge for (1) promising in his campaign to favor state and police and to side against defense, (2) making unfounded attacks on his incumbent opponent and on the local court system and local officials, and (3) presiding over a court case despite a personal direct conflict of interest.

5. In *Commission on Judicial Performance v. Jenkins*, 725 So. 2d 162 (Mississippi 1998), the Mississippi Supreme Court removed a judge who had (1) used his position to benefit a corporation, (2) engaged in the practice of law, (3) engaged in ex parte communications, and (4) been financially and legally involved in a matter pending before him.

6. Affirming the decision of the Commission on Judicial Discipline, the Nevada Supreme Court removed a judge for a variety of misconduct including borrowing money from court employees; publicly campaigning for a candidate;

lying to the Commission; conducting a personal business from chambers; using court employees to perform personal errands during normal business hours; directing or suggesting to persons found guilty to contribute money to certain charities in lieu of paying fines to the city; and using property owned in part by him that was zoned for residential purposes for commercial purposes. *In the Matter of Davis*, 946 P.2d 1033 (Nevada 1997).

7. The New Jersey Supreme Court removed a municipal court judge who had (1) signed a personal letter “JMC” (meaning “Judge Municipal Court”); (2) failed to recuse from a case arising from questionable domestic violence complaints filed by a councilman with whom the judge had a close relationship; and (3) filed false accusations against his son’s teacher and then arraigned the teacher. *In the Matter of Samay*, 764 A.2d 398 (New Jersey 2001).

8. In *In the Matter of Tyler*, 553 N.E.2d 1316 (New York 1990), the New York Court of Appeals upheld the determination of the Commission that a judge should be removed for (1) issuing a warrant of arrest pertaining to a dishonored check given to the judge’s husband; presiding over the defendant’s arraignment; committing the defendant to jail in lieu of \$5,000 bail; failing to appoint counsel for the defendant at arraignment and refusing the advice of the district attorney and another judge that she disqualify herself; (2) requesting a young man, whom she had sentenced one day earlier, to return to court, accusing him of writing obscenities on the court’s table and, upon his denial, striking him across the face with a telephone directory; (3) sending a personal letter in a court envelope to tenants of an apartment building owned by judge’s father about their use of well water; and (4) sending an attorney a letter in a court envelope concerning the quality of well water in the same apartment building.

9. Accepting the determination of the Commission, the New York Court of Appeals concluded that removal was warranted for a judge who had (1) presided over cases involving his friends notwithstanding that he had been previously cau-

tioned by the Commission against doing so, and (2) confronted a woman, in the presence of her employer, after she had sent a letter to the editor of the local newspaper criticizing the judge. *In the Matter of Robert*, 680 N.E.2d 594 (New York 1997).

10. In *In the Matter of Collazo*, 691 N.E.2d 1021 (New York 1998), accepting the determination of the Commission, the New York Court of Appeals held that removal was the appropriate sanction for a judge who had (1) passed a note to his court attorney concerning the physical attributes of a female law intern; (2) suggested to the intern that she remove part of her apparel in his presence; (3) made false statements to the Commission; and (4) gave deceitful responses to the governor’s screening committee and to the staff of the senate judiciary committee when they were considering his nomination to a different court.

11. Accepting the determination of the Commission, the New York Court of Appeals removed a judge for (1) making derogatory racial remarks about a crime victim while attempting to influence a disposition; (2) displaying intemperate behavior and pressing a prosecutor to offer a plea for the judge’s own personal convenience; (3) making disparaging remarks about Italian-Americans at a charity dinner and during his election campaign; and (4) testifying at a criminal proceeding with reckless disregard for the truth. *In the Matter of Mulroy*, 731 N.E.2d 120 (New York 2000).

12. The Rhode Island Supreme Court removed a former judge and imposed a monetary sanction for (1) being regularly absent from his courtroom during normal working hours to gamble in a public casino, and (2) pleading guilty to three federal felony counts of making false declarations in his voluntary petition for bankruptcy. *In re Lallo*, 768 A.2d 921 (Rhode Island 2001).

13. The special court of review appointed by the Texas Supreme Court removed from office a judge who had (1) asked another judge to submit a false report to the State Commission on Judicial Conduct stating the judge had complied with

education requirements imposed by the Commission; (2) called a parking lot attendant a “nigger;” and (3) engaged in self-help to enforce an order he had entered. *In re Lowery*, 999 S.W.2d 639 (Special Court of Review Appointed by Texas Supreme Court 1998).

Off-the-bench misconduct

Only 28 cases in which judges were removed from office involved exclusively off-the-bench, personal conduct.

- In 1 unique case, a municipal court judge was removed, not because of any misconduct, but because his mother was the mayor of the city. The Georgia Supreme Court noted that the mayor appointed the judge (with confirmation by the city council), that the judge serves at the pleasure of the mayor and the council, that the municipal court has jurisdiction of violations of the city charter and city ordinances, and that the municipal court generated substantial revenue for the city. *In re Webb*, 499 S.E.2d 319 (Georgia 1998).

- In 19 cases, judges were removed for conduct that had resulted in conviction of or guilty plea to criminal charges not related to their judicial office.

1. The Arizona Supreme Court removed from office a judge who had been convicted of soliciting prostitution (a misdemeanor). *In re Koch*, 890 P.2d 1137 (Arizona 1995).

2. The Florida Supreme Court removed from office a judge who had shoplifted a VCR Plus device from a Target store. *Inquiry Concerning Garrett*, 613 So. 2d 463 (Florida 1993). The judge had been charged with retail theft, admitted his guilt, and was placed in pretrial intervention, and ordered to attend a shoplifter’s awareness program.

3. The Louisiana Supreme Court removed from office a judge who had pled guilty to one misdemeanor count of failing to file a federal income tax return and was sentenced to a twelve-month prison term, one year of active supervised probation, and a \$5,000 fine. The judge had not filed his 1987 return until January 14, 1993, ten days after he became a judge. *In re Huckaby*, 656 So. 2d 292 (Louisiana 1995).

4. The New York Commission determined that removal was the appropriate sanction for a judge who, over the course of three days, used a shotgun, physical threats, vulgarities, and verbal intimidation.

tion to try to win the advantage in a personal dispute over property rights, which led to his conviction on menacing, trespass, and criminal mischief. *In the Matter of Gloss*, Determination (New York State Commission on Judicial Conduct July 27, 1993) (www.scjc.state.ny.us/gloss.htm).

In 3 cases, the judge was removed for inappropriate financial relationships or dealings, including continuing to practice law.

5. The New York Commission determined that removal was the appropriate sanction for a part-time judge who had been convicted of two misdemeanors for physically abusing a mentally incompetent patient in a nursing home where the judge was employed as a licensed practical nurse. *In the Matter of Stiggins*, Determination (New York State Commission on Judicial Conduct August 18, 2000) (www.scjc.state.ny.us/stiggins.htm).

6. The North Carolina Supreme Court removed a former judge who had been arrested for possessing marijuana, cocaine, and drug paraphernalia and had pled guilty to three felony charges and received a one-year active sentence. *In re Sherrill*, 403 S.E.2d 255 (North Carolina 1991).

7. The Pennsylvania Supreme Court ordered a judge removed and declared ineligible thereafter for judicial office on the basis of his convictions on misdemeanor charges of hindering apprehension or prosecution and obstructing justice, noting the record was inadequate to sustain a determination that the justice had been convicted of a crime involving misuse of the judicial office. *In re Scott*, 596 A.2d 150 (Pennsylvania 1991).

8. The Pennsylvania Court of Judicial Discipline removed a former judge from office and

declared him to be ineligible thereafter for judicial office for violating laws that prohibit knowingly maintaining devices used for gambling purposes and knowingly permitting premises to be used for unlawful gambling (misdemeanors). The judge had resigned as one of the conditions of an accelerated rehabilitation program when he was charged with owning gambling devices. *In re Chesna*, 659 A.2d 1091 (Pennsylvania Court of Judicial Discipline 1995).

9. The Pennsylvania Court of Judicial Discipline removed a former justice of the Supreme Court who had been found guilty of two felony counts of criminal conspiracy (relating to unlawfully obtaining prescription drugs), ordered that the justice be ineligible to hold judicial office in the future, and disbarred him. *In re Larsen*, No. 4 JD 94, Opinion (Pennsylvania Court of Judicial Discipline December 31, 2000), Order (February 2, 2000).



- In addition, 4 cases involved conduct that could have given rise to criminal charges although the decision does not refer to any charge or conviction.

1. The New Jersey Supreme Court removed a former judge for (1) using marijuana and supplying marijuana to another individual on one occasion, and (2) arranging an introduction to help an individual obtain employment from a litigant who was a party to an action before the court on which the judge sat. *In the Matter of Pepe*, 607 A.2d 988 (New Jersey 1992).

2. Accepting the determination of the Commission, the New York Court of Appeals concluded that removal was the appropriate sanction for a judge who had twice signed his dead mother's name to a credit card application in order to procure a user's card for himself and repeatedly misled bank investigators by implying his mother was alive. *In the Matter of Mazzei*, 618 N.E.2d 123 (New York 1993).

3. The New York Court of Appeals accepted the determination of the Commission that a town

court justice should be removed for physically forcing himself on an unwilling victim. *In the Matter of Benjamin*, 568 N.E.2d 1204 (New York 1991).

4. Accepting the determination of the Commission, the New York Court of Appeals held that removal was warranted for a judge who had subscribed as a witness on his own designating petition for re-election when in fact he had not been present when the petition was signed, in violation of state election laws. *In the Matter of Heburn*, 639 N.E.2d 11 (New York 1994).

- Two cases involved judges' improper association with criminals.

Three cases involved multiple types of misconduct relating to the practice of law and misrepresentations or other dishonest conduct.

1. The Mississippi Supreme Court removed a judge who had openly lived with a fugitive charged in Georgia with several drug-related felonies, allowed the fugitive to drive her car with a suspended license, actively participated in the felony case in Georgia, and married him after he was convicted. *Commission on Judicial Performance v. Milling*, 657 So. 2d 531 (Mississippi 1995).

2. Accepting the determination of the Commission, the New York Court of Appeals held that removal was warranted for a judge who had counseled a man known by her to be involved in illegal drug dealing and money laundering as to how to safeguard the money and how to mislead FBI investigators and accepted for safekeeping a large sum of money, keeping \$1,500 of it when she returned the rest. *In the Matter of Backal*, 660 N.E.2d 1104 (New York 1995).



- In 3 cases, the judge was removed for inappropriate financial relationships or dealings, including continuing to practice law.

1. The Louisiana Supreme Court removed from office a judge who owned and operated a company that provided pay telephone service for all inmates in the local parish jail pursuant to a contract with the sheriff. *In re Johnson*, 683 So. 2d 1196 (Louisiana 1996).

2. The New Jersey Supreme Court removed from office a former judge who had (1) managed the affairs of a corporation while serving as a judge; (2) received funds from the corporation in compensation for his activities while serving as a judge; and (3) pled guilty to theft from the corporation. *In the Matter of Imbriani*, 652 A.2d 1222 (New Jersey 1995).

3. Accepting the determination of the Commission, the New York Court of Appeals removed a judge for (1) continuing to act as a fiduciary in several estates, (2) continuing to perform business or legal services for clients, and (3) maintaining an inappropriate business and financial relationship with his former law firm, which had an active practice before his court. *In the Matter of Moynihan*, 604 N.E.2d 136 (New York 1992).

- In 2 cases, the conduct at issue related to a part-time judge's practice of law.

1. Accepting the determination of the Commission, the New York Court of Appeals removed a part-time judge who had been disbarred for conduct involving dishonesty, fraud, and deceit in his handling of an estate in his capacity as a private attorney. *In the Matter of Embser*, 688 N.E.2d 238 (New York 1997).

2. The New York Commission determined that removal was the appropriate sanction for a former town court justice who had (1) borrowed money from a client of his law practice, (2) caused his secretary to alter a car registration, and (3) drove an unregistered car. *In the Matter of*

Wray, Determination (New York State Commission on Judicial Conduct November 6, 1991) (www.scjc.ny.us/wray.htm).

- One case involved inappropriate political activity. The Delaware Court on the Judiciary censured and removed from office a judge who, without first resigning his judicial office, sought the endorsement of a political party convention for the nomination for governor. *In the Matter of Buckson*, 610 A.2d 203 (Delaware Court on the Judiciary 1992).

- One case involved a judge's attempt to rely on the judicial office to obtain favors. The New York Commission determined that removal was the appropriate sanction for a judge who had improperly intervened on behalf of his daughter in three incidents. *In the Matter of Chase*, Determination (New York State Commission on Judicial Conduct June 10, 1997) (www.scjc.ny.us/chase.htm).



- Three cases involved multiple types of misconduct relating to the practice of law and misrepresentations or other dishonest conduct.

1. The Arkansas Supreme Court removed a judge from office for (1) continuing to represent two clients in litigation after becoming a judge; (2) willfully failing to honor a subrogation agreement with a union for medical expenses paid on a client's behalf; (3) failing to properly report attorney's fees, referral fees, and income from a trust on the financial interest statement required to be filed with the secretary of state; (4) writing 59 insufficient funds checks between 1993 and 1997; (5) failing to pay federal income taxes in 1994; (6) placing the license tag for his 1981 Toyota on his Ford pickup truck; and (7) depositing client funds in a personal account rather than a trust account. *Judicial Discipline and Disability Commission v. Thompson*, 16 S.W.3d 212 (Arkansas 2000).

2. The Florida Supreme Court removed a former judge who had (1) virtually abandoned her law practice and neglected several client matters during the time she ran for county court judge; (2) gave inaccurate, incomplete, and misleading testimony

in a domestic violence proceeding against her ex-husband; and (3) in her dissolution of marriage action, failed to produce certain tapes when ordered by the court to do so and failed to provide a sufficient reason for her failure. *Inquiry Concerning Hapner*, 718 So. 2d 785 (Florida 1998).

3. The Washington Supreme Court removed a judge from office for (1) continuing to serve after becoming a judge as president of three corporations included in an estate; (2) while an adjustment of the purchase price for one of the assets of the estate was being negotiated, accepting payments of his car loan from the purchaser and failing to disclose the payments to the trustee of the estate; and (3) failing to disclose the payment of the car loan on public disclosure forms. *In the Matter of Anderson*, 981 P.2d 426 (Washington 1999).

- Two cases involved misrepresentations.

1. The Michigan Supreme Court removed a judge who had made public misrepresentations at a press conference, attempted to introduce a fraudulent letter into evidence in a Commission hearing, and, throughout the proceedings, engaged in conduct that was inappropriate, unprofessional, and demonstrated a lack of respect for the proceedings. *In re Ferrara*, 582 N.W.2d 817 (Michigan 1998).

2. In *Inquiry Concerning Couwenberg*, No. 158, Decision and Order (California Commission on Judicial Performance August 15, 2001) (<http://cjp.ca.gov/pubdisc.htm>), the California Commission on Judicial Performance removed a judge from office for misrepresentations about his educational background, military service, and employment on his personal data questionnaires when he sought judicial appointment, to judges who could help him gain his appointment, on his judicial data questionnaire, to the judge who was to introduce him at the public enrobing ceremony, to attorneys, to a newspaper reporter, and to the Commission.

WHY HAVE SO MANY NEW YORK JUDGES BEEN REMOVED?

One obvious feature of the statistics regarding judicial removal is that one state – New York – accounted for 38% of the removals. From 1990 through 2001, 41 judges were removed in New York, five times as many as the eight removed in Florida, the state with the next highest number.

One explanation for the high number of removals in New York is, of course, that New York has a great many judges – approximately 3300 were subject to the Commission's jurisdiction in 2001. The number of judges alone cannot account for the number of removals in New York, however, as other states also have large judiciaries (approximately 3533 judges were subject to the commission's jurisdiction in Texas in 2001; 1610 in California; 1058 in Michigan; over 800 each in Mississippi and Florida).

A second factor that may contribute to the relatively high number of removals in New York is that New York is one of only 14 states in which suspension without pay is not an option in judicial discipline proceedings; the only choice for serious misconduct other than removal is a censure. Particularly considering the possibility of judges agreeing to suspensions to avoid removal, it is likely that some of the 41 removals in New York would have been suspensions had that option been available. Or conversely, some of the suspensions in states such as Michigan and Mississippi might have been removals if suspension were not an option in those states, reducing the gap evident in the statistics.

Another possible explanation may be that New York is one of only four states in which the commission has the authority to remove a judge from office subject to review by the court of appeals (the highest court in New York) at the request of the judge; in most states, the commission can only recommend removal to the supreme court. See Table II, Appendix I. In 18 New York cases, the judge did not request review of the Commission's removal determination, and in the 23 cases where review was sought, the court of appeals agreed with the determination of the Commission in all but two cases. See *In the Matter of LaBelle*, 591 N.E.2d 1156 (New York 1992) (judge

was censured based on the court's conclusion that "the judge's misconduct was both less frequent and less egregious than the Commission had found"); *In the Matter of Skinner*, 690 N.E.2d 484 (New York Court of Appeals 1997) (judge was censured; the court noted several factors suggesting removal was "unduly severe:" the judge, now in his seventies, had been the elected choice of the voters for nearly four decades, with no evidence of any prior complaints regarding his judicial service; there was no indication that the judge was motivated by personal profit, vindictiveness or ill-will; discrepancies in judge's testimony before the Commission did not necessarily reflect dishonesty or evasiveness).

It is impossible to calculate whether and how that unusual (although not unique) procedure may affect the number of judges removed or otherwise disciplined in New York. In fact, the statistics are comparable with other states. In states other than New York during the study period, only 8 of 67 or 12% of the recommendations of removal were rejected by the reviewing court. In New York, two of 23 or approximately 9% of the removal determinations in which the judge sought review resulted in the Court of Appeals imposing a less severe sanction; in both cases, the court censured the judge.

Almost certainly one of the factors reflected in the number of judges removed in New York is the high number of town and village court judges that serve that state, all of whom serve part-time and the majority of whom are non-lawyers. While some other states such as Texas and Mississippi also have a large number of non-lawyer judges, many large states such as California, Florida, Illinois, and Michigan do not.

Of the 41 judges removed in New York, 31 were town or village court judges – 76%. (It is not possible to ascertain from some of the earlier Commission determinations whether the judge was a lawyer or a non-lawyer.) According to the Commission's 2001 annual report:

[O]f the 3,300 judges in the state unified court system, approximately 67% are part-time town or village justices. Approximately 82% of the town and village justices, comprising about 55% of all judges in the court system, are not lawyers. (Town and village justices serve part-time and may or may not be lawyers; judges of all other courts must be lawyers, whether or not they serve full-time.) Excluding cases from 1978 to 1982

involving ticket-fixing, which was largely a town and village justice court phenomenon – in larger jurisdictions, traffic matters are typically handled by administrative agencies – the overall percentage of town and village justices disciplined since the Commission's inception (66%) is virtually identical to the percentage of town and village justice in the judiciary as a whole (67%).

A particular feature of the town and village court justice system that may contribute to the number of town and village court judges removed is that, because they lack staff, those judges collect fines and other payments from litigants, which they are then required by state law to remit to the state comptroller by the tenth day of the month following collection. In 6 of the removal cases from New York, the basis for the removal was the judge's consistent failure to remit court funds and report cases as required by law and/or to deposit court funds into an official account. Four other cases also involved failure to remit but included additional charges as well. In addition, the conduct for which 5 other town or village court judges were removed related to the fact that the judge was not a lawyer or to the other work in which the part-time judge engaged. *See* case summaries at pages *infra*.

In 5 cases, a town or village court judge was removed, at least in part, for a pattern of egregious legal error. *See In the Matter of Buckley*, Determination (New York State Commission on Judicial Conduct April 6, 2000); *In the Matter of Hamel*, 668 N.E.2d 390 (New York 1996); *In the Matter of Mossman*, Determination (New York Commission on Judicial Conduct September 24, 1991); *In the Matter of Romano*, 712 N.E.2d 1216 (New York 1999); *In the Matter of Winegard*, Determination (New York Commission on Judicial Conduct September 26, 1991). Of those 5, only Winegard is identified as a non-lawyer, and only Romano is identified as a lawyer. However, those cases represent only a small portion of the town and village court removal cases, and full-time, lawyer judges have also engaged in similar misconduct justifying removal or other discipline. Therefore, the statistics do not necessarily support a conclusion that non-lawyer or part-time judges are more likely to disregard the law.

Another probable factor in the removal rate in New York is the size of the Commission's budget. For fiscal year 2001, the Commission had a budget

of \$2.13 million, which enabled the Commission to have a staff of 27, including nine attorneys, six full-time investigators, and one part-time investigator and three offices (in Albany, Rochester, and New York City). That budget is undoubtedly inadequate; in fiscal year 1978-79, the Commission had a budget of \$1.64 million with a staff of 63, including 21 lawyers and 18 investigators. However, it is less miserly than those of other states. No other state has more than one office (the Pennsylvania Judicial Conduct Board has an office in Harrisburg and an office with just one investigator in Pittsburgh), and only California has a comparable budget. (For fiscal year 2001-2002, the budget for the California Commission on Judicial Performance is \$3,976,000, and the California Commission has a staff of 27, which includes 11 attorneys.) In contrast, for example, the Texas State Commission on Judicial Conduct had a budget of \$706,102 and a staff of 15, including six attorneys and two investigators for the fiscal year ending August 2001.

Other factors may also contribute to the number of judges removed in New York compared to other states, such as the composition of the Commission, the confidentiality of Commission proceedings, the fact that the process has only one-tier (compared to the bifurcated process in over a dozen other states), its use of masters to conduct hearings, and the fact that most judges in New York are elected. However, none of those factors is unique to New York, and calculating all the possible effects of those variables is impossible (or at least beyond the scope of this study).

AUTOMATIC REMOVAL FOR CONVICTION OF A CRIME

In approximately 11 states, a judge is always removed from office when he or she is convicted of certain types of crimes and that conviction becomes final. A variety of means are used to affect that removal.

In some states, a judge's office is automatically declared vacant following final conviction. For example, in Georgia, upon a judge's final conviction of a felony under Georgia or federal law with no appeal or review pending, "the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof." Georgia Const., art. 6, §7, ¶ VII. Similarly, in Texas, "A judge is automatically removed from the judge's office if the judge is convicted of or is granted deferred adjudication for: (1) a felony; or (2) a misdemeanor involving official misconduct." Texas Government Code, §33.038. In Pennsylvania, "A justice, judge or justice of the peace convicted of misbehavior in office by a court . . . shall forfeit automatically his judicial office and thereafter be ineligible for judicial office." Pennsylvania Const., art. 5, § 18. In Mississippi, judges are included in a statute providing that a public official's office is declared vacated following conviction "in any court of this state or in any federal court of any felony other than manslaughter or any violation of the United States Internal Revenue Code, of corruption in office or peculation therein, or of gambling or dealing in futures with money coming to his hands by virtue of his office." Mississippi Statutes, § 25-5-1.

In other states, an affirmative act of the conduct commission is apparently necessary to remove a judge convicted of a crime, but the commission is required, first, to suspend a judge upon conviction and then to remove the judge if the conviction becomes final. For example, the provision in California states:

The Commission on Judicial Performance shall suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. . . . If the judge is suspended and the conviction becomes final, the Commission on Judicial Performance shall remove the judge from office.

California Const., art. 6, § 18(c). (If the conviction is reversed, the suspension terminates, and the judge is paid the salary for the period of suspension.) *See also* Montana Const., art. 5, § 24.

In other states, the actor in the suspension and removal is the supreme court, not the commission. For example, in Colorado:

Whenever a justice or judge of any court of this state has been convicted in any court of this state or of the United States or of any state, of a felony or other offense involving moral turpitude, the supreme court shall, of its own motion or upon petition filed by any person, and upon finding that such a conviction was had, enter its order suspending said justice or judge from office until such time as said judgment of conviction becomes final, and the payment of salary of said justice or judge shall also be suspended from the date of such order. If said judgment of conviction becomes final, the supreme court shall enter its order removing said justice or judge from office and declaring his office vacant and his right to salary shall cease from the date of the order of suspension.

Colorado Const., art. 6, § 23. *See also* Indiana Const., art. 7, § 11 ("on recommendation of the commission on judicial qualifications or on its own motion"); Missouri Const., art. 5, § 24 ("on recommendation of the commission"); Nebraska Const., art. V, § 30 ("on recommendation of the Commission on Judicial Qualifications or on its own motion"); Rhode Island Statutes, § 8-16-8 ("on its own motion"); Rule 5(2), Rules of the Vermont Supreme Court for Disciplinary Control of Judges.

Finally, in some states, the supreme court may suspend a judge following a guilty plea or conviction, and if a judge is suspended and the conviction becomes final, the supreme court is required to remove the judge from office. For example, in Minnesota:

On recommendation of the board on judicial standards or on its own motion, the supreme court may suspend a judge from office without salary when the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under Minnesota or federal law or any other crime that involves moral turpitude. . . . If the judge is suspended and the conviction becomes final, the supreme court shall remove the judge from office.

Minnesota Statutes, § 490.16. *See also* Arizona Const., art. 6.1, § 3; New York Const., art. 6, § 22.

EFFECTS OF REMOVAL

In some states, there are collateral consequences to removal from office that affect a former judge's ability to serve as a judge in the future or practice law. (The effect of removal on a judge's pension is beyond the scope of this study.) For example, in at least 16 states, a removed judge is ineligible to serve in a judicial office again and may not seek or hold judicial office. Those states are Arizona, Arkansas, California, Indiana, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Pennsylvania, South Carolina, South Dakota, and Wyoming.⁴ In South Carolina, on petition, the supreme court "may dissolve this permanent injunction."

In Texas, when deciding to remove a judge, the review tribunal appointed by the Texas Supreme Court has the option of prohibiting the former judge "from holding judicial office in the future or from sitting on a court of this State by assignment." Texas Const., art. 5, § 1-a(2)(C) ("Under the law relating to the removal of an active Justice or Judge, the Commission and the review tribunal may prohibit a retired or former Judge from holding judicial office in the future"). See *In re Barr*, 13 S.W.3d 525 (Special Court of Review Appointed by Texas Supreme Court 1998) (Holman, J., concurring and dissenting; arguing that the "record in this case persuasively compels a judgment that not only removes Respondent from judicial office now but also prohibits him from holding judicial office in the future and from sitting as a judge on a court of this State by assignment"). The Michigan Supreme Court has held that it does not have the power to impose a permanent injunction against "holding" judicial office but that it may have the power to permanently enjoin a judge from "serving

in "any judicial office in the future, and retains "the power to determine that a person is unfit for judicial office and to prevent him from ever exercising judicial power in this state for as long as he is, in our judgment, judicially unfit." *In the Matter of Jenkins*, 465 N.W.2d 317, 324 (Michigan 1991).

In California, in addition to being ineligible to serve as a full-time permanent judge, a judge removed from office is precluded from "receiving an assignment, appointment, or reference of work from any California state court." In Wisconsin (Wisconsin Const., art. VII, § 11), a judge removed for cause is ineligible for reappointment or temporary service and cannot be reappointed, although there does not appear to be a bar to running for judicial office.

In Alaska (Alaska Statutes, § 22.30.070(d)), a judge removed by the supreme court is ineligible for judicial office for three years. In Louisiana (Louisiana Supreme Court Rule XXIII, § 26) and Washington (Washington Const., art. 4, § 31(5)), a judge removed from office cannot run for office again unless certified by the supreme court and the former judge cannot petition for certification for five years. (The first step is a petition filed with the commission.) The Louisiana Supreme Court adopted the rule when a judge it had removed from office in November 1996, argued that he could serve the second term to which he had been elected in September 1996, following the Judiciary Commission's recommendation of removal. Rejecting the judge's argument, the court noted that its earlier order had concluded that the judge's conduct warranted "the most severe discipline," and had declared that his office "be, and is hereby, declared vacant," without limitation. The court held that the effect of its earlier holding was that the judge was removed from office both for the term he was serving and any subsequent term to which he was elected. *In re Johnson*, 689 So. 2d 1313 (Louisiana 1997). The court had removed the judge for owning and operating a company that provided pay telephone service for inmates in the local jail. *In re Johnson*, 683 So. 2d 1196 (1996).

In California, Indiana, Mississippi, Montana, and North Dakota, a removed judge is also by rule suspended from practicing law in the state pending

4. See Arizona Const., art. 6.1, § 4(B); Arkansas Statutes, § 16-10-410(d); California Const., art. 6, § 18(e); Indiana Const., art. 7, § 11; Minnesota Statutes, § 490.16(4); Mississippi Statutes, § 9-19-17; Montana Statutes, § 3-1-1111(2); Nebraska Const., art. V, § 30(2); Nevada Revised Statutes, § 1.4653.1; New Jersey Statute, § 2B:2A-9; North Carolina Statutes, § 7A-376; North Dakota Statutes, § 27-23-03(4); Pennsylvania Const., art. 5, § 18(d)(3); South Carolina Appellate Court Rules, Rule 7b(1); South Dakota Statute, §16-1A-13; Wyoming Const., art. 5, § 6(h).

further order of the supreme court. California Const., art. 6, § 18(e); Indiana Const., art. 7, § 11; Mississippi Statutes, § 9-19-17; Montana Statutes, § 3-1-1111(2); North Dakota Statutes, § 27-23-03(4). In Arkansas (Arkansas Statutes, § 16-10-410(d)), the supreme court, when considering removal of a judge, determines “whether discipline as a lawyer also is warranted,” and in Minnesota (Minnesota Statutes, § 490.16(4)), the question of a “removed judge’s right to practice law in this state shall be referred to the proper authority for review.”

SUSPENSION WITHOUT PAY

In most states, the commission or the supreme court has the authority to suspend a judge without pay as a final sanction in judicial discipline proceedings. In fact, that is an option in all but 14 states. *See* Table III, Appendix I. From January 1990 through December 2001, not counting judges suspended until the end of their terms, at least 75 judges were suspended without pay as a result of judicial discipline proceedings. (Some of those suspensions were stayed.) *See* Appendix IV. Some of those suspensions were imposed pursuant to an agreement between the judge and the conduct commission. Some also included other sanctions such as a fine or reprimand and imposition of conditions such as obtaining judicial ethics education, monitoring, and participating in treatment for alcoholism.

In several cases in which the judge was removed, the court expressly rejected the suggestion that the judge be suspended instead. In *In re Peck*, 867 P.2d 853, 860 (Arizona 1994), for example, the court stated, “the goals of judicial discipline will not be served in this case by imposing a sanction of thirty days — a sort of unpaid vacation — followed by some additional schooling.” Acknowledging that its power to remove those holding elected constitutional office should be used only in “extreme circumstances,” the court stated that the record indicated that the judge used the power of judicial office “to get even with his enemies, to harass his debtors, and to bestow favors on those whom he chose to befriend.” Noting that the judge had already been reprimanded once and admonished twice by the Commission on Judicial Conduct, the court concluded “neither censure nor a short suspension is appropriate; lenient treatment will neither serve as a deterrent for others nor give our citizens confidence in the integrity of the judicial system.” 867 P.2d at 861.

In *In the Matter of Holien*, 612 N.W.2d 789 (Iowa 2000), the Iowa Supreme Court rejected the judge’s suggestion that the court be “innovative” and impose a suspension with some form of supervision.

First, it would not be fair to the persons who must deal with the respondent in the performance of her duties because the bizarre conduct we have outlined was exacerbated when the respondent suspected people were watching her. If

someone really is watching her, as a suspension would require, we are not at all optimistic about the effect on her behavior. Also, and more important, we believe the respondent is simply and unalterably unsuited to be a judge, and no attempts at behavior modification are going to change that significantly. She simply should not be a judge.

612 N.W. 2d at 798.

In several suspension cases, the court explained why suspension rather than removal on the one hand or censure on the other was appropriate. In *In the Matter of Crawford*, 629 N.W.2d 1, 11 (Wisconsin 2001), the Wisconsin Supreme Court, concluding that reprimand or censure was insufficient, stated that the judge's "willingness to resort to personal, political threats in his running feud with successive chief judges was disturbingly out-of-bounds and clearly unethical. . . , calling into question his understanding of and capacity to abide by the rules that govern all judges in their conduct on and off the bench." However, the court also concluded that the judge's conduct while serious, "was not so substantial a threat to the public as to warrant the ultimate sanction of removal." The court noted the judge had not previously been disciplined, the misconduct had not occurred in his adjudicative role but in an internal administrative matter, and the misconduct did not affect the specific rights of any litigant or member of the public but implicated more generalized concerns. The court held that a 75-day suspension was "commensurate with the gravity of Judge Crawford's misconduct and the extent to which it jeopardized public confidence in the integrity and independence of the judiciary," and was "sufficiently long to impress upon Judge Crawford the fundamental requirements of judicial office and to demonstrate to the public the judiciary's dedication to preserving integrity within its ranks." 629 N.W.2d at 12.

In *In the Matter of Seaman*, 627 A.2d 106, 124 (New Jersey 1993), suspending a judge for 60 days for sexual harassment, the New Jersey Supreme Court explained that "suspension stands in order of severity between a censure and permanent removal from judicial office." The court stated censure was too lenient in that case because the judge had not acknowledged his guilt, publicly apologized, or exhibited "genuine self-confrontation and commitment to rehabilitation" and the case involved a "prolonged course of judicial

misbehavior that was especially harmful to its victim." The court concluded, "A temporary removal from office will impress upon respondent the magnitude of the offense he has committed, reaffirm public confidence in the integrity of our courts, and provide a powerful deterrent to future misconduct, of this type, by respondent or others who hold judicial office." 627 A.2d at 124. In addition, the court ordered that, during his suspension, the judge must complete an educational program designed to heighten awareness of what constitutes sexual harassment and to reinforce the behavior expected by the judiciary's sexual harassment policy.

In *In the Matter of Williams*, 777 A.2d 323 (New Jersey 2001), the New Jersey Supreme Court suspended for 3 months without pay a judge who had publicly confronted a man with whom she had had a romantic relationship and gave false and misleading information to police and others. The court also ordered the judge to continue psychological counseling until further order of the court. The court stated "censure does not reassure the public that judges will be deterred from 'acting out' in public and that such behavior will not reoccur. The gravity of the judge's violations requires a strong response." 777 A.2d at 331.

The court concluded that removal was too harsh because the judge's conduct did not involve the misuse of judicial office or criminal acts that corrupt the judicial decision-making power or are incompatible with continued judicial service. The court also found that, despite her personal problems, the judge performed well on the bench and had a reputation as a solid and fair judge and commended her work with the Inns of Court and her conscientious attention to her judicial duties. Noting that her transgressions were related to her personal life and her dysfunctional relationship, the court stated, "the picture that emerges from the record is of a person driven by strong emotions, who behaved inappropriately as a result of a flawed personal association." 777 A.2d at 333. The court stated that the judge's "actions affected persons removed from the immediate controversy and her disregard for social norms negatively affects public confidence and brings discredit to the judiciary," noting of greatest concern was her misleading the police and implying to the saloon owner that she was an official from the police department. *Id.* at 332. Although noting that prior incidents relating to

the judge's relationship were not before the court "except insofar as they bear on the quantum of discipline that should be imposed," the court stated that the judge had been physically injured during an earlier confrontation. Noting that although she was reappointed, her reappointment was without tenure due to a break in service, the court concluded that the "judge has already paid a heavy price for her intemperate behavior." *Id.* The court also stated that it had chosen to suspend the judge for 3 rather than 6 months, as recommended by one committee member, because due to the constitutional prohibition against a judge engag[ing] in the practice of law or other gainful pursuit" they were "concerned about the substantial adverse consequences of a longer suspension." *Id.* at 333.

The Missouri Supreme Court found that a judge's "willful pattern of discourtesy, abuse and vendetta against both his colleagues on the bench and those who appear before him as officers of the court or persons whose legal needs require impartial resolution" eroded "the very foundation of the system." *In re Elliston*, 789 S.W.2d 469, 484 (Missouri 1990). The court concluded, "A public reprimand in the presence of such serious misconduct and oppression in office only serves to further that erosion." However, the court also considered that "Judge Elliston is a person of significant legal ability," and stated "it is our hope that he can correct his conduct, and it is our conviction that the people of Jasper County will be better served by a reformed Judge Elliston maintaining his place as a judicial officer rather than losing it." 789 S.W.2d at 484. The court suspended the judge for 15 days without pay.

Length of suspension

Once it is decided that censure is too lenient and removal too harsh, courts and commission must decide what length of suspension is just right. In 12 cases, the supreme court disagreed with the commission and either lengthened the suspension (7 cases) or shortened it (5 cases). The suspensions imposed from 1990 to 2001 ranged from three days (*In the Matter of Jacobi*, 715 N.E.2d 873 (Indiana 1999) and *In the Matter of Hocking*, 546 N.W.2d 234 (Michigan 1996)) to two years (*In the Matter of Breitenbach*, 482 N.W.2d 54 (Wisconsin 1992)). See Appendix IV.

In most states, there is no limit to the length of a suspension. (In Nebraska, a judge may be suspended for only up to 6 months; in West Virginia, the limit is 1 year.) The most frequent length imposed was 6 months (17 cases). There were 48 suspensions under 6 months (1 for 5 months; 11 for 3 months; 1 for 75 days; 9 for 2 months; 1 for 45 days; 8 for 1 month; 7 for 15 days; 3 for 14 days; 3 for 10 days; 2 for 7 days; and 2 for 3 days). There were 10 suspensions over 6 months (1 for two years; 3 for 18 months; 4 for 1 year; 1 for 9 months; 1 for 7 months). (For purposes of this comparison, 30 days are treated as 1 month so, for example, a judge suspended for 60 days would be counted as having a 2-month suspension.) One of the advantages of suspension as a sanction is that the possibility of suspensions for days, weeks, months, or even years gives commissions and courts more flexibility to create sanctions that reflect proportionality.

In 5 cases, the court suspended the judge until the end of the judge's term. See Appendix III. It is not clear from the decision in *In the Matter of Cothren*, No. 28 (Alabama Court of the Judiciary January 22, 1998), how much time remained in the judge's term when he was suspended (although it was longer than two months), and the court gave no explanation for the sanction, which included censure, a 2-month suspension with pay, and suspension without pay until the end of the judge's term. One judge dissented and argued that, although the judge's blindness, sleep apnea, and circadian rhythm disorder may have mitigated the charges that he slept on the bench and failed to dispose of uncontested matters in a reasonable time, those physical conditions were no defense to the charge that, in an ex parte communication, he suggested to an attorney regularly appearing before him

to walk out of a deposition if the subject of the operation of the judge's office were mentioned.

Noting that the judge had decided not to seek retention and his present term expired in less than six months, the Arizona Supreme Court suspended a judge until the end of his term for using profane language and a racial epithet but emphasized that "this case is not authority for the proposition that removal is inappropriate for this sort of conduct." *In re Goodfarb*, 880 P.2d 620, 622 n.3 (Arizona 1994). The court stated that the financial impact of a suspension played no role in its decision because consideration of the financial impact "would in no way serve the objective of guarding the public's interest." *Id.* at 623.

The decision in *In re Hill*, 8 S.W.2d 578 (Missouri 2000) was issued on January 11, 2000, and notes that the judge had most recently been elected to a two-year term in April 1998. Therefore, the decision apparently resulted in an unpaid suspension of approximately four months. The only explanation the court gave for not adopting the recommendation of the Commission on Retirement, Removal and Discipline to remove the judge was that the judge had not been the subject of prior complaints in over 17 years as a municipal judge.

The decision in *In the Matter of Turco*, 970 P.2d 731 (Washington 1999), was issued in January 1999, but the judge had not stood for re-election in 1998 so, in effect, the judge apparently was not suspended at all. The sanction was for intentionally striking or pushing his wife, causing her to fall. The court stated that removal was an "excessive sanction," without noting any mitigating factors but noting its previous statement that "the people's choice in judicial elections should not be 'lightly set aside.'" 970 P.2d at 744 (citations omitted). The court did acknowledge the aggravating factors cited by the Commission – that only one week before he had pushed his wife, the judge stipulated to a written admonishment for statements made in three domestic violence cases and that domestic violence cases comprised a significant part of the caseload of his court.

The underlying rationale in *Hill* and *Turco* for suspension to the end of the term may have been the courts' desire to avoid imposing on the judges the possible collateral consequences of removal such as a bar from sitting as a judge in the future or the elimination or diminution of pension benefits. However, in neither case did the court articulate that rationale.

The bar from future office was part of the justification given by the Arizona Supreme Court in *In re Jett*, 882 P.2d 414 (Arizona 1994). The judge had signed an order releasing her boyfriend from jail after he had been arrested on suspicion of domestic violence. The court imposed a suspension until the end of the judge's term (1997). The commission had recommended censure and a 60-day suspension, and the two dissenting justices would also have imposed a shorter suspension. Noting that the judge would forever be barred from holding judicial office, the court stated, "Because Respondent may be fit to hold judicial office at some time in the future, and because the City Council has removed her from office for the balance of her term, we conclude that the public will be adequately protected if we simply suspend Respondent effective the date on which the City Council removed her."

Suspending a judge until the end of his or her term is not a sound sanction, at least absent some special circumstances. The effect on the judge's income of a suspension without pay is the same as for a removal, except a potential effect on pension benefits. In fact, because a judge may not practice law while suspended, the effect may even be more detrimental than removal (assuming the judge does not resign rather than serve a long suspension).

Moreover, whatever the collateral consequences to a judge of removal, those consequences are outweighed by the consequences to the justice system of a lengthy suspension, at least in most circumstances. As noted in *In the Matter of Vaughn*, 462 S.E.2d 728, 736 (Georgia 1995), if a judge is suspended, rather than removed, the resulting vacancy on the bench cannot be filled with a full-time, experienced judge until the next election and the "already over-burdened court would be forced to handle more cases with fewer experienced, permanent judges, resulting in prejudice to both the judicial system and the litigants appearing in state court." The alternative of part-time judges filling the vacancy was, the court concluded, "a terrible misuse of taxpayer dollars." (The court in *Vaughn* did state that "this does not mean that if Judge Vaughn's conduct warranted only that she be suspended from office, the resulting burden on the Fulton County State Court would authorize her removal.") The same burden on both the judge and the system would also result in a case if a lengthy suspension were imposed.

DISAGREEMENTS ABOUT SANCTION

From 1990 through 2001, reviewing court imposed different sanctions than that recommended or imposed by the commissions in 42 cases. In 22 cases, the state supreme court imposed a less severe sanction than that imposed or recommended by the commission; in 20 cases, the court imposed a more severe sanction. At least 32 cases, including some of the 41 cases in which the court had disagreed with the commission, a minority of the reviewing court dissented from the sanction imposed. (These numbers do not include cases in which there was substantial disagreement about whether and to what extent the judge had committed misconduct.)



- In 22 cases, the state supreme court imposed a less severe sanction than that imposed or recommended by the commission on judicial conduct. In 4 of these cases, there were dissents that would have imposed the sanction recommended by the commission.

- ♦ In 8 cases, the sanction recommended by the commission was removal while the sanction imposed by the court was less severe, although in two of the cases the sanction imposed was suspension without pay until the end of the judge's term. *Inquiry Concerning Miller*, 644 So. 2d 75 (Florida 1994) (public reprimand for writing two letters to the editor of a local newspaper and holding a child custody hearing when he did not have jurisdiction, giving the mother notice only after the hearing began, and forcing her to act as her own attorney); *Judicial Council v. Becker*, 834 P.2d 290 (Idaho 1992) (3-month suspension (with conditions) for habitual intemperance, abuse of alcohol, and driving under influence of alcohol); *Commission on Judicial Performance v. Byers*, 757 So. 2d 961 (Mississippi 2000) (voters had already removed her from office so court reprimanded judge for improperly sentencing defendant under wrong statute, doing nothing to correct error, stating under oath to commission that error had not occurred, and abusing contempt powers); *In*

re Hill, 8 S.W.2d 578 (Missouri 2000) (suspension until end of term for writing "open letter" in local newspaper imploring citizens to support police chief in struggle with mayor; ordering blanket reduction in fines and release of prisoners to compel payment of health insurance; failing to recuse from case involving daughter of mayor with whom judge was feuding); *In re Krepela*, 628 N.W.2d 262 (Nebraska 2001) (6-month suspension for altering copy of police report in criminal case in 1984 while serving as county attorney); *In the Matter of Skinner*, 690 N.E.2d 484 (New York 1997) (censure for summarily disposing of two criminal cases without affording the prosecution the right to be heard, in one case, as a favor to the defendant and his wife, who were social acquaintances); *In the Matter of Turco*, 970 P.2d 731 (Washington 1999) (censure and suspension until end of term for intentionally striking or pushing wife); *In the Matter of Crawford*, 629 N.W.2d 1 (Wisconsin 2001) (75-day suspension for threatening to go public with allegations against chief judge, his daughter, and court administrator unless chief judge dropped attempts to regulate judge's court hours).

- ♦ In 5 cases, the court reduced the length of the suspension recommended by the commission. *In re Jones*, 800 So. 2d 828 (Louisiana 2001) (commission recommended 90-suspension; court imposed 30-day suspension for failing to restrain temper, putting into play events that culminated in physical fight with another judge); *In re Conard*, 944 S.W.2d 191 (Missouri 1997) (commission recommended 90-day suspension; court imposed 30-day suspension for a judge who reneged on agreement with police chief, filed incomplete contempt affidavit, and made public comments that pre-judged case); *In re Chrzanowski*, 636 N.W.2d 758 (Michigan 2001) (commission recommended 12-month suspension; court imposed 6-month suspension for appointing attorney with whom judge had intimate relationship to represent indigent defendants and presiding over the cases; presiding over criminal case in

which attorney was retained counsel, without disclosing relationship; making false statements to police officers investigating murder of attorney's wife); *Commission on Judicial Performance v. Peyton*, 645 So. 2d 954 (Mississippi 1994) (commission recommended 30-day suspension plus \$2,000 fine; court imposed 15-day suspension plus \$1,000 fine for ex parte communications); *In re Schenck*, 870 P.2d 185 (Oregon 1994) (commission recommended 3-month suspension; court imposed 45-day suspension for judge who refused to recuse in several cases involving an attorney who had filed a complaint with the commission where the judge had publicized the complaint and his opinion of the complaint and of the attorney; met privately with the district attorney on the subject of his disqualification; wrote letter to the editor and guest editorial in local paper that criticized the district attorney).

♦ In 2 cases, the supreme court publicly reprimanded a judge when the commission had recommended a suspension. *In the Matter of Tesmer*, 580 N.W.2d 307 (Wisconsin 1998) (judge had law professor prepare for her use opinions on dispositive motions in 32 cases); *In the Matter of Stern*, 589 N.W.2d 407 (Wisconsin 1999) (simultaneously serving as municipal judge and school board member).

♦ In 4 cases, the court privately reprimanded a judge when the commission had recommended a public reprimand. *Inquiry Concerning a Judge*, 788 P.2d 716 (Alaska 1990) (judge had validated blank airline ticket stock and taken a reduced-fare flight pursuant to terminated agreements); *Inquiry Concerning a Judge*, 822 P.2d 1333 (Alaska 1991) (justice used chambers stationery to write letters to opposing counsel and met with the governor about litigation involving the judge's personal financial interests and a state agency); *Commission on Judicial Performance v. A Justice Court Judge*, 580 So. 2d 1259 (Mississippi 1991) (ticket-fixing); *Commission on Judicial Performance v. A Municipal Court Judge*, 755 So. 2d 1062 (Mississippi 2000) (ordering three defendants to get married and setting bond for defendant whom judge represented in another matter).

♦ In 1 case, the court stayed a 6-month suspension when the commission recommended a 6-month suspension without pay. *Office of Disciplinary Counsel v. Evans*, 733 N.E.2d 609 (Ohio 2000) (while candidate, failed to closely supervise campaign activities, failed to report township's contributions of use of township garage for producing signs and value of labor of inmates and welfare workers, and exaggerated endorsements).

♦ In 2 cases, the court found that there was a violation of the code of judicial conduct but that the public censure recommended by the commission was unjustified and imposed no other sanction. *Dodds v. Commission on Judicial Performance*, 906 P.2d 1260 (California 1995) (judge had interfered with law enforcement investigation and been rude to litigants and attorneys); *In re Marullo*, 692 So. 2d 1019 (Louisiana 1997) (judge had written letter on official stationery to federal judge concerning the sentencing of a man who had pled guilty to a conspiracy involving an illegal video poker operation).



• In 20 cases, the state supreme court imposed a more severe sanction than that recommended by the conduct commission.

♦ In 3 cases, the supreme court removed the judge from office when the commission had recommended a less severe sanction. *In re Peck*, 867 P.2d 853 (Arizona 1994) (commission recommended 30-day suspension for reinstating charges brought by two of his friends against his election opponent; ex parte communications with a defendant's family and employer and attempt to influence the investigating police officer; issued a summons on an unrelated criminal complaint against a woman who owed him money under a lease; presided over a dispute in which the defendant was an individual who had previously filed a criminal complaint against the judge); *In the Matter of Carpenter*, 17 P.3d 91 (Arizona 2001) (pursuant to agreement, commission recommended retirement for disability for falling asleep during proceedings; making inappropriate comments and circulating inappropriate materials; ex parte com-

munications; failure to recuse; inappropriate uses of his judicial position; failure to respect the rights of parties; failure to adequately perform judicial responsibilities; misrepresenting facts to commission); *In the Matter of Anderson*, 981 P.2d 426 (Washington 1999) (commission recommended 4-month suspension for continuing to serve as president of three corporations; conflict of interest as trustee; failing to disclose payment of car loan on public disclosure forms).

♦ In 7 cases, the supreme court suspended the judge without pay when the commission had recommended either a reprimand or a censure. *Commission on Judicial Performance v. Bishop*, 761 So. 2d 195 (Mississippi 2000) (commission recommended public reprimand and \$1,500 fine; court imposed 90-day suspension and \$1,500 fine for harassing and intimidating minor female who had accused judge of engaging in sexual relations with her and intimidating high school student who had made suggestive remarks to minor); *In the Matter of Collester*, 599 A.2d 1275 (New Jersey 1992) (commission recommended censure; court imposed 2-month suspension for second drunk driving offense); *In the Matter of Seaman*, 627 A.2d 106 (New Jersey 1993) (commission recommended censure; court imposed 60-day suspension pattern of sexually harassing behavior toward court employee); *In the Matter of Fenster*, 649 A.2d 393 (New Jersey 1994) (commission recommended censure; court imposed 6-month suspension for permitting mayor to make speech that was political and prejudicial to defendant in court proceedings); *In the Matter of Williams*, 777 A.2d 323 (New Jersey 2001) (commission recommended censure; court imposed 3-month suspension for publicly confronting man with whom she had had romantic relationship and giving false and misleading information to police); *Office of Disciplinary Counsel v. Ferreri*, 727 N.E.2d 908 (Ohio 2000) (commission recommended public reprimand; court imposed 12-month suspension with 6 months stayed for ex parte communications with employees of county department of children and family services); *Inquiry Concerning Gallagher*, 951 P.2d 705 (Oregon 1998) (commission recommended censure; court imposed 6-month suspension for using judicial assistant's work time

and other public resources to conduct personal and campaign-related business and using official position to obtain advantage in correspondence regarding disputes).

♦ In 7 cases, the supreme court increased the length of the suspension from that recommended by the commission. *In re Lorona*, 875 P.2d 795 (Arizona 1994) (commission recommended 15-day suspension plus censure; court imposed 90-day suspension for influencing another judge's handling of traffic matters concerning a friend and a relative); *In re Goodfarb*, 880 P.2d 620 (Arizona 1994) (commission recommended 3-month suspension, censure, and counseling; court suspended judge until the end of his term for using a racial epithet in a proceeding and, notwithstanding a prior admonition and a prior reprimand from the Commission, using profane expressions in a case); *In re Jett*, 882 P.2d 426 (Arizona 1994) (commission recommended censure and 60-day suspension; court imposed suspension until end of term for signing order releasing boyfriend from jail after he had been arrested for domestic violence); *In the Matter of Gerard*, 631 N.W.2d 271 (Iowa 2001) (commission recommended 45-day suspension; court imposed 60-day suspension for tardiness in filing rulings and making reports on unfinished rulings and intimate relationship with an assistant county attorney who regularly appeared before him without recusing or disclosing the relationship); *In re Hathaway*, 630 N.W.2d 850 (Michigan 2001) (commission recommended 30-day suspension; court imposed 6-month suspension for inappropriately handling arraignment; improperly attempting to induce defendant to waive jury; overall lack of industry); *In re Hammermaster*, 985 P.2d 924 (Washington 1999) (commission recommended censure and 30-day suspension; court imposed censure and 6-month suspension for making improper threats of life imprisonment and indefinite jail sentences to defendants who had not paid fines; using guilty plea form that denied defendants due process; holding trials in absentia; pattern of undignified and disrespectful conduct toward defendants; asking Hispanic defendants if they are "legal"); *In the Matter of Waddick*, 605 N.W.2d 861 (Wisconsin 2000)

(commission recommended 60-day suspension; court imposed 6-month suspension for recurring delay in deciding cases; filing false certifications of status of pending cases; false statement to commission that no cases were awaiting decision beyond prescribed period).

♦ In 1 case, the reviewing court censured a judge when the commission had recommended a reprimand. *In the Matter of Connor*, 589 A.2d 1347 (New Jersey 1991) (pled guilty to driving under influence of intoxicating liquor, leaving scene of an accident, and driving in careless manner).

♦ In 1 case, the reviewing court reprimanded a judge when the commission had recommended an admonishment, a less severe form of sanction. *In the Matter of Starcher*, 456 S.E.2d 202 (West Virginia 1995) (initiating ex parte communications with prosecuting attorney concerning criminal trial).

♦ In 1 case, the reviewing court publicly reprimanded a judge in a case where the commission had recommended a private reprimand. *Commission on Judicial Performance v. Thomas*, 722 So. 2d 629 (Mississippi 1998) (first offense driving under the influence of intoxicating liquor).

DISSENTS

• In 12 cases in which a judge was removed from office, a minority of the court dissented from the sanction, arguing that, although some sanction was necessary, the judge should not be removed. See *Adams v. Commission on Judicial Performance*, 897 P.2d 544 (California 1995) (Rymer, J., concurring in part, dissenting in part) (one justice would have censured judge for engaging in several business transactions with and accepting a gift from a litigant to whom he had awarded a substantial verdict, advising members of a law firm on cases pending before other judges, receiving gifts from attorneys whose interests had or were likely to come before him, failing to disqualify himself or make full disclosure of his relationship with those attorneys or their firms when they appeared before him, and making material misrepresentations and omissions to the commission); *Fletcher v. Commission on Judicial Performance*, 968 P.2d 958 (California 1998) (Kennard, Mosk, JJ., dissenting) (two justices would have censured judge for multiple findings of conduct prejudicial to the administration of justice and willful misconduct); *Inquiry Concerning Graham*, 620 So. 2d 1273 (Florida 1993) (McDonald, J., concurring in part, dissenting in part) (one justice would have reprimanded judge who repeatedly used his position to make baseless allegations against other judges, elected officials, and others; imposed improper sentences and improperly used the contempt power; acted in an undignified and discourteous manner toward litigants, attorneys, and others appearing in his court; and closed and attempted to close public proceedings); *Inquiry Concerning Johnson*, 692 So. 2d 168 (Florida 1997) (Shaw, Anstead, JJ., dissenting) (two justices would have suspended judge for six months for ordering that convictions in DUI cases be backdated); *In re Spurlock*, No. 98-CC, Order (Illinois Courts Commission December 3, 2001) (two dissenting judges would have suspended the judge for 12 months for sexual harassment of assistant state's attorneys and having sexual intercourse in chambers with a court reporter); *In re Huckaby*, 656 So. 2d 292 (Louisiana 1995) (Calogergo, C.J., Watson, Johnson, JJ., dissenting) (three justices would have suspended judge until the end of his term for plea to misdemeanor charge of failing to file tax returns); *In re Jefferson*, 753 So. 2d 181 (Louisiana 2000)

(Calogergo, C.J., Johnson, J., dissenting) (two justices would have suspended for abusing his contempt power, banning a prosecutor from his courtroom and dismissing cases when the prosecutor did not appear, participating in a case as counsel for four years after becoming a judge, and deliberately disobeying orders of the administrative judge); *In the Matter of Seitz*, 495 N.W.2d 559 (Michigan 1993) (Levin, J., concurring in part, dissenting in part) (one justice would have remanded to the commission for a new recommendation); *Commission on Judicial Performance v. Chinn*, 611 So. 2d 849 (Mississippi 1992) (McRae, J., dissenting) (one justice would have reprimanded for, among other misconduct, ticket fixing); *Commission on Judicial Performance v. Hopkins*, 590 So. 2d 857 (Mississippi 1991) (Lee, P.J., McRae, J., concurring in part and dissenting in part) (two justices would have reprimanded judge for calling an officer with the Bureau of Narcotics an s.o.b.; allowing tickets to be dismissed without an adjudication; regularly failing to timely sign dockets; and dismissing tickets in exchange for information on other crimes); *In the Matter of Davis*, 946 P.2d 1033 (Nevada 1997) (Springer, J., dissenting) (one justice would have censured judge for a variety of misconduct); *In the Matter of Duckman*, 699 N.E.2d 872 (New York 1998) (Titone, Bellacosa, JJ., dissenting) (two dissenting judges would have censured judge for a pattern of knowing disregard of the law, intemperate, disparaging name-calling of young prosecutors, and insensitive remarks).

- In 4 cases, a dissent was filed arguing that the judge should have been removed from office, rather than the less severe sanction imposed by the court. In 3 of the cases, removal was also the sanction recommended or determined by the commission. *In the Matter of Cothren*, No. 28 (Alabama Court of the Judiciary January 22, 1998) (majority censured judge and suspended him until the end of his term (with pay for the first two months) for ex parte communication in which judge suggested attorney should walk out of a deposition if questions were asked concerning the operation of the judge's office; sleeping on the bench; and failing to dispose of uncontested matters within a reasonable time); *In re Krepela*, 628 N.W.2d 262 (Nebraska 2001) (McCormack, J., dissenting) (majority suspended judge for six months for judge for altering a copy of a police

report in a criminal case while serving as a county attorney in 1984); *In the Matter of LaBelle*, 591 N.E.2d 1156 (New York 1992) (Kaye, Simons, Alexander, JJ., dissenting) (majority censured judge for improperly committing defendants in 24 cases to jail without bail although he knew that the law required that bail be set); *Judicial Council v. Becker*, 834 P.2d 290 (Idaho 1992) (McDevitt, J., dissenting) (majority imposed 3-month suspension (with conditions) for habitual intemperance, abuse of alcohol, and driving under influence of alcohol).

- In 10 cases (not involving removal), one or more members of the court filed a dissent arguing that the sanction should have been lower; in 5 of those cases, the dissent would have imposed the same sanction recommended by the commission. *In re Jett*, 882 P.2d 426 (Arizona 1994) (Zlaket, J., dissenting; Martone, J., concurring in part, dissenting in part) (in dissent from decision to suspend judge until the end of her term, two justices would have imposed a shorter suspension on a judge who had released her boyfriend from jail after he had been arrested on suspicion of domestic violence and related crimes; commission recommended censure and 60-day suspension); *Inquiry Concerning Miller*, 644 So. 2d 75 (Florida 1994) (Overton, J., dissenting) (majority publicly reprimanded judge for writing two letters to the editor of a local newspaper and holding a hearing on a child custody matter when he did not have jurisdiction, giving the mother notice only after the hearing began, and forcing her to act as her own attorney); *In re Hathaway*, 630 N.W.2d 850 (Michigan 2001) (Cavanagh, Kelly, JJ., dissenting) (in dissent from decision to suspend judge for 6 months, two justices would have suspended judge for 30 days for inappropriately handling arraignment; improperly attempting to induce defendant to waive jury; overall lack of industry; judge had consented to and commission had recommended 30-day suspension); *Commission on Judicial Performance v. Cantrell*, 624 So. 2d 94 (Mississippi 1993) (Lee, P.J., McRae, J., dissenting) (in dissent from decision to publicly reprimand judge, three justices would have privately reprimanded judge for failure to pay part of a bill for medical treatment received at a hospital and his involvement in a dispute arising over the sale or trade of a car); *Commission on Judicial Performance v. Byers*, 757 So. 2d 961 (Mississippi 2000) (Banks, Smith,

McRae, JJ., dissenting) (three justices would have only reprimanded a judge without the fine imposed by the majority; the judge had improperly sentenced a defendant under the wrong statute, done nothing to correct her error, stated under oath that the defendant had not been sentenced for the crime for which she had sentenced him, and abused her contempt powers by arresting a reporter who had published an article regarding a juvenile proceeding without following correct procedures); *In the Matter of Collester*, 599 A.2d 1275 (New Jersey 1992) (Pollock, J., concurring in part, dissenting in part) (in dissent from decision to suspend judge for two months, one justice would have had the judge sit without pay after his second drunk driving offense); *In the Matter of Williams*, 777 A.2d 323 (New Jersey 2001) (Long, J., dissenting) (in dissent from decision to suspend judge for 3 months, one justice would have censured judge for public confrontation of man with whom she had had a romantic relationship and giving false information to the police; commission had recommended censure); *Office of Disciplinary Counsel v. Ferreri*, 710 N.E.2d 1107 (Ohio 1999) (Douglas, Sweeney, Pfeifer, JJ., dissenting) (in dissent from decision to impose 6-month suspension, two justices would have imposed 18-month suspension with the entire suspension stayed for derogatory remarks the judge made about various court officers; the commission had also recommended a 18-month stayed suspension); *In the Matter of Starcher*, 457 S.E.2d 147 (West Virginia 1995) (Neely, C.J., dissenting) (in dissent from decision to admonish judge, one justice would have reprimanded judge for initiating ex parte communications with a prosecuting attorney concerning a criminal trial; commission recommended reprimand); *In the Matter of Hey*, 425 S.E.2d 221 (West Virginia 1992) (Neely, C.J., concurring in part, dissenting in part) (dissenting justice would have reprimanded, not censured, judge who publicly discussed pending case).

- In 6 cases, one or more members of the court filed a dissent arguing that the sanction should have been higher (but not removal); in 2 of those cases, the dissent would have imposed the same sanction recommended by the commission. *Summe v. Judicial Retirement and Removal Commission*, 947 S.W.2d 42 (Kentucky 1997) (Cooper, Johnstone, JJ., concurring in part, dissenting in part) (in dissent from deci-

sion to impose two 30-day suspensions to run concurrently, two dissenting justices would have run the suspensions consecutively as recommended by the Commission; the judge had violated the restrictions on campaign speech); *In re Runco*, 620 N.W.2d 844 (Michigan 2001) (Cavanagh, J., concurring in part, dissenting in part) (in dissent from decision to censure judge for engaging in self-dealing contrary to clients' interests while an attorney and failing to file timely answer to complaint, one justice would have imposed 30-day suspension without pay, which had been the recommendation of the commission); *Commission on Judicial Performance v. Milling*, 657 So. 2d 531 (Mississippi 1995) (Hawkins, CJ., Lee, McRae, JJ., concurring) (in dissent from decision to remove judge for openly living with a fugitive, three justices would also have imposed a \$500 fine); *Office of Disciplinary Counsel v. Mestemaker*, 676 N.E.2d 870 (Ohio 1997) (Resnick, Stratton, JJ., dissenting) (in dissent from public reprimand of former judge for making derogatory remarks regarding litigant's national origin, ordering marriage as a condition of probation, and displaying a lack of judicial temperament in domestic violence cases, one justice would have suspended the judge from the practice of law for one year); *Ohio State Bar Association v. Reid*, 708 N.E.2d 193 (Ohio 1999) (Moyer, C.J., Cook, J., dissenting) (in dissent from public reprimand for judge who appeared at zoning commission meetings to speak on behalf of real estate partnerships in which he owned an interest, two justices would have suspended the judge for six months); *Office of Disciplinary Counsel v. Evans*, 733 N.E.2d 609 (Ohio 2000) (Christley, Resnick, Cook, JJ., dissenting) (in dissent from decision to impose 6-month stayed suspension for judge who failed to closely supervise campaign activities, four justices would not have stayed the suspension, which was the recommendation of the commission).

EXPLANATIONS FOR THE DISAGREEMENTS

In some cases, the reviewing court did not explain why it was deviating from the sanction recommended by the commission. Similarly, in some cases in which dissents were filed, the dissents do not explain why they would impose a different sanction, although in some of the cases the sanction advocated is the same as that recommended by the commission. Given the difficulty of the sanction decision and the goal of fostering public confidence in the judiciary, it is important that a sanction decision is thoroughly explained, particularly in a case in which there is a debate about the appropriate sanction. If the reviewing court does not explain the basis for its rejection of a commission sanction recommendation, it misses an opportunity to assist the commission by providing standards that can be applied in future cases. Most decisions, however, do explain the basis for the difference of opinion about the appropriate sanction.

In many of the cases, disagreements about the appropriate sanction arose from disagreements about the seriousness of the misconduct.

In many of the cases, disagreements about the appropriate sanction arose from disagreements about the seriousness of the misconduct.

For example, in *In the Matter of Crawford*, 629 N.W.2d 1 (Wisconsin 2001), the Wisconsin Supreme Court's decision not to follow the Judicial Commission's removal recommendation appeared to be based on a different assessment of the seriousness of the misconduct. The court did suspend the judge for 75 days without pay and acknowledged that the judge had "demonstrated no understanding of the impropriety" of his threats to go public with allegations about the chief judge and others if the chief judge continued to try to prevent the judge from remaining on the bench into the lunch hour and after regular business hours. 629 N.W. 2d at 11.

However, the court concluded his behavior "was not so substantial a threat to the public as to warrant the ultimate sanction of removal" because it "occurred in the context of an internal administrative matter," not in the performance of his adjudicative role, and did not affect the specific rights of any litigant or member of the public. *Id.* The court also noted that the judge had not previously been disciplined. *Id.*

Similarly, the three dissenting justices in *In re Huckaby*, 656 So. 2d 292, 301-02 (Louisiana 1995) (Calogergo, C.J., Watson, Johnson, JJ., dissenting), argued that the judge's plea to misdemeanor counts of failing to file federal income tax returns did not meet the standards for removal implied in the Louisiana constitution, which were official misconduct, public misconduct, or felonious criminal conduct. (However, the dissents argued that the judge should be suspended without pay until the end of his term, a strange sanction. See discussion of suspension at pages 28-31, *infra*.)

In *In re Spurlock*, No. 98-CC, Order (Illinois Courts Commission December 3, 2001), the dissent conceded that the judge's conduct was serious but argued it did not merit the most severe sanction because it did not involve abuse of power or affect the judicial process. Stating the sanction imposed "must be in proportion to the ethical offense committed," the two dissenting judges would have imposed a 12-month suspension. The Commission had found that the judge engaged in "intimidating and sexually inappropriate behavior" in the courtroom and chambers toward four assistant state's attorneys and had sexual intercourse in his chambers with a court reporter. The dissent stated, "Much of respondent's behavior, such as inviting the assistant state's attorneys to dinner and asking for their phone numbers, while annoying, was not sanctionable misconduct. In my view, only certain incidents, such as the repeated suggestive comments regarding the assistant state's attorneys appearance and the unwelcome physical contact, constitute sanctionable misconduct." The dissent noted an earlier case (*In re Keith*, No. 93-CC-1, Order (Illinois Courts Commission January 21, 1994)) in which the Commission had removed a judge for evincing a complete lack of judicial demeanor, a disrespect for judicial procedures, and a contempt and disrespect for citizens appearing in his courtroom. The dissent concluded, "The present case, in contrast to Keith, is

not one where respondent has abused the power of his office or subverted the integrity of judicial process and procedure,” noting there was no evidence the judge used his judicial power as leverage in an attempt to force the attorneys to acquiesce to his advances or that this conduct affected the judicial process in any way.

Adopting the recommendation of the Commission on Judicial Performance, the California Supreme Court removed a judge from office for multiple findings of conduct prejudicial to the administration of justice and willful misconduct. *Fletcher v. Commission on Judicial Performance*, 968 P.2d 958 (California 1998). One justice filed a dissenting opinion, arguing censure was the appropriate sanction, in which a second justice concurred. *Id.* at 991-93 (Kennard, Mosk, JJ., dissenting). The dissent emphasized that none of the judge’s acts of misconduct involved corruption or moral turpitude and there was no hint that the judge was corrupt or venal, that the judge’s decisions had been colored by bias or favoritism, or that the judge was incompetent or neglected his duties. The dissent also noted that the judge had expressed remorse and resolved to do better, and that the most recent acts charged had taken place four years before the court’s decision (although only one year before the Commission filed charges).

In *In the Matter of Davis*, 946 P.2d 1033 (Nevada 1997), one justice dissented from a decision to remove a judge for a variety of misconduct, including borrowing money from court employees and not repaying promptly, campaigning for other candidates, conducting a business from chambers, using court employees for personal errands, and directing persons appearing before the court who had been found guilty to contribute money to certain charities in lieu of paying fines to the city. The dissenting justice argued that the sanction was manifestly excessive, stating “charges in this case range from minor (borrowing money from court staff members) to trivial (playing “inappropriate songs” such as “Jail House Rock” in his chambers).” *Id.* at 1049 (Springer, J., dissenting).

In *In the Matter of LaBelle*, 591 N.E.2d 1156 (New York 1992), the New York Court of Appeals censured a city court judge for improperly committing defendants to jail without bail in 24 cases in which he knew bail was required by state law. The

court rejected the determination of the State Commission on Judicial Conduct that the judge be removed, finding that the judge’s misconduct was both less frequent and less egregious than the Commission had found. In concluding that the sanction of removal was too harsh, the court noted that the judge’s actions were “motivated primarily by compassion for those whose problems do not belong in the criminal courts,” and that before the Commission, the judge was forthright, cooperative, and contrite. *Id.* at 1162. The court stated the judge did not “act to advance his own interests over those of the defendants,” he was not “vindictive, biased, abusive, or venal,” but “at the worst, he exhibited impatience with those who abused their right to bail by ignoring scheduled court appearances.” The court concluded that the judge “readily agreed to change those practices found to be improper.”

In contrast, the dissent argued, “Whatever else may be said of the Commission’s numbers, the Court acknowledges that on at least 24 occasions, petitioner ‘improperly committed defendants to jail without bail, knowing that the law required that bail be set.’”

Whichever petitioner’s motivation, in at least two dozen instances he knowingly and wrongfully incarcerated individuals before any determination of their guilt, even for periods longer than a sentence after conviction. Whether petitioner was indeed contrite, or agreed to change his unlawful practice after the initiation of disciplinary proceedings, the appropriate sanction is removal, as the Commission determined. Far less egregious misconduct has warranted removal in the past.

Id. at 1163 (Kaye, Simons, Alexander, JJ., dissenting).

In *In re Lorona*, 875 P.2d 795 (Arizona 1994), the Arizona Supreme Court suspended a non-lawyer justice of the peace for 90 days for influencing another judge’s handling of traffic matters concerning a friend and a relative. Judge Lorona had been a mentor for the judge whom she influenced. The Commission on Judicial Conduct had unanimously recommended that the judge be publicly censured, suspended without pay for 15 days, assessed attorney’s fees and costs, and ordered to obtain four credit hours of judicial education on judicial ethics. The court concluded that a 15-day suspension was “woefully inadequate,” stressing the judge’s “actions rep-

resent an abuse of her office that goes to the heart of judicial integrity.” 875 P.2d at 802.

Adopting the recommendation of the Judicial Tenure Commission, the Michigan Supreme Court removed a judge for jailing the superintendent of a youth center for refusing to obey an order that conflicted with a directive of the chief judge; intemperate conduct to court personnel and insisting that his secretary/court reporter treat them in the same fashion; willful neglect of the adoption docket and refusal to respond to requests by the administrative office; and failure to file reports on undecided matters as required by court rules. *In the Matter of Seitz*, 495 N.W.2d 559 (Michigan 1993). The court noted the judge’s history of being unable to work in an amicable environment with people of authority, co-workers, or employees and that the county probate court had been in a state of disarray. The majority concluded:

[B]oth by his actions and his expressed declarations as he went about the exercise of his duties, he has demonstrated an attitude, a mind set, that leaves us firmly convinced that he is woefully unfit for judicial office. He not only exhibited a lack of the qualities from which judicial temperament springs, but he has exhibited a distinct pattern of injudicious temperament and conduct.

495 N.W.2d at 627.

However, a dissent argued that removal was disproportionate compared to the misconduct and to past cases. Noting that the court had declined to adopt the Commission’s finding that the judge had installed a telephone listening device (which would have been a felony), the dissent argued that the cause should be remanded to the Commission for a new recommendation of discipline on the assumption that the judge did not commit a felony. *Id.* at 672 (Levin, J., concurring in part, dissenting in part).

Adopting the recommendation of the Judicial Hearing Board, the West Virginia Supreme Court of Appeals publicly censured a judge who had discussed specific facts and issues of a child custody case on *Crossfire*, a nation-wide television program, while an appeal from his decisions was pending before the Court. *In the Matter of Hey*, 425 S.E.2d 221 (West Virginia 1992). (The court rejected the Board’s recommendation that the judge be assessed

costs.) On the television program, the judge had said, among other things, “My primary concern, and I want to make this clear, is for the welfare of that child, and I don’t think it is in the welfare, the best interests of a child 13 years old to see her mother sleeping with a man that is not her father, and next week there may be a different man in the house, and the third week there may be a third one.” One justice dissented as to sanction. He argued that “the Board’s severe treatment of Judge Hey was motivated, in part, by the unpopular position advocated by Judge Hey in his public statement.” 425 S.E.2d at 226 (Neely, C.J., concurring in part, dissenting in part).

Adopting a substantial portion of the findings of the Commission on Judicial Performance, the Mississippi Supreme Court publicly reprimanded a judge and fined her \$1,500 for improperly sentencing a defendant under the wrong statute, doing nothing to correct her error, and stating under oath in her answer to the Commission’s complaint that the defendant had not been sentenced for the crime for which she had in fact sentenced him; and abusing her contempt powers by arresting a reporter who had disobeyed the judge’s order by publishing an article regarding a juvenile proceeding without following correct procedures. *Commission on Judicial Performance v. Byers*, 757 So. 2d 961 (Mississippi 2000). (The judge was also assessed costs of \$2,023.59.) The court did not adopt the Commission’s recommendation of removal because the voters had already voted her out of office.

Three justices, concurring in part and dissenting in part, argued that the judge should have been publicly reprimanded only and not fined. 757 So. 2d 973-78 (Banks, Smith, McRae, JJ., dissenting). One dissenting opinion expressed concern about the court’s eagerness to consider mere errors with regard to sentencing as violations of the code of judicial conduct.

In *Dodds v. Commission on Judicial Performance*, 906 P.2d 1260 (California 1995), the California Supreme Court found that clear and convincing evidence supported the Commission on Judicial Performance’s findings that a judge had interfered with a law enforcement investigation and been rude to litigants and attorneys. However, rejecting the Commission’s recommendation that the judge be censured, the court noted that cases in which the court

had publicly censured judges involved more serious conduct and that the record was replete with evidence that the judge was talented and was often sought for his ability to settle difficult cases. 906 P.2d at 1271. The court also found that it was constitutionally prohibited from disciplining the judge for a remark made more than six years prior to the commencement of the judge's current term.

The Supreme Court of Florida publicly reprimanded a judge for writing two letters to the editor of a local newspaper and holding a hearing on a child custody matter when he did not have jurisdiction, giving the mother notice only after the hearing began, and forcing her to act as her own attorney. *Inquiry Concerning Miller*, 644 So. 2d 75 (Florida 1994). The court rejected the Judicial Qualifications Commission's recommendation for removal because it was based in part on repeated ex parte communications by the judge that had not been charged by the Commission but to which one of the judge's witnesses had testified and the judge had admitted. 644 So. 2d at 78. Agreeing with the Commission's recommendation, a dissent stated:

In my view, one of the most important factors in determining the appropriate discipline in a judicial misconduct case is whether a party or other participant in the judicial process was injured or adversely affected by the misconduct of the judge. That factor is present here. First, in this case, a mother was denied custody of her child for one year as a result of Judge Miller's misconduct. Second, and equally as important, at the hearing before the Judicial Qualifications Commission, Judge Miller freely admitted that he engaged in ex parte discussions with parties about cases. . . . Based on Judge Miller's admissions regarding numerous ex parte communications, it is obvious that he may have been wrongfully influenced in multiple cases and, to this day, parties in those cases are likely unaware of that influence.

644 so. 2d at 79-80 (Overton, J., dissenting).



In several cases, the cause for disagreement was whether a judge's excellent reputation and record in office can outweigh serious misconduct.

For example, in *In re Krepela*, 628 N.W.2d 262 (Nebraska 2001), agreeing with the findings of the

In several cases, the cause for disagreement was whether a judge's excellent reputation and record in office can outweigh serious misconduct.

Commission on Judicial Qualifications but disagreeing with its recommendation of removal, the Nebraska Supreme Court suspended for six months a judge who, while serving as a county attorney in 1984, had altered a copy of a police report in a criminal case, provided the altered report to defense counsel, and asked the police officer who made the report to either alter his original report or alter his testimony to conform to the changes. The court agreed with the Commission's statement that the judge's conduct struck "at the very heart of the justice system," especially when taken by a prosecutor. However, the court concluded that the seriousness of the "conduct must be balanced by the fact that we find the conduct to be an aberration. When considering the isolated nature of the conduct and Krepela's otherwise exemplary record, we do not believe that the integrity of the judicial system will be eroded if Krepela remains on the bench." 628 N.W.2d at 271-72.

The majority emphasized that the judge's conduct was serious and deserving of a substantial degree of discipline. However, the majority stated it could not ignore "that the conduct was an isolated incident that occurred more than 16 years ago and was disclosed to [the presiding judge] and opposing counsel," noting that a judge's general performance as a jurist may be a relevant factor to consider in determining the appropriate discipline.

Nothing in the record suggests that Krepela has ever engaged in any other inappropriate conduct or that he is currently unfit to serve as a county judge. To the contrary, the evidence in the record reflects that Krepela has a good reputation as a judge and that he is well respected. In the 16 years since the conduct at issue occurred, no other acts of misconduct have ever been attributed to him. The Commission found, and we agree, that the public has been served well by Krepela since the incident, both in his remaining

term as county attorney and since 1989 as a county judge. . . . [I]f the conduct at issue were truly evidence of a character flaw affecting fitness, it would be likely that some hint of the flaw would surface during the many intervening years that the respondent served as a judge. . . .

Id. at 271.

One justice dissented from the sanction, arguing that “the seriousness of the offense, in my opinion, overcomes and trumps the age of this transgression, Krepela’s unblemished record, and Krepela’s prompt report of this alteration.” 628 N.W.2d at 272 (McCormack, J., dissenting). Noting that the statute establishing the possible penalties did not allow any penalty between six months’ suspension and removal from office, the dissent stated if there was a possible sanction of perhaps two years’ suspension without pay, he “would, in all probability, vote for that sanction.”

While it is true, as noted in the majority opinion, that Krepela’s actions were uncharacteristic, that Krepela’s long record as a lawyer and then as a judge was unblemished except for the offense under consideration, and that Krepela promptly reported the alteration of this report, I feel that the altering of a police report and then requesting the investigating officer to change the original to conform to the false report is so egregious as to warrant removal. This type of conduct by any lawyer, much less by a county attorney prosecuting a first degree murder case, goes to the very heart of our judicial system because it involves the integrity of the system. As such, given our choice of 6 months’ suspension or removal, this requires, in my opinion, removal from office.

Id.

In *Adams v. Commission on Judicial Performance*, 897 P.2d 544 (California 1995), the dissenting justice argued that there can be no doubt that “G. Dennis Adams has been a good judge for his 20 years on the bench,” describing the judge’s education, experience, and judicial history. 897 P.2d at 571 (Rymer, J., concurring in part, dissenting in part). Upholding the recommendation of the Commission, the California Supreme Court had removed Judge Adams for engaging in several business transactions with and accepting a gift from a litigant to whom he had awarded a substantial verdict, advising members of a law firm on cases pending before other judges,

receiving gifts from attorneys whose interests had or were likely to come before him, failing to disqualify himself or make full disclosure of his relationship with those attorneys or their firms when they appeared before him, and making material misrepresentations and omissions to the Commission during its investigation.

There was one dissent from the Florida Supreme Court’s decision to remove a judge who repeatedly made baseless allegations of official misconduct against fellow judges, elected officials, and others; imposed improper sentences and improperly used the contempt power; acted in an undignified and discourteous manner toward litigants, attorneys, and others; and closed and attempted to close public proceedings. *Inquiry Concerning Graham*, 620 So. 2d 1273 (Florida 1993). Arguing the court should have “loudly and severely reprimanded Judge Graham,” the dissent stated that the court’s evaluation “should not be limited to his ethical violations.”

Also thrown in the ratio must be the hours and the days where he properly functioned. We must also consider his intellect, his honesty, and other personal traits. Numerous tapes, both audio and video, indicate that for the most part and on most occasions he performed adequately as a judge.”

620 So. 2d at 1277 (McDonald, J., concurring in part, dissenting in part).

The dissent attributed the judge’s “view that his conduct was justifiable and for good cause without consideration of its effect on others” to “judicial immaturity.” *Id.* However, noting that “most removals have been the result of some act of dishonesty by the judge,” the dissent stated other judges had been reprimanded for “more egregious conduct than Judge Graham.” *Id.* at 1278. The judge relied on *In re Lantz*, 402 So.2d 1144 (Florida 1981) (public reprimand for arrogance, creation of appearance of impropriety, comments casting doubt on impartiality of judiciary, direct solicitation of election support from member of bar, and taking possession of and refusing to release to counsel untranscribed notes of court reporter), and *In re Kelly*, 238 So.2d 565 (Florida 1970), *cert. denied*, 401 U.S. 962 (1971) (public reprimand for filing a petition publicly criticizing his fellow judges). The dissent concluded:

I do not wish to minimize Judge Graham’s trans-

gressions, but I do not believe we can find that he is unfit to serve. Now that this Court has advised him of his errors, and with an appropriate reprimand delivered in open court by the Chief Justice, I believe he should be allowed to continue to serve for such time as he has been elected.

I believe these proceedings were necessary. I also believe that they are bound to have a therapeutic affect on the future conduct of Judge Graham and, hopefully, help steer other judges from like conduct.

Other cases also reflect different weights attributed to aggravating and mitigating factors.

Similarly, in a dissent from the court's removal of a judge who ordered that convictions in DUI cases be back-dated, two justices argued that her "serious error in judgment is not justifiable and deserves punishment, but removal is too harsh a sanction." *Inquiry Concerning Johnson*, 692 So. 2d 168 (Florida 1997). Noting that the judge had served honorably for 14 years and was respected by her colleagues, the dissent concluded:

To call Judge Johnson's conduct unredeeming and to say that she is unfit for judicial office confuses a misguided abuse of judicial discretion with malevolent misuse of judicial power. She committed one error in judgment — and although she committed it repeatedly, her openness convinces me that she was oblivious to the seriousness of her impropriety.

692 So. 2d at 174 (Shaw, Anstead, JJ., dissenting). Instead, the dissent would have suspended the judge for six months.

There was one dissent from the decision of the West Virginia Supreme Court of Appeals to publicly reprimand a judge for initiating ex parte communications with an assistant prosecuting attorney concerning a pending criminal trial. *In the Matter of Starcher*, 457 S.E.2d 147 (West Virginia 1995). The dissenting justice would have admonished him, the

recommendation of the Judicial Hearing Board, to which the judge had consented. Emphasizing that "Larry V. Starcher has been one of the great West Virginia circuit judges in this century," the dissent stated:

[F]ar better for the world that we be graced with a Larry Starcher on the bench who from time to time makes a mistake than some mindless twit who sits in his black robe behind the bench rocking insouciantly, simply happy as a pig in mud to get a regular check on the first and the fifteenth with a big pension at the end of a fairly short road.

Judges should not communicate ex parte with prosecuting attorneys or other lawyers appearing before them. That point having been firmly established, hanging Judge Starcher out to dry does not benefit anyone; Judge Starcher is sufficiently popular in Monongalia County that he will be a judge until the day he voluntarily decides to retire or the Lord decides to call him home. Therefore, it is only good sense — a good sense demonstrated by the agreed order presented to us by the Judicial Hearing Board — that Judge Starcher's will to serve the public, his enthusiasm for creative innovation and his overall morale not be undermined by a gratuitous and unnecessary pounding.

457 S.E.2d at 152 (Neely, C.J., dissenting).

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Other cases also reflect different weights attributed to aggravating and mitigating factors.

For example, it was the presence of mitigating factors that led the Missouri Supreme Court to conclude in *In re Conard*, 944 S.W.2d 191 (Missouri 1997), that the 90-day recommendation of the Commission on Retirement, Removal and Discipline was "too harsh" and to instead suspend a judge without pay for 30 days. The judge had reneged on his agreement with a police chief to drop contempt charges if the police chief released an individual charged with domestic abuse, filed an incomplete and misleading contempt affidavit, and made a public statement regarding a pending case that reflected pre-judgment. The court noted that the judge had been in his first year on the bench when the incident

took place; they were not aware of any other complaints concerning his conduct; the law of contempt is a complex area; and the judge was provoked by an attack in the media by another public official. The court concluded, “although none of these factors excuse Judge Conard’s misconduct, they can be considered in determining the appropriate discipline that is needed to make certain that this type of behavior will not reoccur.” 944 S.W.2d at 205.

In *Office of Disciplinary Counsel v. Evans*, 733 N.E.2d 609 (Ohio 2000), deciding to stay a 6-month suspension, the court noted the absence of a prior disciplinary record, nine letters offered in support of the judge’s character and reputation, and the isolated nature of the misconduct, which had arisen only in the context of the judge’s political campaign. The judge, while a candidate, failed to closely supervise campaign activities, failed to report a township’s contributions of the use of a township garage for producing signs and the value of labor of inmates and welfare workers, and exaggerated his endorsements. The court noted that the judge’s refusal to acknowledge the wrongful nature of the conduct was an aggravating circumstance. In mitigation, the judge had testified that he regretted the exaggeration and that when it was brought to his attention before the primary, he had changed his telephone and radio scripts and printed ads. The court cited as applicable precedent other cases involving election campaign violations in which 6-month stayed suspensions or public reprimands were the sanctions imposed. Three justices would not have stayed the suspension.

The Mississippi Supreme Court based its decision to privately rather than publicly reprimand a judge who had ordered three defendants to get married on the judge’s rescission of the orders, the lack of judicial precedent, the failure of the defendants to complain or object, and the lack of moral turpitude. *Commission on Judicial Performance v. A Municipal Court Judge*, 755 So. 2d 1062 (Mississippi 2000). (The judge had also set bond for a defendant whom the judge represented in another matter.) The Commission had recommended that the reprimand be public.

In *Commission on Judicial Performance v. Thomas*, 722 So. 2d 629 (Mississippi 1998), the Mississippi Supreme Court publicly reprimanded a judge for a first offense of driving under the influence of intoxicating liquor. The Commission had

recommended a private reprimand, the result of a split on the appropriate sanction for the judge — the three Commission members who conducted the hearing voted to privately reprimand the judge; the remaining three Commission members voted for a public reprimand.

The court noted that publicity surrounding the incident subsided in days, primarily because the judge cooperated fully with the Commission and that the judge immediately issued a statement accepting responsibility for his actions and publicly apologized to his family, friends, and other judges. The court also noted that the judge had completely avoided public consumption of alcohol since his arrest. The court stated that the judge’s “public expressions of contrition and mature acceptance of the consequences of his actions are noteworthy” and that he had “acted honorably in these matters and has spared the judiciary undue criticism.” However, the court concluded “the position he enjoys as a sitting Judge requires that the resolution of this matter be known to the public” and “the need for a public resolution of the matter is apparent.” 722 So. 2d at 631.

The Washington Supreme Court found that a 4-month suspension recommended by the Commission was “far too lenient” for a judge who had continued to serve as president of three corporations after becoming a full-time judge; accepted payments of his car loan from the purchaser of an asset from an estate for which he was a trustee while negotiating for an adjustment of the purchase price; and failing to disclose the payments of the car loan on public disclosure forms. *In the Matter of Anderson*, 981 P.2d 426, 437 (Washington 1999). Instead, the court removed the judge.

Rejecting the judge’s claim that his actions were not part of a pattern and did not occur with frequency, the court noted that the judge’s continued participation in the affairs of the estate after he became a full-time judge and his failure to disclose the payments he received over a period of three years demonstrated an extended pattern of misconduct. 981 P.2d at 438. The court found that the judge’s failure to acknowledge or recognize, in the face of overwhelming evidence, that he committed any misconduct at all weighed heavily against him in its determination of the appropriate sanction. *Id.* The court also stated that, in continuing to serve as pres-

ident of the estate's corporations, the judge never evidenced an effort to change or modify his conduct. *Id.* The court concluded that the judge's misconduct had eroded the integrity and respect for the judiciary to such a degree that he must be relieved of the duties of office. *Id.* The court found that the four mitigating factors noted by the Commission (the misconduct occurred outside of the courtroom; the misconduct was not committed in the judge's official capacity except as to his duty to comply with the financial disclosure laws; the judge served as a part-time municipal judge and superior court judge for 14 years; and the judge's position as a judge was not exploited) were not sufficient to justify a sanction less than removal. *Id.* at 438-39. (The court did not mention it, but the state legislature had begun considering impeachment proceedings against the judge following the Commission's failure to recommend removal.)

In imposing a 6-month suspension rather than the censure recommended by the Commission on Judicial Fitness and Disability, the Oregon Supreme Court considered several factors that pointed "to the need for a substantial sanction" in a case in which the judge had used his judicial assistant's work time and other public resources to conduct personal and campaign-related business (the second count) and used his official position to obtain advantage in correspondence regarding disputes (the third count). *Inquiry Concerning Gallagher*, 951 P.2d 705 (Oregon 1998).

The misconduct covered in the second and third causes of complaint was frequent and formed a persistent and pervasive pattern of behavior. The misconduct covered in the third cause of complaint illustrated that the accused exploited his position to satisfy personal desires. The effect of the misconduct covered in the second cause of complaint was to the indirect economic detriment of the public. The accused was an experienced judge at the time of the charged conduct and therefore was well familiar with the high standards of behavior that the privilege of judicial service demands. The accused's conduct adversely affects the public's perception of the integrity and dignity of the judiciary.

Id. at 716.

Accepting the recommendation of the Commission on Judicial Performance based on stipulated facts, the Mississippi Supreme Court publicly reprimanded a judge for his failure to pay part of a bill for medical treatment received at a hospital and his involvement in a dispute arising over the sale or trade of a car. *Commission on Judicial Performance v. Cantrell*, 624 So. 2d 94 (Mississippi 1993). Two justices argued that only a private reprimand was justified. The dissent argued that the majority relied on the complaint without any regard for the stipulated facts. As mitigating factors, the dissent noted that the judge had served as a justice court judge for more than 12 years, this was his first offense, there were no Mississippi cases directly on point, moral turpitude was not involved, and the magnitude of the offenses was far less grave than any of reported cases where public reprimands had been imposed. Noting that the court had "rarely imposed a public reprimand for a first offense," the dissent concluded:

The story of Judge Cantrell's misdeeds already has been told on the front page of his hometown newspaper. The issue of a public reprimand serves only to undermine the operations of his court and is inconsistent with other decisions of this Court. While Judge Cantrell's actions are not to be condoned, the punishment should fit the deed. At most, a private reprimand would have been appropriate.

624 So. 2d at 100 (Lee, P.J., McRae, J., dissenting).

The Wisconsin Supreme Court publicly reprimanded a judge who had had a law professor prepare for her use opinions on dispositive motions in 32 cases. *In the Matter of Tesmer*, 580 N.W.2d 307 (Wisconsin 1998). The Commission had contended that a six-month suspension was justified by the long period of time during which the judge engaged in the misconduct, the numerous instances of it, the fact that the judge kept it confidential from litigants and colleagues, her failure to consult the ethics rules that might have applied to it, and the potential her misconduct created for harm to the court system and to the public it serves. (The three-judge panel that made findings of fact and conclusions of law had recommended a reprimand.) Although agreeing that "the potential for harm to the court system, to the litigants in the cases she decided, and to the public's perception of the fairness of the judicial system was great," the court concluded that the judge's "insistence on retaining and exercising ultimate decision-making authority in those cases," "her confidence in Professor McCormack's disinterest and dis-

cretion in assisting her,” and “her good faith belief, albeit unjustified, that having Professor McCormack assist her in disposing of pending motions was not prohibited” mitigate the severity of the disciplinary response to that misconduct. 580 N.W.2d at 318.

In a case in which the Commission on Judicial Performance had recommended a public reprimand, the Mississippi Supreme Court privately reprimanded a judge who had found defendants not guilty based on ex parte communications, without a hearing or trial and without hearing the state’s side of the case, in other words, ticket-fixing. *Commission on Judicial Performance v. A Justice Court Judge*, 580 So. 2d 1259 (Mississippi 1991). Identifying extenuating circumstances, the court noted when the judge took office there had been a custom or practice of dismissing certain types of tickets upon a showing that a problem had been corrected. The court also stated it was “impressed with his sense of fairness and compassion, while at the same time upholding the law in the overwhelming majority of the cases in his court. Most of the cases in which he exercised leniency involved transients or people of very modest means and circumstances, and in which he could expect no political return or benefit.” 580 So. 2d at 1264. The court also noted the county attorney’s testimony that the judge was the best justice court judge he had ever known, that the judge was an officer in his local church and in his lodge and was respected in his county, and that the practice had been corrected before the matter was heard by the Commission. The court concluded, “It will not promote law enforcement for the law to publicly embarrass this judge in the county where he must have respect for his court in order to fulfill his responsibility.” *Id.* However, the court warned other justice court judges that there would be no excuse for similar infractions in the future. (The Commission had also recommended a public reprimand based on the judge’s practice of accepting money for fines as a courtesy, turning it over to the justice court clerk, and obtaining a receipt. Noting that the judge had not kept the money and had ceased the practice prior to the filing of the complaint, the court simply admonished all justice court judges not to individually accept fine monies.) See discussion at pages 66-67, *infra*.

The New York Court of Appeals rejected the determination of the State Commission on Judicial

Conduct that removal was the appropriate sanction and instead imposed a censure on a judge who had summarily disposed of two criminal cases without affording the prosecution the right to be heard, including one case in which the defendant and his wife were social acquaintances. *In the Matter of Skinner*, 690 N.E.2d 484 (New York 1997). The court noted that the judge, now in his seventies, had for nearly four decades been the elected choice of the voters, with no evidence of any prior complaints regarding his judicial service; there was no indication that judge was motivated by personal profit, vindictiveness or ill-will; and discrepancies in judge’s testimony before the Commission did not necessarily reflect dishonesty or evasiveness. 690 N.E.2d at 486.

In two cases, the Alaska Supreme Court rejected the recommendations of the Commission on Judicial Conduct that the judges be publicly reprimanded. In *Inquiry Concerning a Judge*, 788 P.2d 716 (Alaska 1990), the judge had validated blank airline ticket stock and taken a reduced-fare flight pursuant to terminated agreements, and the court agreed with the Commission’s finding that the judge had created an appearance of impropriety by failing to use reasonable care to determine whether the agreements were still valid. The court found there were no aggravating factors and several mitigating factors: there was no evidence that the judge had ever received a disciplinary sanction, public or private, as an attorney or judge; the record did not reflect a dishonest or selfish motive, but rather negligence; the judge’s attitude toward the proceedings appeared to have been cooperative (he acknowledged his lapse of care during his cross-examination, and expressed remorse); and the judge had been on the bench for a relatively short period of time and may have been less familiar with the code of judicial conduct than might otherwise be the case. 788 P.2d at 726.

In *Inquiry Concerning a Judge*, 822 P.2d 1333 (Alaska 1991), a supreme court justice had used chambers stationery to write letters to opposing counsel in private litigation and met with the governor on this private matter. The court found five mitigating factors: an absence of prior disciplinary proceedings, the judge’s cooperation with the disciplinary process (although he did not admit wrongdoing), the judge’s subsequent divestment of his business interest at a loss before the press reported the matter, the judge’s reputation, and the delay in the

initiation of disciplinary proceedings. The court found two aggravating factors: the judge had a selfish motive and had substantial experience in the practice of law. 822 P.2d at 1346.

In several cases, disagreements arose about whether a sanction was too harsh in light of sympathy for a judge suffering from a problem such as alcoholism, severe illness, or an abusive relationship.

In *In re Marullo*, 692 So. 2d 1019 (Louisiana 1997), the Louisiana Supreme Court found that a judge had violated Canon 2B of the code of judicial conduct by writing a letter on his official stationery to a federal judge concerning the sentencing of a man who had pled guilty to a conspiracy involving an illegal video poker operation, but concluded that the violation did not rise to the level of misconduct subject to punishment through the formal disciplinary process. The Judiciary Commission had recommended that the judge be publicly censured. The court noted that at the time the judge wrote the letter, the state's code did not contain a specific prohibition on writing this type of letter on official court stationery, although there were three advisory opinions from the judicial ethics committee stating that it was ethically impermissible to write the letter on official stationery. The court found that censure "for an isolated and technical violation of the Code of Judicial Conduct, a blemish on an otherwise clean professional slate" would be a disproportionate sanction compared to other cases, particularly considering the confounded state of the ethics law at the time of the judge's action. 692 So. 2d at 1023. The court also noted that in a 22-year judicial career, the judge had never been the subject of official disciplinary proceedings before and had not written the letter for personal gain but in good faith to provide information he believed his acquaintance was entitled to under law. The court stated that, while good faith is not an affirmative defense to a violation, it is a mitigating factor that militates in favor of a lesser sanction.

In dissent, one justice noted that the judge's conduct resulted in wide-spread publicity calling into question the integrity of the judiciary and even became the subject of negative advertising in his reelection campaign. Disagreeing with the majority's characterization of the judge's actions as only a "technical" violation, the dissent concluded that the judge's "ethical conduct was serious, diminished the prestige of the judiciary, and will tend to undermine the public's confidence in the judicial process. Unfortunately, the Court's failure to discipline Respondent for his conduct will have the same effect." *Id.* at 1024 (Victory, J., dissenting).



In several cases, disagreements arose about whether a sanction was too harsh in light of a problem a judge was suffering from such as alcoholism, severe illness, or an abusive relationship.

For example, arguing that a censure was appropriate, one justice dissented from the decision of the New Jersey Supreme Court to suspend for 3 months without pay a judge who had confronted a man with whom she previously had a romantic relationship and his companion and gave false and misleading information to police and when she identified herself as a representative of the police department in a telephone call to a saloon. *In the Matter of Williams*, 777 A.2d 323 (New Jersey 2001). (The court had also ordered the judge to continue psychological counseling until further order of the court on the judge's application.) A majority of the Advisory Committee on Judicial Conduct had recommended public censure; two members of the Committee had recommended instituting removal proceedings, and one member had recommended a 6-month suspension. The court explained that censure was "too lenient" because it "does not reassure the public that judges will be deterred from "acting out" in public and that such behavior will not reoccur. The gravity of respondent's violations requires a strong response." 777 A.2d at 331.

The dissent noted that the judge's conduct took place entirely within her private life without touching on her judicial office; that she was uniformly regarded as a good and fair judge; that after seven years of hard work she had been denied tenure due to the fallout from the very same "romantic misad-

venture”; and that she has been subjected to “unusual obloquy” in the media. The dissent stated:

If, from time to time, one of our number makes an error in judgment in his or her personal life, accepts due punishment, learns from that experience and is permitted to continue as a judicial officer, I do not believe the public’s confidence in the integrity and independence of our institution will be shaken. Indeed it may be strengthened by the notion of the proportionality of the punishment assessed.

777 A.2d at 334 (Long, J., dissenting).

The dissent raised similar arguments in *In re Jett*, 882 P.2d 414 (Arizona 1994). Judge Jett had signed an order releasing her boyfriend from jail after he had been arrested on suspicion of domestic violence, criminal trespass, and disorderly conduct. The Commission on Judicial Conduct had recommended censure and a 60-day suspension; the court imposed suspension until the end of the judge’s term (1997). The two dissenting justices would have imposed a shorter suspension.

The court disagreed with the Commission’s finding that the judge did not act in bad faith (and therefore had not engaged in willful misconduct) because she was suffering from battered woman syndrome and sleep deprivation when she ordered her boyfriend released from jail. Although the court agreed that the judge was suffering from battered woman syndrome and sleep deprivation, it held that the nature of a judge’s misconduct did not change merely because the misconduct was the result of a mental condition, and a judge cannot escape discipline by urging that her misconduct was the result of such a condition. 882 P.2d at 417. The court found that the judge acted in “bad faith” because she clearly used the lawful power of her office for purely personal reasons, constituting willful misconduct. The court did state that it would consider sleep deprivation and battered woman syndrome in determining whether and what kind of discipline is to be imposed and what procedures are to be followed to protect the public.

Further, the court emphasized that the judge’s prior disciplinary record was “highly instructive on the public’s need for protection.” 882 P.2d at 419. The judge had previously been informally disciplined for misconduct in four separate incidents, the last two incidents occurring within six months of the incident giving rise to the disciplinary action.

Concluding that a suspension until the end of the judge’s term was “extraordinarily harsh and unwarranted,” the dissent stated:

What troubles me most . . . is the majority’s implicit suggestion that a human justice system cannot tolerate human judges. I do not accept the premise that judges who succumb to the emotional stresses of daily living necessarily become unfit to serve. My belief is that those who are given the privilege of judging others should be able to recognize and understand, through their own personal experiences, the weakness and folly that go with being human. Otherwise we risk having a judiciary composed of arrogant, sanctimonious elitists — people with little humility or compassion, free of emotion in both their personal and professional lives, and well out of touch with the world. I can think of little that would be more dangerous to our society, and I daresay most citizens who encounter the justice system would agree.

882 P.2d at 423 (Zlaket, J., concurring in part and dissenting in part; joined by Marton, J.) The dissent emphasized the Commission’s finding regarding battered woman’s syndrome and argued “a ten-person commission of judges, lawyers and public members . . . after viewing the witnesses firsthand, hearing their live testimony, questioning respondent and her counsel, and examining the exhibits in the context of all other evidence” had recommended a suspension of only 60 days. *Id.* The dissent stated:

I reject the notion that our conclusions about what is best for the populace and the justice system are somehow more enlightened than those of citizens who together represent a significantly broader segment of society. In fact, they may be considerably less so, given the isolation that inevitably falls upon appellate judges.

Id. (The debate about the length of the suspension is incongruous as the judge had already been removed by the municipality for which she worked. The court held in a challenge by the magistrate that the city council had the authority to do so for cause after a due process hearing. *See Jett v. City of Tucson*, 882 P.2d 426 (Arizona 1994)).

One justice dissented from the decision of the New Jersey Supreme Court to suspend a judge for two months without pay after his second drunk driving offense. *In the Matter of Collester*, 599 A.2d

1275 (New Jersey 1992). (The court also required the judge to continue to participate actively in rehabilitation and disqualified him from presiding over any cases involving drunk driving until his rehabilitation became secure.) The Committee had recommended censure, but the court held censure was not sufficient because the judge had been privately reprimanded in 1987 for a similar offense and had informed the arresting officer that he was a judge and falsely stated that he was responding to an emergency at the courthouse. The court stated that sympathy for one in the grip of alcoholism cannot negate the serious consequences of ensuing misconduct. 559 A.2d at 1278. The court also recognized several mitigating circumstances — the judge’s sincere commitment to rehabilitation, his remorse, and his exemplary personal and professional reputation.

The dissent stated the court would better serve the public interest by staying the suspension if the judge would agree to continue to serve without salary for two months, arguing, “Foregoing approximately \$16,500 in pay is more than a slap on the wrist.” 559 A.2d at 1279 (Pollock, J., concurring in part, dissenting in part). Further, although noting that the majority treated the judge’s alcoholism as a mitigating factor, the dissent stated, “Missing from the majority’s description is the recognition that one characteristic symptom of alcoholism is the alcoholic’s denial of the existence of the disease.” *Id.* The dissent emphasized that the judge’s alcoholism had never affected the discharge of his judicial duties, the judge had taken steps to deal with his alcoholism and satisfied the community service component of his sentence by helping with a landscaping project at a home for senior citizens. The dissent also concluded “to the extent that it ignores the implications of treating alcoholism as a disease, the Court adopts a position that conflicts with the established judicial response in other settings.” *Id.* at 1282.

The purpose of this disciplinary proceeding is not to increase the punitive force of the sentence on respondent’s motor vehicle violations or to humiliate him further. . . . Forfeiting respondent’s pay for two months without suspending him from the performance of his duties would, in my opinion, satisfy the public’s legitimate expectation that we will deal firmly with judges who violate the Code of Judicial Conduct, without depriving the public of the services of a judge

whose qualifications have never been in doubt, who has capably discharged his responsibilities, and whom the judiciary can ill afford to lose for even two months.

Id.

How to handle cases involving alcohol abuse was also an issue in *Judicial Council v. Becker*, 834 P.2d 290 (Idaho 1992). The court concluded the Council’s recommendation of removal “would deprive the judicial system of an experienced judge who was elected by the voters.” 834 P.2d at 294. He could be a good judge, the court stated, if he could control the addiction to alcohol that had led to findings of habitual intemperance, abuse of alcohol, and driving under the influence of alcohol. The court explained:

We are convinced that while Judge Becker’s conduct detracted from the integrity of the judiciary, Judge Becker’s addiction to alcohol, which has been the source of his misconduct, is a disease. It is a disease that cannot be cured, but it is a disease that can be treated and controlled.

Id. The court did impose conditions to assist the judge in avoiding a relapse during the 3-month suspension and the balance of his current term in office. The court provided that if it determines that the judge consumed any alcohol or if the judge fails without good cause to comply with the conditions, the court may immediately order his removal without further proceedings.

One justice dissented and argued that removal was necessary, noting that the judge had contacted a witness to the Council proceedings and attempted to change that person’s testimony, a finding to which the majority did not even refer. 834 P.2d at 297 (McDevitt, J., dissenting).

Two justices dissented from a public reprimand of a former judge for making derogatory remarks regarding a litigant’s national origin; ordering marriage as a condition of probation in three cases; and displaying a lack of judicial temperament in four domestic violence cases in *Office of Disciplinary Counsel v. Mestemaker*, 676 N.E.2d 870 (Ohio 1997). The majority had explained:

The charges against respondent involve disappointing lapses of conduct and decorum in an otherwise distinguished judicial career spanning fifteen years, during which respondent received

six Superior Judicial Service Awards and was active in civic and educational programs. We take particular note that in 1995 respondent handled an ever-growing domestic violence case-load during a time of increasing physical stress and fatigue which resulted in coronary artery bypass surgery in early 1996. In short, we are sympathetic to respondent's situation. Nevertheless, we cannot disregard respondent's conduct.

Respondent is no longer a member of the judiciary. The appropriate sanction, therefore, is a public reprimand, and respondent is so reprimanded.

676 N.E.2d at 871. In contrast, the dissenting opinion argued:

The majority opinion seems to imply that since the respondent judge was defeated in his last election and is no longer on the bench, a public reprimand is in order. I disagree. Not only did the voters indicate their displeasure with the respondent by not reelecting him, but we should not countenance such behavior with a public reprimand. The conduct in this case was a serious violation of the Code of Judicial Conduct and involved eight separate counts.

* * *

While I empathize with Judge Mestemaker's physical condition, it cannot and should not excuse his egregious conduct. From the foregoing discussion it is apparent that the respondent was not in the appropriate mental condition to be on the bench. He could have taken a paid medical leave from his judicial responsibilities until he was both mentally and physically fit to resume those duties.

676 N.E.2d at 871-72 (Resnick, Stratton, JJ., dissenting). The dissenting justices would have suspended the judge from the practice of law for one year.

■ ■ ■

In many cases, the court cited discipline sanctions imposed in other cases as justification for imposing a greater sanction than that recommended by the commission, or the dissent cited other cases in disagreeing with the sanction imposed by the court.

For example, in *In the Matter of Connor*, 589 A.2d 1347 (New Jersey 1991), the New Jersey

In many cases, the court cited discipline sanctions imposed in other cases as justification for imposing a greater sanction than that recommended by the commission, or the dissent cited other cases in disagreeing with the sanction imposed by the court.

Supreme Court publicly censured a judge who had pled guilty to driving under the influence of intoxicating liquor, leaving the scene of an accident, and driving in a careless manner. (In addition to the public censure, the court required the judge to continue to participate actively in rehabilitative programs and disqualified him from presiding over any cases involving drunk driving until his rehabilitation becomes secure.) The court concluded that the case required a harsher sanction than the public reprimand found appropriate in other cases of drunk driving and recommended by the Advisory Committee on Judicial Conduct because the judge's offense was more egregious and went beyond drunk driving — his drunk driving resulted in an accident and a high-speed chase, he left the scene of the accident, and he failed to cooperate with the police. The court also explained:

We acknowledge and give the same weight to most of the mitigating circumstances that influenced the Committee to impose lenient discipline — respondent's acknowledgment of guilt, his contrition, his public apology, his genuine self-confrontation and commitment to rehabilitation, the absence of a prior record of misconduct, and his exemplary personal and professional reputation. Other alleged mitigating factors, however, are not entitled to the weight assigned by the Committee. Although respondent did not, to his credit, attempt to take advantage of his judicial office, the police on the scene quickly learned he was a judge, albeit nothing more was made of that. Further, while the post-accident events involving the on-the-scene investigations moved swiftly, it does not appear that

respondent's cooperation was immediately forthcoming. Respondent did not completely respond to police inquiries concerning the accident, giving evasive or false answers.

589 A.2d at 1351-52. See discussion at page 66, *infra*.

The Wisconsin Supreme Court suspended a judge for 6 months for recurring delay in deciding cases, filing certifications of status of pending cases that falsely represented that no cases were awaiting decision beyond the prescribed period, and stating falsely to the Judicial Commission that he had no cases awaiting decision beyond the prescribed period. *In the Matter of Waddick*, 605 N.W.2d 861 (Wisconsin 2000). The judicial conduct panel before whom the hearing was held had recommended a 60-day suspension; the Judicial Commission took the position that a 1-year suspension was appropriate.

The court found that the judge's misconduct was substantially more serious than that for which it had imposed a 15-day suspension in *In re Dreyfus*, 513 N.W.2d 604 (1994), and, therefore, warranted a substantially longer suspension. *Dreyfus* involved only two cases in which decisions were delayed for over one year; *Waddick* concerned 15 cases, nine of which were delayed for over one year. Judge Dreyfus, who had been on the bench for one and one-half years, filed six false certifications; Judge Waddick filed false certifications monthly over seven years. While both judges lied to the Commission, Judge Dreyfus contacted the investigator one week after he had lied and admitted to the lie; Judge Waddick never admitted his lie until he became the subject of a second investigation two years later. Finally, Judge Waddick had the benefit of the court's decision in *Dreyfus* to appreciate how seriously the court views judicial delay in deciding cases and filing false certifications.

The court deemed a 6-month suspension "sufficient to protect the public from unacceptable judicial behavior and to ensure that it will not recur. It should also suffice to inform the judiciary and the public of the importance of the prompt disposition of cases brought to the courts for resolution, which is essential to the integrity of the judicial system on which the citizens of this state have the right to rely." 605 N.W.2d at 866. The court also directed the chief judge to monitor the judge's caseload and pending case status certifications for one year fol-

lowing his return to the bench.

In a second case, the court rejected the Commission's recommendation of a 15-day suspension and instead publicly reprimanded the judge for holding two offices of public trust — municipal judge and school board member — at the same time. *In the Matter of Stern*, 589 N.W.2d 407 (Wisconsin 1999). In the 1996 spring election, the judge had been re-elected a member of a high school board of education and was also elected municipal judge for the first time.

The Commission had based its recommendation on an earlier case in which the court had suspended a judge for 6 months without pay for seeking election to a non-judicial elective office without first resigning his judicial office. *Judicial Disciplinary Proceedings Against Pressentin*, 406 N.W.2d 779 (1987). The court distinguished the earlier case because Judge Pressentin had been a municipal judge for more than 17 years when he chose to pursue election to a non-judicial elective position while Judge Stern's violation occurred, not during the simultaneous election campaigns, but only upon his swearings in to both offices and, therefore, could not have used his judicial office as an advantage during the election and until he was sworn in to both offices and had the option of declining either and not violating the code. Moreover, unlike Judge Pressentin, Judge Stern attempted to obtain an opinion or ruling that the code prohibition did not apply to him, although he chose to violate the rule after receiving the advice. Finally, once the Commission announced that it would file a complaint seeking discipline, Judge Stern resigned from the non-judicial office. Concluding that the appropriate discipline was a reprimand, the court stated that the likelihood of similar misconduct by the judge was minimal and the reprimand should provide adequate protection to the public from any further judicial misconduct of this kind by others.

In *Commission on Judicial Performance v. Peyton*, 645 So. 2d 954 (Mississippi 1994), the Mississippi Supreme Court suspended a judge for 15 days without pay and ordered him to pay a fine of \$1,000 for dismissing a case based on ex parte communications from the defendant. The Commission on Judicial Performance had recommended that the judge be suspended for 30 days without pay and fined \$2,000. The court did not accept the Commission's recom-

mentation “in light of a review of the penalties meted out for misconduct in other cases.” 645 So. 2d at 957. In particular, the court noted that it had approved a \$500 fine and a 30-day suspension without pay in *In re Mullen*, 530 So. 2d 175 (Mississippi 1988), for a judge who had altered the docket book, randomly issued and stopped garnishments, had *ex parte* hearings, misled the public about the existence of a money judgment that substantially affected the rights of parties involved, prevented a debtor from redeeming property to which he had legal entitlement, and purchased that property, fraudulently placing title to the property in another person’s name in an attempt to conceal his purchase. The court noted that the violations that Judge Mullen committed “appear more severe than that which Judge Peyton is charged with in the instant case.” *Id.*

The two dissents from *In re Jefferson*, 753 So. 2d 181 (Louisiana 2000), argued that judge’s conduct was not so egregious that it required the removal decreed by the majority pursuant to the recommendation of the Judiciary Commission. The judge had abused his contempt power three times, banned a prosecutor from his courtroom and then dismissed 41 cases when the prosecutor did not appear, participated as counsel in a case for four years after becoming a judge, and disobeyed orders of the administrative judge. One dissent would have imposed a suspension for 3 years, without further explanation. A second dissent, which would have suspended the judge for 2 years, argued that removal was excessive based on previous statements by the court that “[t]he most severe discipline should be reserved for judges who use their office improperly for personal gain; judges who are consistently abusive and insensitive to parties, witnesses, jurors, and attorneys; judges who because of laziness or indifference fail to perform their judicial duties to the best of their ability; and judges who engage in felonious criminal conduct.” The dissent argued that the case was similar to a previous case (*In re Bowers*, 721 So. 2d 875 (Louisiana 1998)) involving “inappropriate language and discourteous treatment of persons appearing” before the court, in which the judge had been censured for three acts of misconduct. The dissent contrasted the case against Judge Jefferson with others in which judges had been removed or suspended, citing *In re Whitaker*, 463 So. 2d 1291 (Louisiana 1985) (judge was suspended for 1 year after smoking mar-

ijuana, associating with users and sellers of illegal drugs); *In re Dupont*, 322 So. 2d 180 (1975) (censure for judge who received stolen guns); *In re Huckaby*, 656 So. 2d 292 (1995) (removal following guilty plea to failure to file and pay taxes); *In re Johnson*, 683 So. 2d 1196 (1996) (removal for judge who entered into contract with sheriff to provide telephone service at jail); *In re Haggerty*, 241 So. 2d 469 (Louisiana 1970) (removal for judge’s involvement in gambling and pornography).



Several dissents were based on disagreements with how much deference to grant a commission sanction recommendation.

For example, in *In re Hathaway*, 630 N.W.2d 850 (Michigan 2001), the supreme court rejected the Commission’s recommendation of a 30-day suspension despite the judge’s consent to that sanction. The court imposed a 6-month suspension for inappropriately handling an arraignment, attempting to induce a defendant to waive the right to a jury trial, and overall lack of industry, finding “the course of sustained judicial misconduct that this record reveals requires stronger disciplinary action.” 630 N.W.2d at 860. The court also stated, “Highly relevant to our determination is the fact that Judge Hathaway has never on this record acknowledged the nature of her misconduct, or the deleterious effect that it has had on the persons who appeared before her, or on the public’s perception of the judiciary.” *Id.* at 861.

The dissent in *In re Hathaway* was based on the dissenting justice’s argument that the court’s constitutional authority to act “on recommendation of the judicial tenure commission” did not include the authority to impose a level of discipline that exceeds the Commission’s recommendation. 630 N.W.2d at 864-68. (Cavanagh, Kelly, JJ., dissenting). Also noting that the judge had agreed to the 30-day suspension recommended by the Commission, the two dissenting justices stated that “respondent judges would be well advised to consent to nothing and run the entire gauntlet of available proceedings because whatever the discipline recommended by the JTC, this Court is lurking at the end of the line to increase that discipline if it so chooses.” *Id.* at 869. *See also In re Jett*, 882 P.2d 426 (Arizona 1994) (Zlaket, J.,

concurring in part and dissenting in part; joined by Marton, J.) (in dissent from suspension to end of term, arguing “a ten-person commission of judges, lawyers and public members . . . after viewing the witnesses firsthand, hearing their live testimony, questioning respondent and her counsel, and examining the exhibits in the context of all other evidence” had recommended a suspension of only 60 days).

Several dissents were based on disagreements with how much deference to grant a commission sanction recommendation.

Adopting the recommendation of the Commission on Judicial Performance, the Mississippi Supreme Court removed a justice court judge who had called an officer with the Bureau of Narcotics an s.o.b., knowing that the statement was likely to be published in the newspaper; allowed tickets to be dismissed without an adjudication; regularly failed to timely sign dockets; and dismissed tickets in exchange for information on other crimes. *Commission on Judicial Performance v. Hopkins*, 590 So. 2d 857 (Mississippi 1991). The court stated that the judge had been a judge for 19 years, “more than enough time for him to have learned what is improper behavior from a judge,” and concluded that the number of offenses and his denial of any wrongdoing made removal appropriate. 590 So. 2d at 866. Noting that a three-person tribunal appointed by the Commission had, after hearings, recommended a public reprimand, not removal, two justices dissented on the appropriate sanction and argued that the court should give more deference to the tribunal’s recommendation than to the Commission’s. *Id.* at 867.

Accepting the recommendation of the Commission, the Mississippi Supreme Court removed from office a justice court judge who had, among other misconduct, engaged in ticket fixing. *Commission on Judicial Performance v. Chinn*, 611 So. 2d 849 (Mississippi 1992). The court noted that its prior attempts to send a strong message to judges con-

cerning ticket-fixing had “fallen on deaf ears” and that the judge had violated almost every ethical canon and rule pertaining to his office. 611 So. 2d at 857.

One justice dissented from the removal, arguing that a public reprimand would adequately chastise the judge and removal “represents a sharp departure from past decisions wherein we have customarily given a warning reprimand to “first time offenders.” 611 So. 2d at 858 (McRae, J., dissenting). The dissent argued that in other cases, the court had imposed lesser sanctions on judges who committed far more egregious transgressions. Moreover, the dissent faulted the majority “for paying such uncritical deference to the Commission’s findings and conclusions,” arguing that a judge “appearing before our Judicial Performance Commission receives less due process than did parties who appeared during the Spanish Inquisition or before the infamous Star Chamber.” *Id.* at 860. The dissent also claimed that because the Commission system had never been pre-cleared by the United States Department of Justice as required under the Voting Rights Act of 1965, it “may well be illegal under federal law.” *Id.* The dissent concluded:

Upon reviewing the record in light of past cases involving complaints before the Judicial Performance Commission, it becomes readily apparent that Robert Chinn, a black Justice Court judge, has received a penalty grossly disproportionate to any we have previously imposed for similar misconduct.

Id. at 858.



In several cases, public policy considerations were cited either by the court in imposing a more stringent sanction on a judge than that recommended by the commission or by a dissent from the imposition of the sanction.

For example, in *In the Matter of Seaman*, 627 A.2d 106 (New Jersey 1993), the court imposed a 60-day suspension for a pattern of sexually harassing behavior toward a court employee when the Advisory Committee on Judicial Conduct had recommended a censure. (The court also ordered the judge to complete a program designed to heighten aware-

ness of what constitutes sexual harassment.) In explaining its sanction, the court emphasized that the “commitment of this State and its judiciary to end gender discrimination — and one of its most egregious expressions, sexual harassment — clearly weighs heavily in our determination of the discipline to be imposed on respondent.” 627 A.2d at 122. The court also stressed that the judge engaged in a most serious form of misconduct, involving “not only the mistreatment of a person in his employ, but flagrant disregard for the law.” *Id.* at 122. The court also was “attentive to the harmful impact of the misconduct on respondent’s victim,” noting evidence that the complainant, soon after the judge began his harassing activities, became anxious and depressed. *Id.* at 122-23. The court also found “especially important the vulnerability of respondent’s victim,” noting that judges and their clerks have a relationship “unique in our profession.” *Id.* at 123.

As mitigating factors, the court noted that the judge had long served on the bench with distinction, enjoyed an outstanding personal and professional reputation, and the complaint was the first charge of misconduct to be brought against him. However, the court noted that the judge had not acknowledged his wrongdoing or expressed contrition and tried to cast blame on his victim. The court stated it was not penalizing the judge for defending himself, but noting that it could not give him the benefit of contrition as a mitigating factor. Moreover, the court stated, although “the offensive behavior found to have occurred here was not the second or third time in which respondent was found guilty of such misconduct, it did involve a prolonged and continuing course of behavior.” *Id.* at 123.

In *In the Matter of Fenster*, 649 A.2d 393 (New Jersey 1994), the New Jersey Supreme Court did not explicitly explain why it was suspending a municipal judge without pay for six months for permitting the city’s mayor to make a speech that was political and prejudicial to the defendant during a trial rather than the censure recommended by the Committee. However, in its opinion, the court emphasized the importance to the judiciary of its independence from political influence, particularly in the municipal courts. 649 A.2d at 398.

In a case in which the Commission had recommended censure, the Washington Supreme Court imposed censure and a 6-month suspension for

In several cases, public policy considerations were cited either by the court in imposing a more stringent sanction on a judge than that recommended by the commission or by a dissent from the imposition of the sanction.

making improper threats of life imprisonment and indefinite jail sentences to defendants who had not paid fines; using guilty plea forms that denied defendants due process; holding trials in absentia; a pattern of undignified and disrespectful conduct toward defendants; and asking Hispanic defendants if they were “legal.” *In re Hammermaster*, 985 P.2d 924 (Washington 1999). The court found, as had the Commission, that the judge was “guilty of a pattern or practice of misconduct, committed in the courtroom, in his official capacity. Although he admits the actions, he does not acknowledge their impropriety or the adverse effect they have on the integrity of and respect for the judiciary. Nor, therefore, has he made any effort to change his behavior (though he may be willing to do so in the future).” 985 P.2d at 942. The court noted that the Commission considered as mitigating factors that the judge did not exploit his judicial position to satisfy personal desires, he was willing to change his behavior, no prior disciplinary action had been taken against him during his 30 years of service, and he fully cooperated with the Commission’s investigation. The court found that these factors were not so mitigating as to justify only a 30-day suspension. The court stated that the judge demonstrated “a pattern of intimidating and offensive behavior, ignorance or disregard of basic legal principles, particularly in regard to sentencing and an ambivalence toward maintaining professional competence in his courtroom.” *Id.*

The court emphasized that courts of limited jurisdiction, such as those over which the judge presided, “perform an important function and their impact on Washington citizens is great. . . . To maintain and enhance that confidence the judges of these

courts must meet the high standards expected of all members of the judiciary.”

In *In the Matter of Carpenter*, 17 P.3d 91 (Arizona 2001), the Arizona Supreme Court noted that, at oral argument, the Commission on Judicial Conduct indicated that it had decided to accept a stipulation for retirement for disability, at least in part, because it wanted to remove the justice of the peace as soon as possible and end the county’s obligation to pay his salary. Soon after the justice of the peace had taken office, the Commission had begun receiving complaints about him, and eventually, the justice of the peace had stipulated that he had committed a wide variety of misconduct including falling asleep during court proceedings; making inappropriate comments and circulating inappropriate materials, some of which were racist, sexist, or obscene; and inappropriate uses of his judicial position.

The court stated, “we understand the Commission’s desire to obviate the expense incurred in judicial disciplinary proceedings,” but concluded, “the Commission’s recommended discipline is unduly lenient” and the justice of the peace must be removed from office. 17 P. 3d at 93. (The court noted that although it did not accept the Commission’s recommendation, it did not need to remand the case for further development of the record because the stipulations were not part of a bargained-for stipulated disposition, but were entered into before the justice of the peace agreed to the disposition.) The court noted that the misconduct of the justice of the peace “equals, or exceeds, the collective misconduct of the respondents” in its previous decisions removing judges from office. *Id.* at 94. The court concluded it could not “justify allowing a judge who has committed so much misconduct in so short a period of time to receive discipline short of removal.” *Id.*

Public policy considerations were also cited by the two judges who dissented from the removal in *In the Matter of Duckman*, 699 N.E.2d 872 (New York 1998). The court majority held that the evidence established that the judge willfully disregarded the law in disposing of criminal charges in 16 cases: 13 dismissals for facial insufficiency, one purportedly in the interests of justice, and two adjournments in contemplation of dismissal. The court also found that the Commission documented instances of the

judge’s inappropriate behavior in his dealings with persons appearing before him, demonstrating impatience and intolerance, even at times ordering prosecutors who disagreed with him out of the courtroom. The majority concluded:

[T]he substantial record of petitioner’s intentional disregard of the requirements of the law in order to achieve a personal sense of justice in particular cases before him, coupled with the substantial record of improper courtroom conduct and unresponsiveness to concerns flagged for him, persuade us that removal is the appropriate sanction.

699 N.E.2d at 880.

The dissenting judges did not quarrel with the findings of misconduct but argued that censure was sufficient. One dissent noted that the findings “absolutely do not represent a pattern of conduct in any realistic context and appraisal of the full record of this Judge’s career. Rather, they are qualitatively and quantitatively exceptional, measured by a fair and proportional analysis of the full gamut and docket of any Judge, serving, as this Judge did, in such high volume and high intensity assignments, locales and courts.” 669 N.E.2d at 884 (Bellacosa, J., dissenting). The other dissent emphasized that the proceedings against Judge Duckman “did not begin in a vacuum, and its outcome cannot be assessed without reference to the political maelstrom that generated it.” 669 N.E.2d at 884 (Titone, J., dissenting). Judge Duckman had come to the Commission’s attention following his decision to lower bail for a man who, three weeks after his release on bail, shot his former girlfriend, and then himself. There was extensive, lurid newspaper coverage of the incident, the senate majority leader sent a letter to the Commission urging the judge’s removal, and the governor’s office conducted an investigation of the judge. The Commission’s charges were not based on that bail decision.

The majority had also noted the “firestorm of public criticism” of the judge generated by the shooting. 669 N.E.2d at 880. The majority stated it shared the dissent’s concerns about “a threat to the independence of the judiciary, a cornerstone of our democracy, posed by unwarranted criticism or the targeting of Judges,” but concluded “wrongdoing in connection with initiating an investigation could

not insulate an unfit Judge; any such wrongdoing must be otherwise redressed. We are satisfied that in this particular case removal, rather than censure, does not imperil the independence of the judiciary.” *Id.* at 880-81.

However, one dissent argued:

By accepting without qualification the harsh sanction of removal for Judge Duckman’s indiscretions, the majority has sent a message that the State’s judicial disciplinary procedures are susceptible to manipulation by public officials and that Judges whose rulings displease those public officials may find themselves singled out for exceptional, and possibly ruinous, scrutiny.

* * *

Since the use of the removal power here not only deprives the public of a conscientious and hard-working Judge but also signals an unhealthy tolerance on the part of this Court for the heavy-handed tactics of would-be “Judge bashers,” I dissent from the Court’s acceptance of the Commission’s imposed sanction.

Id. at 881, 884 (Titone, J., dissenting). Similarly, the second dissent concluded:

The precedential implications of this removal decision are daunting and disturbing (a) insofar as the future scope and operations of the Commission are concerned, and (b) for the future discharge of adjudicative responsibilities, especially by trial level judicial officers who have to maintain actual and perceptual independence from all outside influences.

Id. at 884 (Bellacosa, J., dissenting).

RECURRING FACTORS IN REMOVAL CASES

DISHONESTY

“Honesty” is one of the “minimum qualifications which are expected of every judge.” *In re Kloepfer*, 782 P.2d 129, 262-63 (California 1989). Dishonest conduct is an element in many removal cases. Not counting cases involving criminal convictions or misrepresentations during conduct commission proceedings, in at least 33 cases, part of the misconduct that formed the basis for removal was dishonest conduct either in relation to the judge’s official duties or in personal conduct.

Dishonest conduct in connection with judicial duties included, for example, providing misleading evidence during a state audit of court accounts (*Boggan v. Judicial Inquiry Commission*, 759 So. 2d 550 (Alabama 1999)); falsification of case records (*Inquiry Concerning Johnson*, 692 So. 2d 168 (Florida 1997); *In re Jones*, 581 N.W.2d 876 (Nebraska 1998); *In re Thoma*, 873 S.W.2d 477 (Special Court of Review Appointed by Texas Supreme Court 1994); *Judge Lewie Hilton*, Judgment (Special Court of Review Appointed by Texas Supreme Court February 7, 1991)); making false accusations against attorneys (*Inquiry Concerning Shea*, 759 So. 2d 631 (Florida 2000)); and filing false travel vouchers or making false representations on a statement of economic interest (*In re Ritchie*, 870 P.2d 967 (Washington 1994); *In the Matter of Drury*, 602 N.E.2d 1000 (Indiana 1992)).

Dishonesty in personal conduct included, for example, writing personal checks without sufficient funds in the account (*Judicial Discipline and Disability Commission v. Thompson*, 16 S.W.3d 212 (Arkansas 2000)); giving inaccurate, incomplete, or misleading testimony in court proceedings in personal cases (*Inquiry Concerning Hapner*, 718 So. 2d 785 (Florida 1998)); filing a false report with or making a false statement to the police (*In the Matter of Samay*, 764 A.2d 398 (New Jersey 2001); *In the Matter of Mogil*, 673 N.E.3d 896 (New York 1996)); misrepresentations on an insurance or credit card application (*In the Matter of Jenkins*, 465

N.W.2d 317 (Michigan 1991); *In the Matter of Mazzei*, 618 N.E.2d 123 (New York 1993)); and misrepresentations at a press conference (*In re Ferrara*, 582 N.W.2d 817 (Michigan 1998)). One removal case arose from misrepresentations during an election campaign (*Inquiry Concerning McMillan*, 797 So. 2d 560 (Florida 2001)), and several cases involved deceitful statements to appointing authorities (*Inquiry Concerning Couwenberg*, Decision and Order (California Commission on Judicial Performance August 15, 2001) (<http://cjp.ca.gov/pub-disc.htm>); *In the Matter of Collazo*, 691 N.E.2d 1021 (New York 1998)). In several cases, the judges were removed for dishonest conduct as an attorney or while handling a trust (*In re Ford-Kaus*, 730 So.2d 269 (Florida 1999); *In the Matter of Embser*, 688 N.E.2d 238 (New York 1997); *In the Matter of Anderson*, 981 P.2d 426 (Washington 1999)).

Dishonest conduct, however, does not always result in removal. *See, e.g., In the Matter of Flournoy*, 990 P.2d 642 (Arizona 1999) (18-month suspension for tampering with the official transcript in a case, repeated outbursts of temper, and shouting at a court clerk); *In re Chrzanowski*, 636 N.W.2d 758 (Michigan 2001) (12-month suspension (with credit for six months) for appointing an attorney with whom the judge had an intimate relationship to represent indigent defendants and presiding over cases involving the attorney, and making false statements to police officers investigating the murder of the attorney’s wife); *In re Krepela*, 628 N.E.2d 262 (Nebraska 2001) (6-month suspension for altering a copy of a police report in a criminal case while serving as a county attorney, providing the altered report to defense counsel, and asking the police officer who made the report to either alter his original report or alter his testimony to conform to the changes); *In the Matter of Williams*, 777 A.2d 323 (New Jersey 2001) (3-month suspension for publicly confronting man with whom the judge had had a romantic relationship and his companion and giving false and misleading information to police and when she identified herself as a representative of the police in a tele-

phone call to a saloon); *In the Matter of Bloom*, Determination (New York Commission on Judicial Conduct January 20, 1995) (www.scjc.state.ny.us/bloom.htm) (censure, based on agreed statement of facts, for knowingly giving inaccurate testimony in an attorney disciplinary proceeding); *In re Kroger*, 702 A.2d 64 (Vermont 1997) (1-year suspension plus public reprimand for making false, misleading, and deceptive statements at a judge's association hearing regarding conflicts over the administration of county business).

PATTERN OF MISCONDUCT

One striking aspect of the removal cases is that most involve more than one act of misconduct or a continuing failure to act. There are four cases in which a judge was removed for one criminal act. See *In re Koch*, 890 P.2d 1137 (Arizona 1995) (solicitation of prostitution); *Inquiry Concerning Garrett*, 613 So. 2d 463 (Florida 1993) (shoplifting); *In re Huckaby*, 656 So. 2d 292 (Louisiana 1995) (failure to pay income taxes); *In the Matter of Stiggins*, Determination (New York State Commission on Judicial Conduct August 18, 2000) (physical abuse of nursing home patient). Only one removal case involved just two non-criminal acts. *In the Matter of Hamel*, 668 N.E.2d 390 (New York 1996) (improperly jailed two individuals for their purported failure to pay fines and restitution). All other cases involved more than two acts, a series of related acts, the same misconduct repeated more than once, or a continuing failure to act.

That removal is usually not justified absent findings of a pattern of misconduct is supported by the statements in many of the removal cases. As the California Supreme Court explained, "The number of wrongful acts is relevant to determining whether they were merely isolated occurrences or, instead, part of a course of conduct establishing 'lack of temperament and ability to perform judicial functions in an even-handed manner.'" *Fletcher v. Commission on Judicial Performance*, 968 P.2d 958, 989 (California 1998) (citation omitted). Similarly, in a case involving a judge's demeanor, the Illinois Court Commission emphasized:

One or two of the matters brought to our attention might have been overlooked or disregarded as a bad day for the judge, or an aberration or temporary lapse. Given the nature of high-volume courtrooms we acknowledge that latitude is necessary to a judge who is attempting to maintain order and decorum. We are well aware of the challenges to maintaining order in such courts and wish to emphasize that reasonable steps taken by judges will not result in sanctions. . . .

Considered in isolation, specific instances of Respondent's misconduct might have warranted only reprimand or censure. Considered as a whole, however, the judge's misconduct indicates both a penchant and a pattern of improper behavior. John R. Keith has proven himself to be

a person who should not occupy the position of a judge.”

In re Keith, No. 93-CC-1, Order (Illinois Courts Commission January 21, 1994).

Similarly, the Missouri Supreme Court observed:

This is not to say that all judges are free of isolated moments of ill-temper and pompous disregard for others. Judges do not leave behind the concerns and difficulties of ordinary life when they undertake judicial office. A pattern and practice of abusive and discourteous behavior, however, betrays a mindset which this Court cannot ignore and for which a serious sanction is appropriate.

* * *

Nor can it be said that this pattern and practice is but an accumulation of isolated events, which, when taken together, show no more than that Judge Elliston is ill-mannered. Were we permitted to view these incidents that superficially, and in isolation, a public reprimand might be a sufficient sanction. However, a careful review of this case paints a darker picture. Lurking just below the surface is the portrait of a judge whose desire to even the score with those who confront him personally or question his legal judgment clouds his judgment and jeopardizes the ability of litigants who appear before him to receive full and impartial justice.

In re Elliston, 789 S.W.2d 469, 480 (Missouri 1990) (15-day suspension).

Further, the Florida Supreme Court stated that although standing alone each individual charge against a judge might not warrant removal:

[c]onduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents, which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary.

In re McAllister, 646 So. 2d 173, 178 (Florida 1994) (citation omitted). See also *Inquiry Concerning Shea*, 759 So. 2d 631, 639 (Florida 2000) (“While we do not necessarily find that any one of the other offenses charged would constitute a removable offense individually, when considered together, these charges are evi-

dence of Judge Shea’s abuse of power and require removal”); *Inquiry Concerning McMillan*, 797 So. 2d 560, 573 (Florida 2001) (“Even if a single impropriety were considered insufficient in isolation, the cumulative weight of the improprieties supports removal”).

One striking aspect of the removal cases is that most involve more than one act of misconduct or a continuing failure to act.

Other courts have also relied on the accumulation of incidents to support a removal decision. See *In re Jefferson*, 753 So. 2d 181, 194-95 (Louisiana 2000) (“While each individual charge against the judge, standing alone, might not warrant the extreme disciplinary measure of removal, the record, when viewed in its entirety, shows a persistent pattern of conduct that does not comport with the standards required by the Code of Judicial Conduct and the Louisiana Constitution”); *Commission on Judicial Performance v. Hopkins*, 590 So. 2d 857, 868 (Mississippi 1991) (“An isolated incident of misconduct may have justified a public reprimand. However, because of the number of offenses committed by Judge Hopkins and his denial of any wrongdoing, we . . . order that Judge James ‘Petey’ Hopkins be removed from the office”); *In re Jones*, 581 N.W.2d 876, 891 (Nebraska 1998) (“It is the accumulation of offenses committed over a substantial period of time that is of most concern in the instant case” and “it has been determined that a combination of incidents prejudicial to the administration of justice warranted removal from office as an appropriate sanction”) (citations omitted); *In re Complaint Against Empson*, 562 N.W.2d 817, 833 (1997) (“Conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents which, [taken] together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary”) (citations omitted); *In the Matter of Davis*, 946 P.2d 1033,

1047 (Nevada 1997) (“[W]hile many of the charges would not sustain removal standing alone, the totality of the sustained charges, appellant’s wrongful assertion of privilege and his contumacious demeanor at the hearing demonstrated that the totality of the offenses, sustained by clear and convincing evidence, justified appellant’s removal from office”).

The term “pattern” of misconduct is used in several different senses in judicial discipline cases. One sense is that a pattern is proven by several acts of the same type of misconduct. *See, e.g., In re Elliston*, 789 S.W.2d 469, 480 (Missouri 1990) (16 attorneys testified as to the judge’s abusive behavior); *In re Baber*, 847 S.W.2d 800, 805 (Missouri 1993) (“We do not reach our conclusion in this case based on any one incident or charge, but rather on a recurrent pattern of mistaken rulings over a period of years”); *Goldman v. Commission on Judicial Discipline*, 830 P.2d 107, 122-23 (Nevada 1992) (6 instances constitute long-standing pattern of abuse of the power of contempt).

Second, several acts of unrelated misconduct may constitute a pattern demonstrating a lack of respect for the high standards imposed on the judiciary. In *In the Matter of Seitz*, 495 N.W.2d 559 (Michigan 1993), the Michigan Supreme Court removed a judge for abusing his contempt power, intemperate conduct with respect to court personnel and his insistence that his secretary/court reporter treat them in the same fashion, willful neglect of the adoption docket and refusal to respond to requests by the administrative office, and failure to file reports on undecided matters as required by court rules. The court concluded:

[N]one of these instances of misconduct is an isolated event, nor to be sure the result of inattention, lack of knowledge, or incompetence, but rather part of a mosaic of willful, contentious, destructive, and sometimes malicious behavior. We are prompted to conclude that this is an occasion when the totality of the behavior is larger than the sum of its ingredients.

495 N.W.2d at 576. *See also In the Matter of Castellano*, 889 P.2d 175, 185 (New Mexico 1995) (court stated that the Commission had proven “a pattern of behavior that indicates a lack of respect for the constitutional and statutory limitations on a judge’s authority” before removing judge for harassing and

interfering with a court administrator; refusing to obey legitimate orders of the chief judge; verbally abusing a deputy sheriff; using profanity, and being discourteous, undignified, and disrespectful; deliberately failing to devote the number of hours required of a district judge; his relationship with a not-for-profit organization.)

The third sense uses “pattern” to describe a series of acts all related to the same unethical scheme. For example, in *In the Matter of Seaman*, 627 A.2d 106, 122 (New Jersey 1993), the court stated although the finding that the judge had made repeated remarks of a sexual nature to a law clerk “was not the second or third time in which respondent was found guilty of such misconduct, it did involve a prolonged and continuing course of behavior.” In *In the Matter of Anderson*, 981 P.2d 426 (Washington 1999), the Washington Supreme Court removed a judge from office for continuing to serve as president of three corporations included in an estate; while an adjustment of the purchase price for one of the assets of the estate was being negotiated, accepting payments of his car loan from the purchaser without disclosing the payments to the trustee of the estate; and failing to disclose the payment of the car loan on public disclosure forms. The court rejected the judge’s claim that his actions were not part of a pattern or did not occur with frequency. The court concluded that the judge’s continued participation in the affairs of the estate after he became a full-time judge and his failure to disclose the payments he received over a period of three years demonstrated an extended pattern of misconduct. 981 P.2d at 438. *See also In re Lorona*, 875 P.2d 795, 797 (Arizona 1994) (90-day suspension for influencing another judge’s handling of two traffic matters concerning a friend and a step grandson; court noted case did not involve a single, isolated mistake that might justify an informal disposition but that each alleged incident involved numerous improper contacts with the other judge).

PRIOR DISCIPLINE RECORD

A “pattern” relevant to a decision to remove may be proven not only by the incidents in the immediate case but also by previous discipline. The Louisiana Supreme Court noted that a deferred discipline agreement between a judge and the Judiciary Commission (for ordering the arrest and incarceration of an individual for misdemeanor state traffic offenses when the judge was the alleged victim and complainant) was subsumed by the court’s removal, but concluded that “the prior discipline indicates a pattern of misconduct and ethical problems which further underscores the need for the instant discipline.” *In re Johnson*, 683 So. 2d 1196, 1202 (Louisiana 1996) (removal for judge who owned and operated company that provided pay telephone serve for all inmates in the local parish jail pursuant to contract with sheriff).

In *Doan v. Commission on Judicial Performance*, 902 P.2d 272 (California 1995), the court noted:

Of course, we would hesitate to remove a judge who showed himself ready, willing, and able to reform under a less severe sanction. Doan, however, is not such a judge. Quite the opposite is true. To use the words of one of the examiners, she is apparently the “most disciplined judge in the State of California” — meaning, obviously, the most sanctioned.

902 P.2d at 296. The court stated that Doan did not learn from her public reproof in 1989 (for, inter alia, failure to make full disclosure in her annual statement of economic interests), from her private admonishment in 1990 (for, inter alia, engaging in financial dealings that exploited her judicial position), or from her public reproof in 1990 (for lending the prestige of her office to advance the private interest of others). The court concluded, “In sum, Doan has had three opportunities for reformation. She will have no more.” *Id.*

In *In re Jett*, 882 P.2d 414 (Arizona 1994), the Arizona Supreme Court suspended until the end of her term a judge who had signed an order releasing her boyfriend from jail after he had been arrested on suspicion of domestic violence, criminal trespass, and disorderly conduct. Noting that the judge had been informally disciplined for misconduct in 4 separate incidents, the last 2 incidents within 6 months

of the incident giving rise to the current disciplinary action, the court found that the judge’s “pattern of misconduct presents a threat to the public, and therefore we consider it to be a strong aggravating factor.” 683 So. 2d at 420. The court further found that, in light of the 4 prior disciplinary actions in which the judge had acknowledged her conduct and cooperated with the Commission, the Commission’s finding that the judge was remorseful and cooperative carries “little weight in terms of mitigation. . . . After repeated violations . . . these factors lose their impact. We cannot continue to excuse judicial misconduct because the judge repeatedly acknowledges wrongdoing, cooperates with the disciplinary process, and is remorseful.” *Id.* at 421. In *Jett*, the court overruled an earlier decision in which it had suggested that it would not consider informal sanctions imposed in prior judicial disciplinary actions. See *In re Ackel*, 745 P.2d 92 (Arizona 1987).

Similarly, in *In re Peck*, 867 P.2d 853, 859 (Arizona 1994), the court stated that the judge’s previous reprimand and two admonishments “should have alerted Respondent to his errors,” particularly as three of the four current charges occurred within months after the reprimand. Noting the judge “continued to act improperly without ever seeking self-improvement or help,” the court concluded that the judge’s “continued failure to exercise caution, even after earlier sanctions, is a strong aggravating factor.”

A “pattern” relevant to a decision to remove may be proven not only by the incidents in the immediate case but also by previous discipline.

In contrast, that the judge had no prior discipline record has been cited as a mitigating factor in many cases in which the judge was not removed or even publicly sanctioned. See, e.g., *Inquiry Concerning a Judge*, 822 P.2d 1333, 1334 (Alaska 1991) (noting an absence of prior disciplinary proceedings before issuing private reprimand); *Inquiry Concerning a Judge*, 788 P.2d 716, 725 (Alaska 1990) (noting no evidence that the judge had ever received a disciplinary sanction, public or private, as an attor-

ney or judge, before issuing private reprimand) *In the Matter of Skinner*, 690 N.E.2d 484, 486 (New York 1997) (noting no evidence of any prior complaints in 40 years as a judge before censuring a judge, rejecting the Commission's determination that removal was the appropriate sanction); *In re Marullo*, 692 So. 2d 1019, 1023 (Louisiana 1997) (noting that in a 22-year judicial career, the judge had never been the subject of official disciplinary proceedings in deciding judge should not be sanctioned for technical violation of code); *In the Matter of Crawford*, 629 N.W.2d 1, 11 (Wisconsin 2001) (noting while rejecting Commission's removal recommendation that the judge had not previously been disciplined).

JUDICIAL REPUTATION

Judges in judicial discipline proceedings frequently introduce testimony or letters to demonstrate their reputation for competence, diligence, dedication, and administrative skills, and long record of public service. However, courts have held that such a record does not excuse misconduct and, while it may be relevant to the degree of sanction, it cannot justify a less severe sanction if removal or at least suspension are otherwise justified.

For example, *In re Elliston*, 789 S.W.2d 469, 484 (Missouri 1990), the court noted that "the record leaves no question but that Judge Elliston is a man of substantial legal talent. He is able, diligent, and intelligent." However, the court stated that "intelligence, ability and diligence are minimum qualifications expected of every judge. They do not serve to mitigate when the public's confidence in the impartiality, integrity and evenhandedness of the judicial branch is at stake." *Id.* Sixteen attorneys had testified as to the judge's abusive behavior. The court noted:

These attorneys testified not as to Judge Elliston's reputation generally but as to their experience with him specifically. Evidence of Judge Elliston's good conduct, to which others testified, does not disprove his acts of oppression, abuse and misconduct. It only shows that his conduct is not universally contrary to the Code of Judicial Conduct.

Id. at 480. The court suspended the judge for 15 days for a pattern of personal insult and invective and a pattern of petty vendetta.

Similarly, the same court stated in *In re Baber*, 847 S.W.2d 800, 804 (Missouri 1993) that "it need not be shown that the judge's performance is substandard all of the time, or even most of the time. The fact that Judge Baber discharged his duties competently in his interactions with these particular witnesses does not preclude a finding that he cannot do so consistently, as evidenced by the testimony of other witnesses." The court removed Judge Baber for a lack of competence to handle the duties of the office.

The New York Court of Appeals rejected a judge's request for credit for "his otherwise unblemished performance in a high-stress, high-volume court" and his argument that the number of abuses should not be viewed in isolation from his career on

the bench. *In the Matter of Duckman*, 699 N.E.2d 872, 879 (New York 1998). The court noted that the number of abuses was not insignificant (improper dismissal of 16 cases and numerous instances of inappropriate behavior in his dealings with persons appearing before him) and, if viewed in the context of the judge's entire career, would at best "establish that his behavior was erratic, which itself is inconsistent with a Judge's role." 699 N.E.2d at 878-79 (citations omitted). The court stated it had "resisted any numerical yardstick for determining unfitness and that it was "the nature of the proven wrongdoing as well as the numbers that determine the appropriate sanction." 699 N.E.2d at 879 (citations omitted).

In *In re Goodfarb*, 880 P.2d 620 (Arizona 1994), the Arizona Supreme Court stated:

It is true that Judge Goodfarb has had a long and solid judicial career. The many testimonials before the Commission and this court on his behalf are evidence of that. It makes this case tragic, and even pathetic. But there was also substantial evidence before the Commission that many citizens have lost faith in Judge Goodfarb's judgement because he used racially inflammatory language in an official court proceeding and because of this chronic use of profanity in official proceedings.

880 P.2d at 623 (suspension until end of term). See also *In re Koch*, 890 P.2d 1137, 1139 (Arizona 1995) ("While there are factors supporting a lesser sanction, such as Judge Koch's excellent record on the bench, we cannot overlook the gravity of his misconduct"); *Inquiry Concerning Couwenberg*, Decision and Order (California Commission on Judicial Performance August 15, 2001) (<http://cjp.ca.gov/pubdisc.htm>) ("Even assuming that his judicial performance was exemplary, it would not excuse his misconduct"); *Inquiry Concerning Garrett*, 613 So. 2d 463, 465 (Florida 1993) ("We are not unmindful of Judge Garrett's meritorious service to the State of Florida both as a state attorney and as a judge. However, it is essential to our system of justice that the public have absolute confidence in the integrity of the judiciary. We believe it would be impossible for the public to repose this confidence in a judge who has knowingly stolen property from another"); *Inquiry Concerning Johnson*, 692 So. 2d 168, 172-73 (Florida 1997) ("We cannot dispute Judge Johnson's oth-

erwise unblemished judicial record. However, her knowing and repeated acts of falsifying public records strike at the very heart of judicial integrity. We are compelled to the conclusion that Judge Johnson must be removed from office"); *Commission on Judicial Performance v. Hopkins*, 590 So. 2d 857, 866 (Mississippi 1991) ("The fact that several attorneys and law enforcement officials testified as to his good character does not diminish the fact that Judge Hopkins, by his willful misconduct, brought his judicial office into disrepute"); *Commission on Judicial Performance v. Dodds*, 680 So. 2d 180, 201 (Mississippi 1996) ("Dodds' traits of good character, as witnessed by the lawyers of Prentiss County, as well as his patriotism and hard-working qualities are substantially outweighed by his unlawful actions in office"); *In re Jones*, 581 N.W.2d 876, 891 (Nebraska 1998) (Notwithstanding the "letters and testimony in support of Jones that speak of his good record in handling a variety of judicial matters . . . we cannot ignore that Jones violated both the Code of Judicial Conduct . . . on numerous occasions over a significant period of time"); *In the Matter of Fine*, 13 P.3d 400 (Nevada 2000) (removing a judge for ex parte communications and favoritism, noting that in light of the judge's previous discipline for ex parte communications, "Simply put, Judge Fine should have known better"); *In the Matter of Imbriani*, 652 A.2d 1222, 1224 (New Jersey 1995) (judge's "long and illustrious record of public service to this State . . . cannot assuage the effect of the wrongdoing"); *In the Matter of Mulroy*, 731 N.E.2d 120 (New York 2000) ("Petitioner's judicial record cannot excuse racial epithets and ethnic slurs in the official and quasi-official context in which they were uttered, attempts to influence dispositions, intemperate behavior and false testimony"); *In the Matter of Esworthy*, 568 N.E.2d 1195, 1196 (New York 1991) ("Petitioner's 'record of public service as legislator, judge, and mayor, and as an active community volunteer over a span of forty years' cannot excuse these acts of gross judicial misconduct").

One case in which an otherwise unblemished record did prevent a judge's removal is *In re Krepela*, 628 N.W.2d 262 (Nebraska 2001). See discussion at pages 42-43, *supra*.

PROPORTIONALITY

Commissions and courts strive to impose similar sanctions in cases involving similar judicial misconduct and to be consistent from case to case. *See* discussion at pages 51-53 *supra*. For example, the New Jersey Supreme Court uses public reprimand as the minimum sanction for judges convicted of driving while intoxicated, while public censure and suspension are imposed on judges for second convictions, additional offenses, or attempting to use the prestige of office to get out of the charge. *See In the Matter of Connor*, 589 A.2d 1347 (New Jersey 1991) (public censure for judge who had pled guilty to driving under the influence, leaving the scene of an accident, and driving in a careless manner); *In the Matter of Lawson*, 590 A.2d 1132 (New Jersey 1991) (public reprimand for judge who pled guilty to driving while under the influence and failing to observe a traffic signal and who had been charged with using courtesy license plates); *In the Matter of Collester*, 599 A.2d 1275 (New Jersey 1992) (2-month suspension after second drunk driving offense); *In the Matter of Annich*, 617 A.2d 664 (New Jersey 1993) (public censure for driving while intoxicated and acting in an inappropriate manner subsequent to arrest; the judge had consented to the censure); *In the Matter of Richardson*, 709 A.2d 197 (New Jersey 1998) (public reprimand for driving while intoxicated); *In the Matter of D'Ambrosio*, 723 A.2d 943 (New Jersey 1999) (public reprimand for driving while intoxicated).

However, the wide variety of misconduct in which judges engage and the importance of aggravating and mitigating factors (some very individual to each judge) make the goal of equivalence very difficult to achieve. For example, in *Broadman v. Commission on Judicial Performance*, 959 P.2d 715 (California 1998), the judge argued that public censure was not warranted in his case because his misconduct was less egregious than that of judges publicly censured in other cases. The California Supreme Court concluded: "Proportionality review based on discipline imposed in other cases . . . is neither required nor determinative. The factual variations from case to case are simply too great to permit a meaningful comparison in many instances." 959 P.2d 734. Even the Michigan Supreme Court, although it stated that the Judicial Tenure Commis-

sion had the burden to persuade the court that "it is responding to equivalent cases in an equivalent manner and to unequivalent cases in a proportionate manner," acknowledged that "no two judicial misconduct cases are identical." *In the Matter of Brown*, 461 Mich. 1291, 1292-93 (Michigan 2000). Stating the individualized approach to sanction is guided by general principles, the Wisconsin Supreme Court concluded:

Past judicial misconduct cases before this court are of limited usefulness in setting the sanction appropriate for this case, which involves unique circumstances. We have not established, nor will we here, a "bright line" standard when, for example, reprimand or censure is warranted as opposed to suspension. Each case is different, and is considered on the basis of its own facts.

In the Matter of Crawford, 629 N.W.2d 1, 11 (Wisconsin 2001).

Further, a judge's willingness to agree to a sanction may result in a stipulated disposition that is less harsh than that that would be imposed if the case were tried. Moreover, it is not unreasonable for the second, third, or fourth judge who commits a particular type of misconduct to receive a more severe sanction than the first judge who did so. For example, in *In re Dreyfus*, 513 N.W.2d 604 (1994), the Wisconsin Supreme Court suspended a judge for 15 days for recurring delay in deciding cases and filing false certifications of status of pending cases; 6 years later, in *In the Matter of Waddick*, 605 N.W.2d 861, 866 (Wisconsin 2000), the court suspended a judge for 6 months for comparable behavior. In its list of reasons for the longer suspension (*see* discussion at page 52, *supra*), the court included "that Judge Waddick had the benefit of the court's decision in *Dreyfus* to appreciate how seriously the court views judicial delay in deciding cases and filing false certifications." 605 N.W.2d at 866.

Similarly, in its first ticket-fixing case, the Mississippi Supreme Court had privately reprimanded the judge for finding defendants not guilty based on ex parte communications and without a hearing or trial. *Commission on Judicial Performance v. A Justice Court Judge*, 580 So. 2d 1259 (Mississippi 1991). However, the court warned other justice court judges that there be no excuse for similar infractions in the future. Unfortunately, the justice court judges did not heed that warning, and the sanctions

imposed by the court in subsequent ticket-fixing cases became harsher, beginning with a public reprimand and fine. See *In re Seal*, 585 So. 2d 741 (Mississippi 1991) (public reprimand and \$500 fine for ticket-fixing); *Commission on Judicial Performance v. Gunn*, 614 So. 2d 387 (Mississippi 1993) (public reprimand and \$400 fine for ticket-fixing); *Commission on Judicial Performance v. Bowen*, 662 So. 2d 551 (Mississippi 1995) (public reprimand and \$1,450 fine for ticket-fixing); *Commission on Judicial Performance v. Anderson*, 691 So. 2d 1019 (Mississippi 1996) (public reprimand and \$500 fine for ticket-fixing); *Commission on Judicial Performance v. Jones*, 735 So. 2d 385 (Mississippi 1999) (public reprimand and \$1,500 fine for ticket-fixing). In fact, two judges were removed for ticket-fixing and other misconduct. *Commission on Judicial Performance v. Chinn*, 611 So. 2d 849 (Mississippi 1992); *Commission on Judicial Performance v. Dodds*, 680 So. 2d 180 (Mississippi 1996). In removing Judge Chinn, the court noted that its prior attempts to send a strong message to judges concerning ticket-fixing had “fallen on deaf ears.” 611 So. 2d at 857.

CONDUCT IN RESPONSE TO INVESTIGATION

In many cases, the judge’s conduct in response to the commission’s inquiry and disciplinary proceedings was cited either as an aggravating factor or as a separate ground for finding misconduct. In several cases, it appeared to have been the decisive factor leading to the judge’s removal. An inappropriate reaction to a commission investigation may take several forms — the judge’s failure to show remorse, take responsibility, or make an effort to change his or her conduct; the failure to be candid and cooperate with the commission; or attempts to mislead the commission.

The failure to take responsibility and show remorse is treated as evidence that a sanction such as a reprimand or suspension would not cause the judge to change his or her behavior, leaving removal the only option. For example, stating it was troubled by a judge’s failure to show remorse, the Florida Supreme Court concluded it could “only presume that if this Court reprimanded him, he would continue to violate the precepts of the Code of Judicial Conduct.” *Inquiry Concerning Graham*, 620 So. 2d 1273, 1276 (Florida 1993). The court stated, “A judge who refuses to recognize his own transgressions does not deserve the authority or command the respect necessary to judge the transgressions of others.”

The New Jersey Supreme Court noted that a retired judge’s justification of his actions and position to other judges and in the media “fully confirms that Judge Kenny sees nothing wrong in his conduct and is likely to repeat it” *Judge Eugene P. Kenny*, Order (New Jersey 1991). The court, therefore, terminated the judge’s recall for lecturing and demeaning a litigant because she was an unwed mother on welfare, which was not relevant to the legal proceedings. The court concluded, “While judges are only human and sometimes make mistakes, a judge who intentionally and improperly demeans a litigant appearing in court and who announces an intention to continue to do so in the future misconceives the responsibility of a judge and demonstrates unsuitability to continue in judicial office.”

Similarly, *In re Hathaway*, 630 N.W.2d 850 (Michigan 2001), the Michigan Supreme Court stat-

ed it was troubled by the absence of any “plausible explanation” by the judge for her “overall lack of industry.” The court concluded: “Absent some understanding of *why* these problems occurred, or even a direct acknowledgment that such a situation existed, we see no reasonable basis for assuming that these problems are safely behind her.” 630 N.W.2d at 861. The court suspended the judge for 6 months without pay, rather than the 30 days recommended by the Commission to which the judge had consented.

Courts also look askance at judges' attempts to blame their conduct on others or to assert that the charges are the result of a conspiracy

In *Inquiry Concerning O'Neal*, 454 S.E.2d 780, 783 (Georgia 1995), the Georgia Supreme Court noted that the magistrate “refused to acknowledge that any specific action was improper” or “accept personal responsibility for the difficulties she experienced with the other elected officials” The court took “this refusal into account” in considering whether the magistrate should be removed from office for an uncooperative working relationship with the county board of commissioners and determined that the magistrate’s acts “demonstrate she is presently unfit to hold judicial office.” See also *In the Matter of Carpenter*, 17 P.3d 91, 95 (Arizona 2001) (“[T]he record established several factors that this court has previously recognized as aggravating: the repeated nature of the misconduct; failure to acknowledge wrongdoing and the offering of excuses; and providing inaccurate responses to the Commission’s investigation” (citations omitted)); *Judicial Discipline and Disability Commission v. Thompson*, 16 S.W.3d 212, 226 (Arkansas 2000) (“Even at this stage, Judge Thompson fails to accept responsibility for those acts that conflicted with any of the canons or laws in issue”); *In the Matter of Vaughn*, 462 S.E.2d 728, 736 (Georgia 1995) (noting “from her own testimony, we find it unlikely that, were she to stay on the bench, Judge Vaughn would alter her previous conduct”); *In re Spurlock*, No. 98-CC,

Order (Illinois Courts Commission December 3, 2001) (in decision to remove judge, noting “He has not acknowledged the improprieties, and has denied they occurred”); *Commission on Judicial Performance v. Hopkins*, 590 So. 2d 857, 866 (Mississippi 1991) (“Judge Hopkins denies that he committed any wrongdoing. He instead offers explanations and excuses for every act”); *In re Conard*, 944 S.W.2d 191, 205 (Missouri 1997) (judge’s failure to accept and acknowledge that behavior was wrongful made 30-day suspension without pay more appropriate than public reprimand); *In the Matter of Anderson*, 981 P.2d 426, 438 (Washington 1999) (“In the face of such overwhelming evidence . . . Judge Anderson’s failure to acknowledge or recognize that he committed any misconduct at all weighs heavily against him in our determination of the appropriate sanction”).



Courts also look askance at judges’ attempts to blame their conduct on others or to assert that the charges are the result of a conspiracy. In *In re Peck*, 867 P.2d 853, 859 (Arizona 1994), the Arizona Supreme Court noted its dismay at “the tone and substance” of the judge’s “wild, unsubstantiated claims of conspiracy and revenge.” The judge accused “Commission members — who had shown some leniency by recommending only a thirty-day suspension — of ‘academic snobbery and hypocrisy,’ stating that they acted only because they believed ‘the Judge to be a dangerous sort of person who would rip away their positions,’ and claiming that their retaliatory actions were “**CORRUPTION** of their office.” The judge also accused the Commission of “collusion, suppressing dissent, and of furthering its own agenda.” Although stating these “charges have neither credibility nor factual support and will not be addressed,” the court concluded the judge’s “accusations only confirm that he lacks the judgment needed to carry out his duties competently.”

Respondent blames the world for his troubles, refuses to see his own shortcomings, and, consequently, does nothing to cure them. We take this as some indication that no amount of rehabilitation or education will solve these problems and that Respondent poses a danger of committing

future violations bringing the judiciary into disrepute.

Id. at 860.

Trying to shift blame to others during discipline proceedings also supports removal to prevent a judge from retaliating. Finding that a judge had engaged in a disturbing course of judicial tyranny in the two weeks after losing his candidacy for another judicial office, the Kentucky Judicial Conduct Commission stated that even “more disturbing” was the fact that Judge Woods blamed court workers, law enforcement officials, judges and others for his situation.” *In re Woods*, Final Order (Kentucky Judicial Conduct Commission June 27, 2000). The Commission concluded, “return to the bench would likely bring judicial retribution against witnesses who testified against Judge Woods in these proceedings.”

Moreover, expressions of remorse made late in the proceedings or following similar professions that did not result in changed behavior will not necessarily prevent a judge’s removal. In *Fletcher v. Commission on Judicial Performance*, 968 P.2d 958, 990 (California 1998), the California Supreme Court noted that, “contrary to the contrite tone he sounds in this court, petitioner’s primary response to the misconduct allegations during the Commission proceedings was to allege a conspiracy against him.” Therefore, the court concluded:

[T]he record “belies petitioner’s claim that he has learned from past experience and has modified his courtroom behavior. It demonstrates instead an inability to appreciate the importance of, and conform to, the standards of judicial conduct that are essential if justice is to be meted out in every case.” It “does not suggest that petitioner has, or will be able to, overcome [his demonstrated lack of judicial temperament] and that similar incidents will not recur.”

968 P.2d at 991 (citations omitted).

In *In re Jones*, 581 N.W.2d 876, 891 (Nebraska 1998), the Nebraska Supreme Court noted that the judge had “said he is sorry for his actions and that he will not engage in such conduct again, making the sanction of removal unnecessary for protection of the judicial system.” However, the court also noted that the “record shows a pattern of apologies by Jones following his outrageous behavior, yet Jones’ undignified and abusive behavior persisted.” The court concluded

removal was appropriate. See also *In the Matter of Duckman*, 699 N.E.2d 872, 880 (New York 1998) (“unresponsiveness to concerns flagged for him” by district attorneys coupled with “the substantial record of petitioner’s intentional disregard of the requirements of the law in order to achieve a personal sense of justice in particular cases before him” and “improper courtroom conduct . . . persuade us that removal is the appropriate sanction.”) See discussion of *In re Jett*, 882 P.2d 426 (Arizona 1994), at page 63, *supra*.



Persisting in misconduct even after being informed of a commission investigation is also considered an aggravating factor supporting removal. For example, after being notified by the New York State Commission on Judicial Conduct that it was investigating his handling of cases brought by several friends, the judge continued to hear their cases. He also criticized a defendant at her place of employment after she made remarks critical of the judge in a letter to the editor. The reviewing court stated “the fact that the misconduct continued even after petitioner was on notice that the Commission considered his actions improper demonstrates that he is not fit for judicial office.” *In the Matter of Robert*, 680 N.E.2d 594, 595 (New York 1997). Concluding that the judge continued to fail to comprehend the seriousness of his conduct, the court noted that he had testified that he intended to continue presiding over matters involving his friends and suggested in his brief that the error in criticizing the letter-writer in front of her employer would have been ameliorated had he put the criticism in the form of a letter to her and her employer.

Similarly, two weeks before a judge was to testify before the New York Commission regarding the effect of his romantic relationship with a court attorney on his conduct at the court, the judge signed an ex parte order lifting the suspension of a friend’s driver’s license for failure to pay child support. The New York Court of Appeals concluded, “This cavalier behavior illustrates petitioner’s insensitivity to the nature of the charges and proceedings against him.” *In the Matter of Going*, 761 N.E.2d 585, 589 (New York 2001). The court also noted the judge’s lack of contrition, his admonishment by the Commission in July 1997 for disparaging a litigant from

the bench, his persistent failure to recognize and acknowledge the impropriety of his behavior, his blaming of co-workers for his personal and professional failings, and his resistance and lack of cooperation with administrators in their repeated attempts to address problems he helped create.

Half-hearted attempts at remedial action do not placate the courts making removal decisions.

Failure to take remedial action has also been cited as an aggravating factor. Accepting the determination of the New York Commission, the New York Court of Appeals removed a judge who had mishandled court funds and failed to recuse himself in several cases involving an acquaintance from whom the judge had borrowed money. *Murphy v. Commission on Judicial Conduct*, 626 N.E.2d 48 (New York 1993). After an evening court session on November 28, 1989, the judge had offered to make the deposit of \$1,173 in fines and surcharges collected into his official bank account, but the deposit was never made. Had the judge taken immediate remedial steps after being notified of the shortfall, the court stated, “a lesser sanction might be warranted for a first transgression.” 626 N.E. 2d at 50. However, the court found the judge’s attitude “for an extended period was, at best, one of relative indifference. For almost a year he made no official notification of the missing money — the referee concluded this ‘smack[ed] of concealment’ — and he did not contact the debtors until the Commission intervened, almost 15 months after the deposit should have been made. Nor has petitioner provided an adequate explanation for the loss of the money.” *Id.* The court concluded: “These are aggravating circumstances warranting removal.” *Id.*

Half-hearted attempts at remedial action do not placate the courts making removal decisions. A judge who owned and operated a telephone company that had a contract with the sheriff to provide service at the local jail transferred his interest to his wife after receiving notice of the Judiciary Commission inquiry. However, the Louisiana Supreme Court

found that had the judge “truly been interested in divesting himself” of his interest in the phone company, “he would have sold his interest for a fair price to a disinterested third party.” The court concluded, “One who persists in this type of misconduct and does not comprehend the impropriety of such actions cannot hold the office of judge.” *In re Johnson*, 683 So. 2d 1196, 1201 (Louisiana 1996).



Courts and commissions also find a lack of integrity demonstrating unfitness for office in a judge’s lack of cooperation with a conduct commission, including failure to respond to commission inquiries, advancing an unlikely defense, attempting to interfere with witnesses, and attempting to mislead the commission. For example, in 8 cases from New York involving judges’ failure to remit court funds and report cases to the state comptroller as required by state law and/or to deposit court funds into an official account, the judge was removed because, in addition, he or she failed to respond to letters from the Commission (the Commission usually sends at least three letters in an attempt to get a response) and to appear to give testimony following notification. See discussion at page 9, *supra*. Failure to remit by itself, the Commission has stated, warrants admonition or censure. See, e.g., *In the Matter of Ranke*, Determination (New York State Commission on Judicial Conduct September 30, 1991). Failure to cooperate with the Commission “exacerbates” (*In the Matter of Driscoll*, Determination (New York State Commission on Judicial Conduct March 20, 1996)) or “compounds” the underlying misconduct, demonstrates “a total lack of concern about the allegations of misconduct,” and a “flagrant indifference to the obligations of judicial office” (*In the Matter of Armbrust*, Determination (New York State Commission on Judicial Conduct December 16, 1993)), “shows contumacious disregard for the responsibilities” of judicial office (*In the Matter of Coble*, Determination (New York State Commission on Judicial Conduct February 5, 1998)), and demonstrates unfitness for office and is conduct prejudicial to the administration of justice warranting removal (*In the Matter of Driscoll*, Determination (New York State Commission on Judicial Conduct March 20, 1996)). See also *In the Matter of Gregory*, Determi-

nation (New York State Commission on Judicial Conduct March 23, 1999) (removal was the appropriate sanction for a judge who had neglected his judicial duties and failed to cooperate in the Commission's investigation). (Determinations of the New York Commission are available on-line at www.scjc.state.ny.us.)

In *In the Matter of McClain*, 662 N.E.2d 935, 943 (Indiana 1996), the Indiana Supreme Court found that the judge's lack of integrity was demonstrated not only in the conduct for which he was being sanctioned (harassing a court employee) but also in advancing an "unbelievable" "eleventh hour tale of vengeance and coincidence" in his defense and in his obstructive and uncooperative posture toward the Commission's investigation. The failure to cooperate was in *McClain* considered an aggravating factor, but the court stated such a failure could in itself constitute actionable misconduct. *Id.* at 940. The court did state that a judge's duty to cooperate with the Judicial Qualifications Commission does not require an admission of misconduct or preclude the advocacy of a theory of defense that is contradictory to the allegation of misconduct.

Similarly, the New Jersey Supreme Court stated it was "disturbing" when a judge "minimizes his misconduct and has demonstrated that he has no compunction about being less than credible in support of his position." The court considered "that shortcoming to be further evidence that respondent lacks the honor and integrity demanded of a judge." *In the Matter of Samay*, 764 A.2d 398, 409 (New Jersey 2001).



Judges have also been removed when attempting to influence a witness, either by requesting lack of cooperation or through intimidation, was one of the findings of misconduct. In *In the Matter of Drury*, 602 N.E.2d 1000 (Indiana 1992), the Indiana Supreme Court removed a judge who, among other misconduct, attempted to intimidate and retaliate against his ex-girlfriend and her mother for cooperating in the investigation by the Commission into loans he had solicited, received, but failed to report. The judge had assisted his son in preparing an anonymous, misleading letter that claimed his ex-girlfriend had been convicted of a felony, when in

fact she had been convicted only of a misdemeanor, and mailing the letter to the state agency that regulated the day care center that employed his ex-girlfriend and that her mother owned. The court stated that, in addition to the judge's other misconduct, it also found "a basis for removal in the charges regarding witness intimidation."

Witness intimidation is a reprehensible offense; it threatens the search for justice by attempting to silence those who would otherwise speak. This type of dishonesty strikes at the heart of what the judiciary should be — impartial arbiters of the truth who avoid even the shadow of impropriety.

Id. at 1010. See also *Doan v. Commission on Judicial Performance*, 902 P.2d 272 (California 1995) (judge, during the Commission's preliminary investigation, asked a woman from whom she had borrowed money and her husband not to cooperate with the Commission's agents, specifically, not to discuss the \$4,500 loan the judge had obtained; judge was removed); *Commission on Judicial Performance v. Dodds*, 680 So. 2d 180 (Mississippi 1996) (among other misconduct, judge circulated order after being served with complaint from Commission to members of court staff demanding that they deliver official and unofficial notes and evidence and threatening punishment for contempt for failure to abide by his orders; judge was removed).

In *In re Lowery*, Opinion (Special Court of Review Appointed by Texas Supreme Court February 13, 1998), Judge Lowery asked another judge to submit a false report to the Commission stating Judge Lowery had complied with education requirements imposed by the Commission in earlier proceedings. The reviewing court stated that while the judge's verbal abuse of the parking lot attendant and the techniques he used to enforce an order constituted serious misconduct for which sanctions would be appropriate, these incidents standing alone might justify only a reprimand or censure. But the court concluded, coupled with the failure to comply with a valid order from the Commission requiring additional judicial education, the judge's actions justified removal. The court noted that the Commission had ordered education about topics (for example, distinguishing the role of a judge from the role of ombudsman, mediator, or arbitrator) that could have prevented the judge's additional miscon-

duct. The court stated that even worse than ignoring the Commission's order was the judge's request to a fellow jurist to lie to the Commission about his completion of the training, noting that such conduct is tantamount to an effort to perpetrate a fraud on the Commission.



Furnishing false evidence or testimony in commission proceedings or investigations has also been one of the grounds for removal in several cases.

The California Supreme Court has stated, "There are few judicial actions in our view that provide greater justification for removal from office than the action of a judge in deliberately providing false information to the Commission on Judicial Performance in the course of its investigation into charges of wilful misconduct on the part of the judge." *Adams v. Commission on Judicial Performance*, 897 P.2d 544, 571 (California 1995). In *Adams*, the court found that clear and convincing evidence supported the charges that the judge made four separate material misstatements or omissions to the Commission during its investigation. For example, when the Commission requested information about any appearance by the a particular law firm before the judge, the judge responded "Because of our friendship, Tom Ault has never appeared in front of me," failing to disclose that members of Ault's law firm had appeared before the judge on several occasions. The court concluded that the judge knew or should have known that his responses were either inaccurate or incomplete and that it was unreasonable for the judge to assume he was obligated to disclose only those instances in which Ault had personally appeared before him.

Similarly, the New York Court of Appeals held that removal was the appropriate sanction for a judge who had made false statements to the Commission during its investigation into allegations he had passed a note to his court attorney concerning the physical attributes of a female law intern and suggested to the intern that she remove part of her apparel in his presence; the judge also gave deceitful responses to the governor's screening committee and to the staff of the senate judiciary committee when they were considering his nomination to a different court. *In the Matter of Collazo*, 691 N.E.2d 1021 (New York 1998). The

court stated that the judge's ribald note and indelicate suggestion standing alone would not be sufficient to justify removal, but that the judge's misconduct was magnified by a pattern of evasive, deceitful, and outright untruthful behavior, evidencing a lack of fitness to hold judicial office. The court concluded that the judge's false statements to the Commission and his denial to the screening committees that the Commission was investigating him could not be explained as a "mere lack of recall" or described as "poor judgment." 691 N.E.2d at 1023.

Furnishing false evidence or testimony in commission proceeding or investigations has also been one of the grounds for removal in several cases.

Similarly, in *In the Matter of Mossman*, Determination (New York Commission on Judicial Conduct September 24, 1991)(www.scjc.state.ny.us/mossman.htm), the New York Commission found that the judge's failure to remove himself from a case "alone, while serious, would not ordinarily require removal." The judge had failed to remove himself from a case in which the complaining witness was his long-time acquaintance and a regular customer of his mother's bar where the incident occurred and the judge lived; the judge's father was a witness; and the defendant was his father's political adversary. The judge had issued an arrest warrant and arraigned the defendant on a complaint that was clearly deficient on its face, then attempted to have a valid complaint drawn. However, the Commission concluded, the judge's "false testimony at the hearing and his attempts to obstruct the Commission's discharge of its lawful mandate demonstrate that he is unfit for judicial office." (The judge had mentioned only two complaints in his written response and sworn testimony during the investigation, mentioning a third "chicken scratch" complaint only when discrepancies in the dates were pointed out to him.)

In removing a judge who told the Commission he had worked for the CIA when a previous lie that he had been in combat in Vietnam was exposed and

then told the Commission that he had worked in Laos for an unknown agency when the CIA disputed his other claim, the California Commission on Judicial Performance stated, “Any discipline other than removal for such blatant misrepresentations might well encourage others who are investigated by the commission to prevaricate and develop faulty memories.” *Inquiry Concerning Couwenberg*, Decision and Order (California Commission on Judicial Performance August 15, 2001) (cjp.ca.gov/pub-disc.htm). See also *In the Matter of Carpenter*, 17 P.3d 91 (Arizona 2001) (judge removed for, among other misconduct, misrepresenting facts to commission); *In the Matter of Mogil*, 673 N.E.2d 896, 899 (New York 1996) (“we agree that the offensive, harassing and vindictive nature of petitioner’s conduct, and his repeated dishonesty before the Commission, requires the sanction of removal”).

In *In re Ferrara*, 582 N.W.2d 817 (Michigan 1998), a witness for the judge, who had been charged with using racial epithets in a private telephone conversation, had submitted a letter stating that the judge was not racist. The letter was purportedly written by the witness to a newspaper when the controversy first arose, but, in fact, the judge had written the letter after the Commission hearing had begun. The court found that by submitting the letter, the judge “had attempted to mislead the court, or at least create a false impression, with respect to the time, motivation, and scrivener of the letter.” 582 N.W.2d at 824. The judge also made a second attempt to admit the letter. The court concluded that the judge’s failure to divulge the source and circumstances surrounding the letter constituted an obstruction of justice and lack of candor with the tribunal. *Id.* at 825. The court found that this second attempt at admission was glaring evidence of the judge’s inability to admit her shortcomings and to conform to judicial standards of conduct. See also *Judge Lewie Hilton*, Judgment (Special Court of Review Appointed by Texas Supreme Court 1991) (removal for, among other misconduct, altering and fabricating criminal docket sheets, official receipts for fines, and monthly reports of collection and furnishing those false documents to the Commission).



Not simply false testimony but evasive testimony or an uncooperative or contemptuous attitude

toward commission proceedings has been cited as in decisions to remove.

For example, also in *Ferrara*, the Michigan Supreme Court adopted the commission’s findings that “‘respondent’s conduct throughout the formal hearing was inappropriate, unprofessional, and demonstrated a lack of respect’ for the judicial discipline proceedings.” Stating the incidents were too numerous to recount, the court noted the judge failed to observe appropriate courtroom decorum by interrupting opposing counsel and the master on several occasions and by making snide side comments. 582 N.W.2d. at 826. The court also emphasized that the judge’s “evidence and testimony were replete with half-truths and misleading statements” and on other occasions “were so unnecessarily vague as to hinder the proceedings and significantly interfere with the administration of justice.” *Id.*

Similarly, in *In the Matter of Davis*, 946 P.2d 1033 (Nevada 1997), the Nevada Supreme Court held that the Commission on Judicial Discipline rightfully considered the judge’s demeanor at the hearing, including his wrongful assertion of a Fifth Amendment privilege. The court concluded the “totality of the sustained charges, appellant’s wrongful assertion of privilege and his contumacious demeanor at the hearing demonstrated that the totality of the offenses, sustained by clear and convincing evidence, justified appellant’s removal from office.” 946 P.2d at 1047.

At the formal hearing, the special prosecutor had called the judge as a witness. After initially refusing to take the oath, the judge was sworn and then asserted a blanket Fifth Amendment privilege, and even after his attorney and the Commission directed him to answer the non-incriminating questions, the judge continued to refuse to answer most of the questions posed to him, including non-incriminating questions such as, “When were you first elected?” The Commission did not discipline the judge for pleading the Fifth Amendment but did take into consideration the manner in which he behaved in determining the appropriate discipline. The court held:

In this case, the Commission could have reasonably concluded that appellant’s sophomoric and arrogant behavior was calculated to “poison the well” so that the fairness and validity of the Commission proceedings would be obscured on

review. His contention on appeal that he is entitled to relief because he was required to “humble himself” is a clear sign that he had, to a degree, lost touch with a proper sense of his public trust and decorum. Certainly, he would never have tolerated such behavior in any proceeding over which he was charged with presiding. His approach to the hearing, whether or not a predetermined strategy, cannot be condoned. While we believe that his general behavior and the specific manner in which he invoked his Fifth Amendment privilege should have been disregarded in terms of whether imposition of discipline was justified on any specified charge, appellant’s behavior was relevant, to a limited degree, to the deliberations over the nature of discipline imposed.

Id. at 1042. *See also Commission on Judicial Performance v. Chinn*, 611 So. 2d 849, 857 (Mississippi 1992) (noting in removal case that judge “was evasive and non-cooperative in answering the questions at the inquiry”); *In the Matter of Roberts*, Determination (New York State Commission on Judicial Conduct May 29, 1997), *accepted*, *In the Matter of Roberts*, 689 N.E.2d 911 (New York 1997) (noting in removal case that judge’s lack of candor at hearing exacerbated his wrongdoing).

Such conduct, however, is not always sanctioned by a reviewing court. *See In re Jones*, 581 N.W.2d 876 (Nebraska 1998) (judge was removed from office for pattern of misconduct, but court held, although the judge did give a false statement to the Commission’s investigator and suggested to other court employees that if he got into any trouble, he would retaliate against other judges, there was no clear and convincing evidence that the conduct interfered with the investigation); *In the Matter of Skinner*, 690 N.E.2d 484 (New York 1997) (judge was censured, not removed as recommended by the commission, in part because court found discrepancies in judge’s testimony before the Commission did not necessarily reflect dishonesty or evasiveness); *Inquiry Concerning Gallagher*, 951 P.2d 705 (Oregon 1998) (court need not consider whether tactics designed to obstruct and delay could be an aggravated factor; although the judge’s “defense was vigorous, it was not improper”).



Several commissions have rules requiring cooperation and proscribing misrepresentations and concealment in commission proceedings. For example Rule 5 of the Colorado Rules of Judicial Discipline provides:

Failure or refusal of a judge to cooperate or the intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute willful misconduct in office.

See also Rule 2(d)(2)(ii), Rules of the Minnesota Board on Judicial Standards. Rule 104(a) of the Rules of the California Commission on Judicial Conduct provides:

A respondent judge shall cooperate with the commission in all proceedings The judge’s cooperation or lack of cooperation may be considered by the commission in determining the appropriate disciplinary sanction or disposition as well as further proceedings to be taken by the commission but may not be considered in making evidentiary determinations.

Similarly, Rule VIII(K)(2) of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys states:

The failure of the judicial officer to answer or to appear at the hearing, standing alone, shall not be taken as evidence of the facts alleged or constitute grounds for discipline, retirement, or removal, however the failure to cooperate in the prompt resolution of a complaint by the refusal to respond to Commission requests or by the use of dilatory practices, frivolous or unfounded arguments, or other obdurate behavior may be considered as aggravating factors affecting sanctions or may be the basis for the filing of separate counts of judicial misconduct.

Rule 605 of the Kansas Commission on Judicial Qualifications provides:

A judge shall cooperate with the commission or a hearing panel. A judge shall, within such reasonable time as the commission or hearing panel may require, respond to any inquiry concerning the conduct of a judge. The failure or refusal of the judge to respond may be considered a failure to cooperate.

The failure or refusal of a judge to cooperate in an investigation, or the use of dilatory practices, frivolous or unfounded responses or argument, or other uncooperative behavior may be considered a violation of Canon 1 of the Code of Judicial Conduct.

Rule VIID of the Rules of the Judiciary Commission of the State of Louisiana states:

The failure or refusal of a judge to cooperate in an investigation, or the use of dilatory practices, frivolous or unfounded responses or arguments, or other uncooperative behavior may be considered by the Commission in determining whether or not to recommend a sanction to the Louisiana Supreme Court and may bear on the severity of the sanction actually recommended.

In Nebraska, Rule 5(a), of the Rules for the Commission on Judicial Qualifications provides:

[The answer] shall contain a full and fair disclosure of all facts and circumstances pertaining to his or her alleged misconduct or physical or mental disability. Any willful concealment, misrepresentation, or failure to file such an answer and disclosure, shall be additional grounds for disciplinary action under the complaint.

Finally, Rule 4(d) of the Procedural Rules and Regulations of the New Mexico Judicial Standards Commission states:

The failure of any judge under investigation to comply with the reasonable requests or directives of the [Judicial Standards] Commission may be considered willful misconduct in office by the Commission. The intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute willful misconduct in office.

STANDARDS FOR DETERMINING THE APPROPRIATE SANCTION

RELEVANT FACTORS

In *In re Deming*, 736 P.2d 639 (Washington 1987), the Washington Supreme Court stated that, to determine the appropriate sanction, it would consider the following non-exclusive factors:

- (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct;
- (b) the nature, extent and frequency of occurrence of the acts of misconduct
- (c) whether the misconduct occurred in or out of the courtroom;
- (d) whether the misconduct occurred in the judge's official capacity or in his private life;
- (e) whether the judge has acknowledged or recognized that the acts occurred;
- (f) whether the judge has evidenced an effort to change or modify his conduct;
- (g) the length of service on the bench;
- (h) whether there have been prior complaints about this judge;
- (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and
- (j) the extent to which the judge exploited his position to satisfy his personal desires.

736 P. 2d at 659. In each subsequent judicial discipline case, the Washington State Commission on Judicial Conduct and the court have deliberately and expressly used the *Deming* factors as a checklist when deciding what sanction to impose. In fact, the Commission has adopted the factors as part of its rules; one factor was amended to consider "whether there has been prior public disciplinary action concerning the judge" rather than prior complaints. The Commission also added as an additional factor "whether the judge cooperated with the commission investigation and proceeding." Rule 6, Washington State Commission on Judicial Conduct Rules of Procedure. Other courts or commissions have also adopted the *Deming* factors. See *In re Spurlock*, No. 98-CC, Order (Illinois Courts Commission December 3, 2001); *In re Chaisson*, 549 So. 2d 259, 266

(Louisiana 1989); "Guidelines for Sanctions," Appendix C, *Utah Judicial Conduct Commission Annual Report Fiscal Year 2000* (adopted February 7, 1996).

The Arizona Commission on Judicial Conduct has adopted many of the *Deming* factors but added a few additional ones. Rule 19 of the Commission's rules of procedure provides that the following non-exclusive factors may be considered in determining appropriate disciplinary action:

- (a) the nature, extent, and frequency of the misconduct;
- (b) the judge's experience and length of service on the bench;
- (c) whether the conduct occurred in the judge's official capacity or in his or her private life;
- (d) the nature and extent to which the acts of misconduct injured other persons or respect for the judiciary;
- (e) whether and to what extent the judge exploited his or her position for improper purposes;
- (f) whether the judge has recognized and acknowledged the wrongful nature of the conduct and manifested an effort to change or reform the conduct;
- (g) whether there has been prior disciplinary action concerning the judge, and if so, its remoteness and relevance to the present proceeding;
- (h) whether the judge complied with prior discipline or requested and complied with a formal ethics advisory opinion;
- (i) whether the judge cooperated fully and honestly with the commission in the proceeding; and
- (j) whether the judge was suffering from personal or emotional problems or from physical or mental disability or impairment at the time of the misconduct.

In *In re Brown*, 626 N.W.2d 403 (Michigan 2001), the Michigan Supreme Court "articulated several factors that were among the criteria to be used in evaluating judicial discipline cases:"

- (1) misconduct that is part of a pattern or prac-

tice is more serious than an isolated instance of misconduct;

(2) misconduct on the bench is usually more serious than the same misconduct off the bench;

(3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety;

(4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does;

(5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated;

(6) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery;

(7) misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.

Additional factors

The following additional factors were identified in other cases as relevant to a decision regarding the appropriate sanction in a judicial discipline case.

- Whether the judge requested an advisory opinion before engaging in the conduct (*In the Matter of Fleischman*, 933 P.2d 563 (Arizona 1997)).

- Whether the judge made an effort to keep the prohibited activity secret (*id.*).

- Whether the judge's conduct was contrary to an important public policy (*In the Matter of Seaman*, 627 A.2d 106 (New Jersey 1993)).

- Whether the misconduct evidenced lack of independence or impartiality (*id.*).

- Whether the misconduct resulted in economic detriment to the public (*Inquiry Concerning Gallagher*, 951 P.2d 705, 716 (Oregon 1998)).

- Whether the judge was experienced and should have been familiar with the high standards of behavior demanded of judges (*id.*).

- Whether the conduct occurred in the judge's administrative or adjudicative role (*In the Matter of Crawford*, 629 N.W.2d 1, 11 (Wisconsin 2001)).

- Whether the ethics law in the area was uncertain at the time of the judge's action (*In re Marullo*, 692 So. 2d 1019, 1023 (Louisiana 1997)).

- Positive contributions made by the judge to the court and the community (*Commission on Judicial Performance v. Dodds*, 680 So. 2d 180, 200 (Mississippi 1996)).

- The lack of prior judicial precedent indicating the conduct was unethical (*id.*).

- The judge's commitment to fairness and innovative procedural reform (*id.*).

- The number of persons affected (*id.*).

- Whether moral turpitude was involved (*id.*).

- Whether the judge ignored efforts to persuade the judge to change (*In the Matter of King*, 568 N.E.2d 588, 599 (Massachusetts 1991)).

- Whether the judge's problems were due to stress brought on by heavy caseload and inadequate facilities (*id.*).

- Whether the judge has suffered other repercussions from the misconduct (*In the Matter of Williams*, 777 A.2d 323, 332 (New Jersey 2001)).

- Whether the misconduct took place over a significant period of time (*In re Jones*, 581 N.W.2d 876, 891 (Nebraska 1998)).

The Alaska approach

In *In re Inquiry Concerning a Judge*, 788 P.2d 716 (Alaska 1990), the Alaska Supreme Court stated it would use the *American Bar Association's Standards for Imposing Lawyer Sanctions* by analogy insofar as possible when sanctioning judges. The court noted the "ABA Standards are limited in analogical scope because judges are held to a higher level of scrutiny than are ordinary lawyers. This is not to say, however, that they are valueless." 788 P.2d at 723 n.11 (citation omitted)

The *ABA Standards* establish a four-pronged test for determining the level of sanction. The first prong asks what ethical duty the lawyer violated – to a client, to the public, to the legal system, or to the profession. The second prong examines whether the lawyer acted intentionally, knowingly, or negligently. "Intentionally" is defined as "with the conscious objective or purpose to accomplish a particular result." "Knowingly" is "with conscious awareness of the nature or attendant circumstances of his or her conduct but without the conscious objective or purpose to accomplish a particular result." "Negligently" is defined as "when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in that situation."

The fourth prong of the approach defined in the *ABA Standards* determines whether there are any aggravating or mitigating circumstances. The mitigating factors are: absence of a prior disciplinary record, absence of a dishonest or selfish motive; personal or emotional problems; timely good faith effort to make restitution or to rectify consequences of misconduct; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; inexperience in the practice of law; character or reputation; physical or mental disability or impairment; delay in disciplinary proceedings; interim rehabilitation; imposition of other penalties or sanctions; remorse; and remoteness of prior offenses.

Aggravating factors are: prior disciplinary offenses; dishonest or selfish motive; a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; submission of false evidence, false state-

ments, or other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of conduct; vulnerability of victim; substantial experience in the practice of law; and indifference to making restitution.

For each category of misconduct, the *ABA Standards* recommend a level of sanction to be imposed, absent aggravating or mitigating circumstances. For example, when a lawyer knowingly converts a client's property and causes injury or potential injury to the client, disbarment is recommended, but suspension is considered appropriate when the lawyer only knew or should have known that he or she was dealing improperly with client property and causes injury or potential injury. When a lawyer is negligent in dealing with client property and causes injury or potential injury, a reprimand is recommended; when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client, admonition is generally appropriate.

In *In re Inquiry Concerning a Judge*, 788 P.2d 716 (Alaska 1990), the Alaska Supreme Court had found that the judge created an appearance of impropriety by validating blank airline ticket stock and taking a reduced-fare flight pursuant to terminated agreements. The court found that the judge's "error lies in his negligent failure to appreciate a substantial risk that his self-issuance of reduced fare tickets might appear improper under the circumstances" and that "the degree of actual or potential injury caused was nearly negligible." 788 P.2d at 724-25. The court noted that the *ABA Standards* do not directly address the problem of creating an appearance of impropriety as that is a standard not generally imposed on lawyers. However, the court also noted that, under the *ABA Standards*, where the violation, whatever its nature, involves only negligent conduct that occasions little injury, the recommended sanction is admonition, or private reprimand, regardless of the nature of the offense. Therefore, the court stated that a private reprimand was the baseline sanction in judicial discipline case for an appearance of impropriety involving negligence and little injury such as that involved in the case before it. *Id.* at 725. Noting there were six mitigating factors present and no aggravating factors, the court privately reprimanded the judge. The court did state that there is "no 'magic formula' to determine which or how many mitigat-

ing circumstances justify the reduction of an otherwise appropriate sanction,” or a “formula dictating how many aggravating factors justify increasing a sanction, or how aggravating and mitigating factors are to be balanced.” *Id.* at 725-26.

Willful misconduct and prejudicial conduct

In some states, an important step in determining the appropriate sanction is classifying the judge’s misconduct as either “willful misconduct in office” or “conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” (“Willful misconduct” and “conduct prejudicial to the administration of justice” are two of the grounds for sanction contained in many of the state constitutional provisions that establish the commissions and authorize the reviewing courts to sanction a judge.) “Willful misconduct in office” is the more serious category and includes only misconduct committed while acting in a judicial capacity. The second element of willful misconduct is malice or bad faith: “the judge must have (1) committed acts he or she knew or should have known to be beyond his or her power, (2) for a purpose other than faithful discharge of judicial duties.” *Adams v. Commission on Judicial Performance*, 897 P.2d 544, 547 (California 1995).

In contrast, prejudicial conduct covers both conduct while acting in a judicial capacity and conduct out of office. 897 P.2d at 610. For conduct while acting in a judicial capacity, prejudicial conduct is conduct that “a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office.” *Fletcher v. Commission on Judicial Performance*, 968 P.2d 958, 962 (California 1998). For conduct while not acting in a judicial capacity, prejudicial conduct is unjudicial conduct committed in bad faith. Violation of a canon of the code of judicial conduct “suggests performance below the minimum level necessary to maintain public confidence in the administration of justice.” *Adams v. Commission on Judicial Performance*, 897 P.2d at 547 (citations omitted). The subjective intent or motivation of the judge is not a significant factor in assessing whether prejudicial conduct has occurred. *Id.* Prejudicial conduct adversely affects the esteem in which the judiciary is held by members of the public who become aware of the circumstances of the conduct. Actual notoriety is not required, but only that the conduct, if known to an objective observer, would appear to be prejudicial to public esteem for the judicial office. *Id.*

Although willful misconduct is more serious, removal is not precluded for prejudicial conduct. “Although a judge may perform the necessary judicial functions diligently, competently, and impartially, his or her inability to discern (and thus to avoid) extrajudicial activities that reasonably would be perceived as damaging to the judiciary may place that judge’s fitness for judicial office in doubt.” 897 P.2d at 548. *See also In re Jett*, 882 P.2d 414, 417-19 (Arizona 1994). *But see Commission on Judicial Performance v. Dodds*, 680 So. 2d 180, 190-91 (Mississippi 1996) (“Willful misconduct in office of necessity is conduct prejudicial to the administration of justice that brings the judicial office into disrepute. However, a judge may also, through negligence or ignorance not amounting to bad faith behave in a manner prejudicial to the administration of justice so as to bring the judicial office into disrepute”).

The analysis of whether a judge’s violation of the code of judicial conduct constitutes willful misconduct or conduct prejudicial combines consideration of whether the misconduct occurred in the judge’s official capacity or in the judge’s private life and the examination of the judge’s intent or state of mind.

COMPREHENSIVE LIST

The list below consolidates into one list the factors identified in cases as relevant to the sanction decision, grouping together those related to the nature of the misconduct, the extent of the misconduct, the judge’s culpability, the judge’s response to the commission proceedings, and the judge’s record. Focusing carefully and thoroughly on the nature and extent of the misconduct before considering other factors helps clarify the decision-making process.

The nature of the misconduct

- Whether the misconduct occurred in the judge’s official capacity or in the judge’s private life
- Whether the misconduct occurred in the courtroom or in the judge’s administrative role
- Whether the judge exploited the judicial position to satisfy personal desires
- Whether the misconduct constituted a crime, particularly one of a type over which the judge’s court has jurisdiction
- Whether the misconduct involved dishonest acts or moral turpitude
- Whether the judge acted in bad faith, good faith, intentionally, knowingly, or negligently
- Whether the judge’s act was spontaneous, premeditated, or deliberate
- Whether the judge was motivated by compassion for others or for personal profit, vindictiveness, ill-will, or other dishonest or selfish motives
- Whether the conduct involved the appearance of impropriety or an actual impropriety
- Whether the misconduct affected or appeared to affect the administration of justice
- Whether the misconduct undermined the ability of the justice system to discover the truth or to reach the most just result or merely delayed the result
- Whether the judge’s conduct was contrary to a public policy to which the state has made a commitment
- Whether the misconduct involved the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion
- Whether the misconduct evidenced lack of independence or impartiality.

The extent of the misconduct

- Whether the misconduct was an isolated instance or part of a pattern or course of conduct
- Whether the misconduct took place over a significant period
- The actual or potential for harm to the court system, to litigants, and to the public's perception of the fairness of the judicial system
 - ♦ *The number of victims*
 - ♦ *The vulnerability of the victims*
 - ♦ *Whether there was indirect economic detriment to the public.*

The judge's culpability

- Whether the judge was suffering from personal or emotional problems
- Whether the judge was suffering from physical or mental disability
- Whether the judge was impaired by alcoholism or drug abuse
- Whether the judge's problems were due to stress
- Whether there was judicial precedent that the judge's conduct was unethical
- Whether other judges have been disciplined for similar misconduct
- Whether the judge asked for and complied with a judicial ethics advisory opinion
- Whether the judge ignored others' efforts to persuade the judge to change his or her behavior.

The judge's conduct in response to the commission's inquiry and disciplinary proceedings

- Whether the judge acknowledged the misconduct, took responsibility, or showed remorse
- Whether the judge made an effort to change his or her conduct
- Whether the judge attempted to blame his or her conduct on others
- Whether the judge failed to respond to commission inquiries
- Whether judge advanced an unlikely defense
- Whether the judge attempted to interfere with witnesses
- Whether the judge was candid or less than

forthcoming with the commission

- Whether the judge presented false evidence or gave false testimony in commission proceedings
- Whether the judge gave evasive testimony
- Whether the judge showed a contemptuous attitude toward commission proceedings.

The judge's record

- The length of time the judge has served
 - ♦ *Whether the judge was experienced and should have been familiar with the high standards established for judicial behavior*
- Inexperience in the practice of law
- Whether the judge had previously been sanctioned
 - ♦ *The remoteness of any previous sanctions*
 - ♦ *The similarity between the conduct in the previous proceedings and the current proceeding*
 - ♦ *Whether the judge complied with prior discipline.*
- The judge's reputation
 - ♦ *Positive contributions made by the judge to the court and the community*
 - ♦ *The judges' commitment to fairness and innovative procedural reform*
 - ♦ *The judge's ability to fairly, effectively, and efficiently run a court with a heavy caseload.*

CONCLUSION

It is possible to make a few generalizations about judicial discipline sanctions. For example, this study suggests that removal is generally appropriate for a pattern of intentional misconduct while carrying out judicial duties (absent substantial mitigating factors) and that removal is generally not appropriate for a single act of misconduct that does not involve a criminal or dishonest act (absent substantial aggravating factors). However, no court or commission has articulated, nor has this study discovered, any “magic formula” for balancing aggravating and mitigating factors that would reduce the sanction decision in all cases to a science, resulting in sanctions with which no reasonable person could disagree.

There are, however, some steps courts and commission could take to remove any suggestion that the sanction decision is just a matter of guesswork or that it depends too much on favoritism or bias. Most importantly, when recommending or imposing a sanction, a conduct commission should give a detailed explanation of the factors that formed the basis for its decision and include comparisons with analogous cases where possible. Similarly, the supreme court in imposing a sanction should expressly articulate the factors leading to its decision, particularly if the court disagrees with the sanction recommended by the commission. A clear explanation for a decision bolsters confidence that the process by which it was reached was rationale and unbiased even if the conclusion is debatable.

To aid this process, those courts and commissions that have not already done so should articulate applicable standards for determining the appropriate sanction. The court could take the lead in this process or the commission could take the initiative or, perhaps ideally, they could work cooperatively outside the context of a specific case to develop a list of factors and an approach to the issue, using the comprehensive list developed in this study as a starting point. Any list of factors should be publicly disseminated, for example, as part of the commission’s rules. During this discussion, they could also consider issues such as what is meant by a “pattern” of misconduct, whether prior informal or private resolutions of complaints may be considered in subsequent proceedings, what weight should be accorded the judge’s record, whether lengthy suspensions are a dis-

service to the judge and the public, and whether to reflect a judge’s personal problems such as alcoholism, addiction, and stress in a sanction decision.

The commission and the court could also try to develop “baseline” sanctions for common, recurring problems such as driving while intoxicated and delay in issuing decisions. They could analyze all the past judicial discipline cases from their jurisdiction, including private or informal sanctions (redacted to keep the judge’s name confidential), and determine if it is possible to make generalizations about the appropriate sanction, for example, that an informal resolution is appropriate for a first-time finding of substantial delay in a single case (absent significant aggravating factors) but that a public reprimand is appropriate for a “second offense” or substantial delay in several cases (absent significant mitigating factors). Moreover, given the number of cases in which failure to cooperate with a conduct commission was a contributing factor to a judge’s removal, the court or the commission should adopt a rule that requires cooperation and candor to emphasize that judges should recognize the authority of the commission and the role an effective judicial discipline process plays in protecting the independence of the judiciary and public confidence in judges.

Finally, because part of the purpose of judicial discipline is to deter other judges and to reassure the public that the judiciary does not tolerate judicial misconduct, court decisions imposing public sanctions should clearly explain the misconduct that gave rise to the sanction (not simply refer to the commission recommendation and findings) and should be treated as other important decisions by the court and be available on a web-site, in the court’s official reporter, and in the regional reporter. Commission decisions should also be available online. Many commissions have already begun to make their decisions available on web-sites. See www.ajs.org/ethics/eth_conduct-orgs.asp.

While it is impossible and would probably be unwise to develop a methodology that would make the sanctions decision a rote exercise, courts and commissions should continue to strive to make their sanctions decisions as transparent and even-handed as possible to preserve the public’s confidence in the effectiveness of the system and to preserve the judiciary’s confidence in its fairness.

APPENDIX I

AVAILABLE SANCTIONS IN JUDICIAL DISCIPLINE PROCEEDINGS

TABLE I
INFORMAL DISPOSITIONS OR PRIVATE SANCTIONS –
BEFORE FILING OF FORMAL CHARGES¹

Alabama	Advice; further counseling or other assistance; no private sanction
Alaska	Informal private admonishment; letter of caution; memorandum of understanding; recommendation for counseling
Arizona	Preliminary measures: advisory letter, diversion program (for example, counseling or treatment, education, mentoring), and consultation. Informal sanctions: private admonition, private reprimand, and other measures
Arkansas	Informal adjustment (direct professional treatment or conditions to be followed); public admonishment
California	Private admonishment; advisory letter
Colorado	Professional counseling; private admonishment, reprimand, or censure; “take or direct other action”
Connecticut	Request appropriate treatment
Delaware	Discipline by consent; stipulated disposition of proceedings involving alleged disability
District of Columbia	Private reprimand; professional counseling/treatment and monitoring
Florida	Advice; counseling or other assistance; appearance or response
Georgia	Private admonition or reprimand
Hawaii	Private reprimand; inform or admonish judge that conduct is or may be cause for discipline; direct professional counseling or assistance; impose conditions on conduct; cautionary letter; informal meeting with commission to discuss problems or issues
Idaho	Private reprimand; remedial action to resolve issue; informal admonition
Illinois	Require appearance; private letter of admonishment or caution
Indiana	Advisory or cautionary letter; confidential admonition, caution, or agreement; commission admonition in lieu of charges pursuant to agreement with public statement or findings
Iowa	NA

1. “NA” means no informal disposition or private sanction is available.

Kansas	Dismissal with caution; letter of informal advice; private or public cease and desist order; refer to impaired judges assistance committee
Kentucky	Private reprimand or admonition
Louisiana	NA
Maine	Letter of warning; recommendation of informal correction to chief justice or other appropriate judicial department official
Maryland	Dismissal with warning; private reprimand; deferred discipline agreement
Massachusetts	Private admonishment; counseling; conditions; private reprimand with consent; by agreement with judge before or after filing of formal charges, commission may inform or admonish judge that his conduct may be or is cause for discipline
Michigan	By commission: explanatory letter; cautionary letter; private admonishment; requirement that judge, for example, take sensitivity training, return attorney's fee, disqualify in cases involving certain lawyers. By supreme court: private censure
Minnesota	Warning; personal appearance; visit by delegation; conditions; counseling, treatment, or other assistance
Mississippi	Letter of agreement or memorandum; meeting; private admonishment
Missouri	Informal recommendations made in conference with commission members (if judge agrees, matter disposed of on basis of agreement); appearance before commission; cease and desist order (if judge agrees, matter disposed of on basis of agreement)
Montana	Private admonition or reprimand
Nebraska	NA
Nevada	Deferred discipline agreement to require rehabilitation, treatment, education, or minor corrective action
New Hampshire	Informal resolution
New Jersey	Caution, admonition, private reprimand
New Mexico	Letter of caution; mentorship; counseling
New York	Pre-charge letter of dismissal and caution; post-charge letter of caution
North Carolina	Private admonition
North Dakota	Admonition with consent; deferred discipline agreement

Ohio	NA
Oklahoma	NA
Oregon	NA
Pennsylvania	Letter of counsel (may include conditions)
Rhode Island	Private reprimand
South Carolina	Confidential admonition with consent; deferred discipline agreement; letter of caution (with or without a finding of misconduct)
South Dakota	Private reprimand
Tennessee	Private admonition with consent; deferred discipline
Texas	Referral to amicus curiae program for assistance with impairment; private or public admonition; private or public warning; private or public reprimand; order of education (may be issued with other sanctions)
Utah	NA
Vermont	Deferred discipline agreement (may include conditions, education, counseling, substance abuse programs, monitoring)
Virginia	Counseling; informal conference with all or part of commission
Washington	NA
West Virginia	Public admonishment
Wisconsin	Dismissal with expression of concern or warning
Wyoming	Settlement; corrective notice

TABLE II
FORMAL SANCTIONS – AFTER FILING OF FORMAL CHARGES

	By commission subject to supreme court review	By supreme court after commission recommendation
Alabama ¹	Public censure Suspension Removal Retirement or suspension for disability	
Alaska		Public censure Suspension Removal Retirement
Arizona	Public censure ² Suspension without pay ² Removal ² Retirement for disability ²	Public censure Suspension without pay Removal Retirement for disability
Arkansas	Public reprimand Public censure	Suspension Removal Leave or retirement for disability Lawyer discipline
California	Advisory letter Private admonishment Public admonishment Public censure Removal Retirement for disability Bar former judge from service with censure	

1. **Alabama.** Complaint is filed by Judicial Inquiry Commission; sanction decision is made by Court of the Judiciary; judge may appeal to supreme court.

2. **Arizona.** Pursuant to stipulation.

	By commission subject to supreme court review	By supreme court after commission recommendation
Colorado		Discipline Public reprimand Public censure Suspension Removal Retirement for disability “Any other sanction or combination of sanctions that the commission or Supreme Court believes will curtail or eliminate the judge’s misconduct”
Connecticut	Public censure Suspension for less than a year Retirement for disability	Suspension for longer than a year Removal
Delaware³	Discipline by consent Stipulated disposition of proceedings involving alleged disability	Public censure Removal Retirement
District of Columbia	Removal Involuntary retirement	
Florida		Public reprimand Fine Suspension with or without pay Removal Retirement for disability Lawyer discipline
Georgia		Public reprimand Public censure Suspension with or without pay Removal Retirement for disability
Hawaii		Public reprimand Public censure Suspension Limitations or conditions Removal Retirement

3. **Delaware.** Sanctions are reviewed or imposed by the Court on the Judiciary, which is comprised of the justices of the Supreme Court, the chancellor of the Court of Chancery, and the president judge of the superior court.

	By commission subject to supreme court review	By supreme court after commission recommendation
Idaho		Discipline Removal Retirement
Illinois⁴	Public reprimand Public censure Suspension without pay Removal Suspension with or without pay or retirement for disability	
Indiana		Public reprimand Public censure Fine Suspension Limitations or conditions Removal Retirement Discipline as attorney
Iowa		Discipline Removal Retirement
Kansas		Public censure Suspension Removal Retirement
Kentucky	Private admonition Private reprimand Public reprimand Public censure Suspension Removal Retirement	
Louisiana		Public censure Suspension with or without pay Removal Involuntary retirement for misconduct Involuntary retirement for disability

4. **Illinois.** Sanction decision is made by the Courts Commission, based on a complaint brought by the Judicial Inquiry Board; there is no review by the Illinois Supreme Court.

	By commission subject to supreme court review	By supreme court after commission recommendation
Maine		Public reprimand Civil penalty Suspension
Maryland	Public reprimand	Public censure Other appropriate discipline Removal Retirement
Massachusetts		Private reprimand Private censure Public reprimand Private censure Fine Suspension Retirement Lawyer discipline Limitations or conditions “Any other sanction which is reasonable and lawful” ⁵
Michigan		Public censure Suspension Retirement Removal Other disciplinary action (conditional suspension, supervision, monitoring, imposition of costs, restitution)
Minnesota ⁶		Public reprimand Public censure Civil penalty Suspension with or without pay Limitations or conditions Removal Retirement Lawyer discipline

5. **Massachusetts.** Although statute provides that the supreme judicial court may remove a judge following a hearing before the Commission on Judicial Conduct, the state constitution provides that only the legislature has the power to remove a judge.

6. **Minnesota.** These sanctions are also available before the filing of public charges if the judge does not dispute the proposed resolution by requesting a public hearing.

	By commission subject to supreme court review	By supreme court after commission recommendation
Mississippi		Private reprimand Public reprimand Public censure Fine Suspension Removal Retirement for disability
Missouri		Public reprimand Discipline Suspension Removal Retirement for disability
Montana		Public reprimand Censure Suspension Removal Retirement for disability
Nebraska	Public reprimand ⁷	Public reprimand Discipline Public censure Suspension without pay for less than 6 months Removal Retirement for disability
Nevada	Public censure Fine Suspension Removal Probation pursuant to conditions Attend training or education Follow remedial course of action Issue public apology Conditions or limitations Seek medical, psychiatric, or psychological care Agree not to seek office in the future	

7. **Nebraska.** Not subject to supreme court review.

	By commission subject to supreme court review	By supreme court after commission recommendation
New Hampshire	Public reprimand	Public censure Suspension without pay Removal
New Jersey		Public reprimand Public censure Suspension Removal
New Mexico		Public reprimand Public censure Fine Suspension Removal Retirement Limitations or conditions on judicial duties
New York	Public admonishment Public censure Removal	
North Carolina		Public censure Removal Removal for mental or physical incapacity
North Dakota		Public censure Suspension Removal Retirement Other disciplinary action
Ohio		Public reprimand Stayed suspension with or without supervised probation Suspension without pay Removal Retirement Suspension of law license Permanent disbarment
Oklahoma ⁸	Suspension Removal	

8. **Oklahoma.** Sanction decision is made by the Trial Division of the Court of the Judiciary; the decision may be appealed to the Appellate Division of the Court of the Judiciary; there is no appeal to the Oklahoma Supreme Court.

	By commission subject to supreme court review	By supreme court after commission recommendation
Oregon		Public censure Suspension Removal
Pennsylvania⁹		Public censure Suspension Removal Other discipline authorized
Rhode Island		Public censure Public reprimand Suspension Removal Retirement
South Carolina		Public reprimand Public, unpublished admonition Suspension Limitations Removal Recommendation of removal to appropriate authority Any other sanction determined appropriate
South Dakota		Public censure Suspension Removal Retirement
Tennessee	Suspension with pay Limitations and conditions Cease and desist Deferred discipline Recommendation of removal to legislature	
Texas	Public warning Public reprimand Public admonition Public censure	Removal ¹⁰ Involuntary retirement

9. **Pennsylvania.** Sanction decision is made by Court of Judicial Discipline; judge or Judicial Conduct Board may appeal to Pennsylvania Supreme Court.

10. **Texas.** State Commission on Judicial Conduct removal recommendations are heard by a seven-member review tribunal appointed by the Texas Supreme Court.

	By commission subject to supreme court review	By supreme court after commission recommendation
Utah		Private reprimand Public reprimand Public censure Suspension Removal Involuntary retirement
Vermont		Public reprimand Suspension (temporary or until end of term) Retirement
Virginia	Private reprimand Supervision	Public censure Removal Retirement
Washington	Public admonishment Public reprimand Public censure	Suspension Removal
West Virginia		Public admonishment Public reprimand Public censure Fine up to \$5,000 Suspension without pay for up to 1 year Retirement for disability
Wisconsin		Public reprimand Public censure Suspension Removal for cause or disability
Wyoming		Public censure Retirement Removal

TABLE III
PRIVATE, INFORMAL, AND FORMAL DISPOSITIONS¹

	Private or informal disposition ²	Public sanction	Fine	Suspension	Removal	Other ³
Alabama	Yes	Censure	NA	Yes	Yes	Yes
Alaska	Yes	Censure	NA	Yes	Yes	Yes
Arizona	Yes	Censure	NA	Yes	Yes	Yes
Arkansas	Yes	Reprimand Censure	NA	Yes	Yes	Yes
California	Yes	Admonishment Censure	NA	NA	Yes	Yes
Colorado	Yes	Discipline Reprimand Censure	NA	Yes	Yes	Yes
Connecticut	Yes	Censure	NA	Yes	Yes	Yes
Delaware	Yes	Censure	NA	Yes	Yes	Yes
D.C.	Yes	NA	NA	NA	Yes	Yes
Florida	Yes	Reprimand	Yes	Yes	Yes	Yes
Georgia	Yes	Reprimand Censure	NA	Yes	Yes	Yes
Hawaii	Yes	Reprimand Censure	NA	Yes	Yes	Yes
Idaho	Yes	Discipline	NA	NA	Yes	Yes
Illinois	Yes	Reprimand Censure	NA	Yes	Yes	Yes
Indiana	Yes	Reprimand Censure	Yes	Yes	Yes	Yes
Iowa	NA	Discipline	NA	NA	Yes	Yes
Kansas	Yes	Censure	NA	Yes	Yes	Yes
Kentucky	Yes	Reprimand Censure	NA	Yes	Yes	Yes

1. "NA" means disposition is not available in the jurisdiction.

2. See Table I.

3. See Table II.

	Private or informal disposition	Public sanction	Fine	Suspension	Removal	Other
Louisiana	NA	Censure	NA	Yes	Yes	Yes
Maine	Yes	Reprimand	Yes	Yes	NA	NA
Maryland	Yes	Reprimand Censure	NA	NA	Yes	Yes
Massachusetts	Yes	Reprimand Censure	NA	NA	NA	Yes
Michigan	Yes	Censure	NA	Yes	Yes	Yes
Minnesota	Yes	Reprimand Censure	Yes	NA	Yes	Yes
Mississippi	Yes	Reprimand Censure	Yes	Yes	Yes	Yes
Missouri	Yes	Reprimand	NA	Yes	Yes	Yes
Montana	Yes	Reprimand Censure	NA	NA	Yes	Yes
Nebraska	NA	Reprimand Discipline Censure	NA	Yes	Yes	Yes
Nevada	Yes	Censure	Yes	Yes	Yes	NA
New Hampshire	Yes	Reprimand Censure	NA	Yes	Yes	NA
New Jersey	Yes	Reprimand Censure	NA	Yes	Yes	NA
New Mexico	Yes	Reprimand Censure	Yes	Yes	Yes	Yes
New York	Yes	Admonishment Censure	NA	NA	Yes	NA
North Carolina	Yes	Censure	NA	NA	Yes	Yes
North Dakota	Yes	Censure	NA	NA	Yes	Yes
Ohio	NA	Reprimand	NA	Yes	Yes	Yes
Oklahoma	NA	NA	NA	Yes	Yes	NA
Oregon	NA	Censure	NA	Yes	Yes	NA
Pennsylvania	Yes	Censure	NA	Yes	Yes	NA

	Private or informal disposition	Public sanction	Fine	Suspension	Removal	Other
Rhode Island	Yes	Reprimand Censure	NA	Yes	Yes	Yes
South Carolina	Yes	Reprimand	NA	Yes	Yes	Yes
South Dakota	Yes	Censure	NA	Yes	Yes	Yes
Tennessee	Yes	NA	NA	Yes	NA	Yes
Texas	Yes	Warning Reprimand Admonition Censure	NA	NA	Yes	Yes
Utah	NA	Reprimand Censure	NA	Yes	Yes	Yes
Vermont	Yes	Reprimand	NA	Yes	NA	Yes
Virginia	Yes	Censure	NA	NA	Yes	NA
Washington	NA	Admonishment Reprimand Censure	NA	Yes	Yes	NA
West Virginia	Yes	Admonishment Reprimand Censure	Yes	Yes	NA	Yes
Wisconsin	Yes	Reprimand Censure	NA	Yes	Yes	Yes
Wyoming	Yes	Censure	NA	NA	Yes	Yes

APPENDIX II

SUMMARIES OF JUDICIAL DISCIPLINE CASES RESULTING IN REMOVAL FROM OFFICE

Alabama

The Alabama Supreme Court affirmed the decision of the Court of the Judiciary to remove a judge who had (1) deposited a \$23,000 personal check in the probate court account following an audit but, during the same transaction, withdrew \$23,000 from the official account and deposited it back into his personal account; (2) showed the slip indicating the \$23,000 deposit to the state examiners; (3) negotiated and cashed eight personal checks from court funds that were returned by the judge's bank because he had insufficient funds and failed to pay them for more than three years; (4) filed his state ethics form for 1996 more than a year late; and (5) failed to properly administer his office. Two justices dissented. The court found that the deposit slip was false, worthless, and misleading, which the judge knew and later admitted. The court stated it was not necessary to determine that the judge misappropriated or stole any of the \$23,000, noting there was no evidence that he took any of that money. The court found that the judge failed to properly administer his office even after the examiners of public accounts pointed out exceptions and shortcomings in 1992 and in 1995, and made no substantial effort to correct these serious deficiencies until 1998. The problems included deposits that were not made or were short, records that were not being kept, deposits that were missing, office employees mixing their personal funds with court account funds, service charges that were not collected or documented, sales of licenses that were not reported, records of fiduciary funds that were not kept, fiduciary funds that were commingled in the probate court funds, taxes that were not remitted timely, receipts that were not reported on vehicle licenses, license decals that were unaccounted for, bank accounts that were not reconciled during the entire period, fiduciary funds that were not in interest bearing accounts, and incorporations filed in the county that are not on record with the secretary of state. *Boggan v. Judicial Inquiry Commission*, 759 So. 2d 550 (Alabama 1999).

Arizona

Accepting the findings of fact and legal conclusions of the Judicial Conduct Commission but rejecting its recommendation for a 30-day suspension, the Arizona Supreme Court removed a judge from office. (1) The judge had reinstated charges brought by two of his friends against his election opponent, issuing a summons requiring the opponent to appear in his court. (2) After a private meeting with a defendant's family and employer, the judge had told the investigating police officer that he had strong reason to believe this was a case of mistaken identity. (3) At a time when the judge claimed a married couple owed him about \$300 in unpaid rent, plus damages for breaching a lease for office space in a building owned by the judge, the judge issued a summons on an unrelated criminal complaint against the wife. (4) The judge presided over a landlord-tenant dispute in which the defendant was an individual who had previously filed a criminal complaint against the judge, accusing him of fraudulently registering to vote in violation of state law; the judge never disqualified himself from hearing the case and eventually entered judgment against the defendant. *In re Peck*, 867 P.2d 853 (Arizona 1994).

Agreeing with the Commission on Judicial Conduct, the Arizona Supreme Court removed from office a judge who had (1) been convicted of soliciting prostitution; (2) thrown a woman with whom he was living against a wall; (3) after he was no longer living with the woman, verbally abused a friend of hers, pushed him, and threatened his life, and pushed his ex-girlfriend with enough force to injure her; and (4) on a subsequent occasion, yelled obscenities at another friend of his ex-girlfriend's, pushed him backward, and threatened his life. *In re Koch*, 890 P.2d 1137 (Arizona 1995).

Rejecting the recommendation of the Commission on Judicial Conduct that, pursuant to a stipulation, a justice of the peace be retired for disability, the Arizona Supreme Court removed the judge from office for (1) falling asleep during court proceedings; (2) making inappropriate comments and circulating inappropriate materials, some of which were racist, sexist, or obscene; (3) ex parte communications; failure to recuse and otherwise creating an appearance of bias; (4) inappropriate uses of his judicial position; (5) failure to respect the rights of par-

ties appearing before him; (6) failure to adequately perform his judicial responsibilities; and (7) misrepresenting facts to the Commission. *In the Matter of Carpenter*, 17 P.3d 91 (Arizona 2001).

Arkansas

Pursuant to the recommendation of the Judicial Discipline and Disability Commission, the Arkansas Supreme Court removed a judge from office for (1) continuing to represent two clients in litigation after becoming a judge; (2) willfully failing to honor a subrogation agreement with a union for medical expenses paid on a client's behalf; (3) failing to properly report income on required financial interest statement; (4) writing 59 insufficient funds checks between 1993 and 1997; (5) failing to pay federal income taxes in 1994; (6) placing the license tag for his 1981 Toyota on his Ford pickup truck; and (7) depositing client funds in a personal account rather than a trust account. The court also forwarded a copy of the opinion to the Committee on Professional Conduct for a hearing on the issue of imposition of lawyer discipline. (1) When the judge was elected in November 1992, he was co-counsel representing Jacqueline Ford in a personal injury claim and Ada Gant in a wrongful-death suit in claims pending in Louisiana. In January 1993, the opposing counsel sent the judge a receipt and release for Ford and her husband to sign and for the judge to approve as their attorney, a motion and order of dismissal with prejudice that the judge was requested to approve as one of the Fords' attorneys, and a check for the settlement. The judge met with the Fords in his chambers where they discussed and signed the documents, and he accompanied the Fords when they negotiated the check. The judge faxed a letter to his Louisiana co-counsel, confirming their fee arrangement, and sent co-counsel a cashier's check with a letter, written on his judicial stationery, directing her to approve the order of dismissal and giving her directions on closing the case. (2) During his representation of Ford, the judge and Ford executed a subrogation agreement with a union whereby the union paid for the medical treatment or services Ford incurred and the judge and Ford agreed to reimburse the fund for any recovery. After the settlement, neither the judge nor Ford reimbursed the union. The union filed suit against the judge and Ford and obtained a judgment for \$29,971, with the court ruling that the judge had intentionally exercised control over funds inconsistent with the union's rights and that he converted the union's funds. (3) The judge did not list on his outside-income report the attorney's fees he received in 1993 from the Ford and Gant settlements, nor did he list attorney's fees or income he received in 1993 and 1994 from other attorneys or clients. The Commission also concluded that the judge failed to file any outside-income report with the supreme court clerk in 1996 or a statement of financial interest with the secretary of state in 1996 as required by statute. (4) 59 checks had been returned to the judge as insufficient between 1993 and 1997, compromising his ability to sit on cases involving "hot checks." (5) The judge was assessed \$86,936.91 as delinquent federal income tax for 1994, and the IRS filed a notice of tax lien on the judge and his wife. (6) The judge was given a citation by police for exhibiting a fictitious license plate tag in violation of a statute, a misdemeanor. (7) The judge did not dispute that, sometime after January 1993, he allowed his attorney's trust account to elapse, maintaining a personal operating account, to "clean up" his debts. In handling the Ford and Gant settlements, the judge conceded that he deposited the settlement checks in his operating account and disbursed checks to his clients. *Judicial Discipline and Disability Commission v. Thompson*, 16 S.W.3d 212 (Arkansas 2000)

California

The California Supreme Court removed from office a retired judge who was absent from work for 96 1/2 days out of approximately four and one-half months. (The court censured the judge for other misconduct.) The court stated, even if a substantial portion of the absences in 1985 and 1986 were excusable by illness or as vacation, there appears no excuse for his failure to work from the beginning of 1987 to May 14, 1987, and he did not claim to have made even an attempt to return to his duties from that time until his retirement in July 1988. *Kennick v. Commission on Judicial Performance*, 787 P.2d 591 (California 1990).

Upholding the recommendation of the Commission on Judicial Performance, the California Supreme Court removed from office a judge who had (1) engaged in several business transactions with and accepted a gift from a litigant to whom he had awarded a substantial verdict, (2) advised members of a law firm on cases pending before other judges, (3) received gifts from attorneys whose interests had or were likely to come before him, (4) failed to disqualify himself or make full disclosure of his relationship with those attorneys or their firms when they appeared before him, and (5) made material misrepresentations and omissions to the Commission during its investigation. One justice dissented from the sanction, arguing that the judge should be censured. From August through October of 1985, the judge had presided over a trial in a complex civil case between a bank and an automobile dealer. The automobile dealer was represented in the litigation by Patrick Frega. In early 1986, the judge awarded the dealer approximately \$5 million, expressly reserving jurisdiction to determine attorney fees and costs on appeal. The bank appealed from the judgment, which was affirmed on August 31, 1989. The bank paid the judgement on January 29, 1990. (1) Over a period of time, including while the case was pending on appeal and shortly after satisfaction of the judgement, the judge bought a used Mercedes for his wife and a used Jeep for his daughter from the dealer, arranged for his daughter's Jeep to be repaired by the dealer and for her to have a loaner from the dealer while the Jeep was being repaired, and had his car buffed and polished at the dealer's. The judge relied on Frega in several of the transactions, and Frega, without the judge's knowledge, arranged for the judge to receive favorable terms. In addition, the judge accepted a sweater valued at \$150 from the dealer in December 1990, the same year as the judgement. (2) In four separate instances, the judge assisted or otherwise communicated with members of Frega's firm regarding pending cases. Motivated by his close friendship with an associate at Frega's firm, the judge had assisted the associate in the preparation of settlement conference briefs in two cases, in one case drafting an "issue analysis" that the associate incorporated almost verbatim into a brief. Further, the judge discussed a medical malpractice case with the associate suggesting the filing of a motion in limine, reviewed the written motion, and commented that it was "a good job." Finally, the judge communicated with Frega regarding a case that involved the same plaintiff and cross-defendant and similar issues as the case over which the judge had presided and asked Frega to send him a copy of the special verdict in that case, later volunteering to Frega his view that it appeared Frega had lost the case. (3) (a) Frega and his wife took the judge and his wife to dinner while the litigation was pending on appeal, the judge had reserved jurisdiction to determine attorney fees and costs on appeal, and the judge was acting as the settlement judge in a case involving the Frega firm and had been assigned to another case in which Frega's firm represented several of the plaintiffs. (b) The judge accepted the loan of Frega's laptop computer while Frega's law firm was handling cases pending before the judge. (c) The judge attended a dinner hosted by Frega in celebration of the satisfaction of the judgement in the litigation over which the judge had presided. (d) The judge accepted a write-off of \$800 from a law firm (Ault, Midlam, & Deuprey) that had represented him in legal proceedings and that regularly appeared before him. (e) The judge accepted the use for three nights of a resort condominium owned by a senior partner of the Duckor law firm, whose interest regularly came before the judge, and participated as a guest on two fishing trips co-sponsored by the law firm. The court found that the judge engaged in prejudicial or improper conduct in accepting gifts or financial benefits from attorneys or their law firms whose interests had come and were likely to come before him. (4) The court found that, in those cases involving the Frega, Ault, and Duckor law firms where the judge did more than preside over settlement-related matters, the judge improperly failed to disqualify himself, make adequate disclosure on the record of his relationship with the members of those firms, or obtain a written waiver of disqualification. (5) The court found that clear and convincing evidence supported the charges that the judge made four separate material misstatements or omissions to the Commission during its investigation, constituting wilful misconduct. (a) When asked by the Commission to comment and supply information "regarding any appearances before [the judge] by any of the donors [of gifts], or any attorney or entity associated with a donor, since January 1, 1985," the judge responded that the sweater from the dealer "was a Christmas gift from Williams who is a personal friend and has no business before me," failing to disclose that the dealer had been a litigant who had appeared before judge in 1985 and 1986, and in favor of whom judge had awarded a judgment of approximately \$5 million following a court trial. (b) When the Commission requested information about any appearance by the Ault law firm before the judge, the judge responded "Because of our friendship, Tom

Ault has never appeared in front of me,” failing to disclose that members of the law firm had appeared before judge on several occasions. (c) When the Commission requested information as to any appearances by Frega or members of Frega’s law firm before judge, the judge responded that “Mr. Frega last appeared before me in 1984,” failing to identify numerous cases involving Frega or his firm that had come before judge since 1984. (d) When the Commission inquired regarding the judge’s stay at Duckor’s condominium, the judge responded: “I recuse myself from all Duckor matters although the court uses him as a special master in cases involving construction defects,” failing to disclose that the Duckor firm had appeared before him in three cases. *Adams v. Commission on Judicial Performance*, 897 P.2d 544 (California 1995).

Following the recommendation of the Commission on Judicial Performance, the California Supreme Court removed a judge from office for conduct displaying moral turpitude, dishonesty, and corruption. (1) The judge presided over a felony action instituted against her former gardener, to whom she owed \$400, engaged in ex parte contacts with the gardener and his wife, and became personally involved in the case as an advocate for the gardener. (2) In 1992, the judge borrowed \$4,500 for a term of one year without interest from Darlene Jones. (a) After learning that the defendant in a misdemeanor action over which she was presiding was Jones’s nephew, she commented to Jones several times in the presence of the defendant that she would “take care of the matter”; at a pretrial conference, she did not disqualify herself or advise any party of her comment to Jones or her relationship with her as a friend and debtor; she rejected a proposal made by the prosecutor and defense counsel for a negotiated disposition because it was unfavorable to Jones’s nephew; and she exerted pressure on the prosecutor to reduce the charge of resisting arrest to further ingratiate herself with Jones. (b) After a second nephew of Jones and his companion were arrested, the judge assured Jones that she would “take care of the matter” and see to it that they would receive at most a sentence of community service; she subsequently dismissed the action against the companion and accepted a guilty plea from the nephew, admitting him to probation on condition that he complete an educational program; at no time did she advise the parties of her relationship with the defendant’s aunt or her discussion with Jones. (c) After learning that a misdemeanor action had been brought against Jones for obstructing an officer, the judge discussed the charge with Jones and advised her against retaining counsel because she had already spoken with the judge who was assigned to the proceedings, and that “the matter would be taken care of.” (3) The judge failed to report several loans in the statement of economic interests that she was required to file annually with the Fair Political Practices Commission pursuant to statute. (4) When the judge and her husband filed a voluntary petition of bankruptcy, they failed to list at least six creditors, and, in supporting declarations executed under penalty of perjury, stated in substance that they had listed all their creditors. (5) In 1992 and 1993, the judge was habitually tardy in commencing court sessions by an hour to an hour and a half, inconveniencing attorneys, parties, and witnesses, including law enforcement personnel who had been called away from their normal duties. (6) Some time after obtaining the \$4,500 loan from Jones in 1992, the judge informed Jones that she could not make repayment but would instead “work off” the debt by providing her with legal assistance, specifically, by helping to prepare a petition for writ of habeas corpus on behalf of Jones’ husband, who had been convicted of federal felony narcotics trafficking offenses and was incarcerated. (7) During the Commission’s preliminary investigation, the judge asked Jones and her husband, who were material witnesses, not to cooperate with the Commission’s agents, specifically, not to discuss the \$4,500 loan. *Doan v. Commission on Judicial Performance*, 902 P.2d 272 (California 1995).

Adopting the recommendation of the Commission on Judicial Performance, the California Supreme Court removed a judge from office for multiple findings of conduct prejudicial to the administration of justice and willful misconduct. (1) At the end of a settlement conference in a small claims case growing out of services performed by a contractor, the judge entered a judgement against the real estate salesman who had sold the property and who was present at the conference but who had not been named as a party. (2) When an attorney was not present when her case was called, the judge stated, “She shouldn’t be handling criminal cases. Here’s another example of a civil attorney who shouldn’t be handling criminal cases.” Later the judge stated, “she probably had something more important to do today, like go to a PTA meeting. She has a whole bunch of kids. She’s been having kids ever since I’ve known her.” (3) At the end of a court session, the judge had a group photograph taken of court staff and oth-

ers who appeared before him, and the judge's re-election campaign used the photograph in a political advertisement without the permission of those photographed. None of those photographed understood that the judge would use it in his re-election campaign. Not all the people in the photograph supported the judge for re-election, and at least one was embarrassed at being pictured as a supporter of the judge. (4) The judge was dissatisfied with a court employee's performance but rather than follow the usual process for termination, met with her to try to talk her into finding another job and avoid the termination process. When the employee stated she wanted to call her union representative, the judge told her that she could not do that and ordered her to sit down and talk to him. When she refused, he told her, "Vicky, you are in contempt." (5) In a case in which the defendant was charged with possession of cocaine, the judge engaged in ex parte communications with members of the defendant's family, failed to disqualify himself, improperly delegated the question of diversion to the prosecutor, directed alteration of a minute order to support his explanation after receiving the Commission's letter of inquiry, and submitted a copy of the minute order to the Commission without disclosing that it had been altered. (6) While several cases were pending before the judge arising out of family and child custody problems, the defendant attended the judge's Bible study class and, at the judge's suggestion, a men's fellowship hosted by the judge. The fellowship meetings included discussions of personal aspects of the defendant's family issues. (7) After several ex parte contacts, the judge gave an unusually lenient sentence to a defendant whom the judge knew personally, after he entered a plea of guilty to drunk driving, his second conviction. The judge suspended the 60-day sentence on the condition that the defendant complete community work service on the courthouse roof. After it became apparent that the courthouse expansion plan was not going to take place, the judge encountered the defendant at the courthouse and, without defense counsel or the district attorney present, modified the conditions of probation to provide for other community service. (8) After being approached at a restaurant by a friend who complained about a speeding violation, the judge explained he could do community service rather than pay a fine and gave him a couple months to complete the community service. A couple of months later, the judge granted him another chance to do the service and attend traffic school. (9) While serving a sentence of three years probation handed down by the judge, Pearson attended the judge's Bible study class, and the judge engaged Pearson in a "judge/probationer relationship" in which he counseled Pearson regarding the problems that led to his criminal violation. Pearson would come to the courthouse, and the judge would go out to see him; on one occasion, he invited Pearson and Pearson's wife into chambers to discuss personal matters. The judge did not disqualify himself from a subsequent zoning case involving Pearson and his wife, but granted continuances until the alleged violation was abated and the charge dismissed. (10) While on the bench during a case involving a misdemeanor charge of assault with a deadly weapon (a BB rifle), the judge telephoned both the victim and the park ranger who arrested the defendant and left messages for them. While court was still in session, the ranger returned the judge's call. The judge took the call at the bench, but did not put it on the speaker phone, so the defendant and counsel could hear only the judge's side of the conversation. The judge repeated in open court parts of the ranger's conversation. After the call, the judge again stated, "Just what I thought. This ranger has affirmed that he had a bad attitude. He's a punk kid." The judge also expressed the opinion that the defendant should be tried and that he would be convicted and stated that he would not accept the negotiated plea bargain. (11) The judge admitted that 25 to 30 times he had "telephoned defendants, including defendants [he] knew, for whom bench warrants had been issued to advise them to come to court." The judge explained that he informed these individuals the court was processing a warrant on them and that the warrant would not issue if they appeared in court. Before placing the calls, the judge did not inform the district attorney or determine whether the individuals had counsel nor did he ask whether they had counsel during the calls. In the judge's view, this practice saved time for the under-staffed clerk's office by eliminating the need to process warrants for those who responded to the judge's calls. The judge discontinued this practice when another judge informed him that it might violate the separation of powers doctrine and create conflicts. (12) The judge prejudged a potential witness's testimony, stating, "The court has dealt with Jon Fry many, many times and his credibility is not too high. And I hope you don't expect the Court to regard his testimony like any other citizen in the community." Referring to another potential witness, the judge stated, "I don't believe Laura Sear would have much more credibility in this Court than Jon Fry. They're both recovering alcoholics that are working hard to try to stay out of trouble." The statements were made in open court. (13) The judge refused to appoint Kim Fletch-

er, a public defender, to represent a defendant after she expressed a desire to disqualify the judge, but immediately appointed another public defender. In the same case, the judge called the investigating peace officer, to which conversation the attorneys were not fully privy. (13) When Tippets appeared before the judge on a charge of shoplifting four packages of developed film, the judge suggested “a one-year dispo and have her do some things,” and Tippets’ attorney Fletcher indicated that the proposal was “acceptable.” The district attorney then suggested payment of \$150 in court costs as well. When Tippets indicated she could not afford that amount, the judge responded, “Well, one minute you tell us you’re wealthy and can pay for [the stuff the store claimed was shoplifted], and the next minute, you say . . . you can’t pay a \$150.00 fine.” After Tippets explained that she had just moved, the judge abruptly declared, “All right. Let’s set it for trial, then.” Tippets and Fletcher then attempted to explain Tippets’s financial situation. The judge seemed to ignore these comments and asked twice: “When do you want to try it?” Fletcher stated, “I’m going to have to [disqualify] you, your Honor. I think there’s some animosity here.” The judge replied, “There’s no animosity. I’m trying to settle the case.” When Fletcher started to reply, the judge interjected, “[I]f you don’t want me to get involved in settling cases, then I won’t. But you get me involved. And then as soon as I get involved in it, then you say, ‘Oh, we’re going to have to [disqualify] you’ because I’m trying to encourage settlement.” The judge also stated that Tippets’ account at the hearing of what happened at the store was inconsistent with what she had told the security guard. According to the court reporter’s notation in the hearing transcript, the judge was yelling at this point. The judge also yelled at Fletcher “I’m getting sick and tired of you threatening me with disqualification. And I’m not going to have it anymore.” (14) After the judge denied a district attorney’s motion to dismiss a drunk driving case, the prosecutor asked whether the judge had “any knowledge of the facts in this case.” The judge replied that he did not, but that he knew from “the printout” that the defendant had two prior convictions. The judge then explained that, despite his lack of knowledge about the case, he was denying the dismissal motion because he thought “in the interest of justice, a man with a drunk driving and two priors should go to trial.” The district attorney responded that the judge could not know the defendant “was a drunk driver unless [the judge] ha[d] knowledge of the facts of the case,” and that the judge was not required to assume the truth of the complaint. The judge replied, “All right. Well, the Court does.” The district attorney asked the judge to disqualify himself on the grounds that he had apparent knowledge of the facts in the case. The judge denied the motion and set the case for trial. After the hearing, and without the request or knowledge of either party, the judge ordered the court clerk to review the police reports and issue subpoenas to all witnesses. According to the judge, he took this action because the district attorney had said he would not subpoena the witnesses. *Fletcher v. Commission on Judicial Performance*, 968 P.2d 958 (California 1998).

Adopting the findings of fact of a panel of three judges sitting as special masters, the California Commission on Judicial Performance removed a judge from office for (1) misrepresenting his educational background on his personal data questionnaires when he sought judicial appointment in 1993 and 1996; (2) falsely representing that he was a Vietnam veteran to judges who could help him gain his appointment in 1996; (3) misrepresenting his educational background, legal experience, and affiliations on his 1997 judicial data questionnaire; (4) falsely representing to the judge who was to introduce him at the public enrobing ceremony that he was a Vietnam veteran who had received a Purple Heart; (5) falsely representing to attorneys that he went to Vietnam, had a master’s degree in psychology, and had shrapnel in his groin received in military combat; (6) falsely telling a newspaper reporter that he was in Vietnam in 1968 and 1969; and (7) making false statements about his education and military experience in letters and testimony to the Commission. *Inquiry Concerning Couwenberg*, No. 158, Decision and Order Removing Judge Couwenberg from Office (California Commission on Judicial Performance August 15, 2001) (<http://cjp.ca.gov/pubdisc.htm>).

Delaware

The Delaware Court on the Judiciary censured and removed from office a judge who, without first resigning his judicial office, sought the endorsement of his party convention for the nomination for the office of the Governor of the State of Delaware. The judge had publicly announced in a press release that it was his “intent to

have my name placed before the Republican Convention to be the gubernatorial nominee for Governor of Delaware. The party deserves a choice. This is not partisan politics and, therefore, not in violation of any rules pertaining to the judiciary. When I am the nominee, I will resign my present position and ask the Governor to promptly name a successor acceptable to the Senate.” He also attended regional party caucuses and other meetings to gain support. *In the Matter of Buckson*, 610 A.2d 203 (Delaware Court on the Judiciary 1992).

Florida

Agreeing with the recommendation of the Judicial Qualifications Commission, the Florida Supreme Court removed from office a judge who had ordered her clerk to back-date the convictions in 47-52 DUI cases. When the defendant pled guilty, the judge would announce “Today’s date is” and give a date other than the actual date, and at the judge’s direction, the clerk would back-date the convictions to earlier dates on the disposition sheets and on the citations forwarded to the Department of Motor Vehicles. The judge made numerous statements reflecting she was aware of the impropriety of her actions and that she intended to mislead the Department of Motor Vehicles. The judge back-dated the convictions to disguise the length of time that she had taken to dispose of the cases. As a result of the judge’s back-dating practice, defendants either did not have their licenses revoked at all or had them revoked for shorter periods. *Inquiry Concerning Johnson*, 692 So. 2d 168 (Florida 1997).

Approving the recommendation of the Judicial Qualifications Commission, the Florida Supreme Court removed a judge for (1) sexual harassment of a judicial assistant, (2) engaging in ex parte communications, and (3) intentional abuse directed toward a public defender. (1) The judge had remarked on her assistant’s legs, breasts, figure, and sex life and told her assistant about her own personal life, mentioning that the judge had a female friend who, like the judge, liked women, and discussing a pool party at which her female friends sat around in the nude. The judge had asked the assistant to go to lunch every day and told her to cancel her other plans and had invited her out for drinks after work on numerous occasions and to attend a judicial conference with the judge. (2) The judge had improper ex parte communications with the state concerning matters before her. (3) The judge had expressed a strong personal dislike for a particular public defender and made numerous comments in pejorative terms reflecting on his character, skill, and ability, contacting prosecutors and other judges to question the public defender’s conduct, citing him for direct criminal contempt, and in on case, screaming at the public defender, berating the defendant on the stand, and threatening the public defender with contempt no less than three times. *In re McAllister*, 646 So. 2d 173 (Florida 1994).

Accepting the recommendation of the Judicial Qualifications Commission, the Florida Supreme Court removed from office a judge who had shoplifted a VCR Plus device from a Target store. *Inquiry Concerning Garrett*, 613 So. 2d 463 (Florida 1993).

Approving the findings and recommendations of the Judicial Qualifications Commission, the Florida Supreme Court removed from office a judge who had (1) repeatedly used his position as judge of the county court to make allegations of official misconduct and improper criticisms against fellow judges, elected officials and their assistants, and others, without reasonable factual basis or regard for their personal and professional reputations, (2) exceeded and abused the power of his office by imposing improper sentences and improperly using the contempt power, (3) acted in an undignified and discourteous manner toward litigants, attorneys, and others appearing in his court, (4) acted in a manner that impugned the public perception of the integrity and impartiality of the judiciary, and (5) closed and attempted to close public proceedings. *Inquiry Concerning Graham*, 620 So. 2d 1273 (Florida 1993).

Affirming the recommendation of the Judicial Qualifications Commission, the Florida Supreme Court removed a judge from office for (1) mishandling an appeal before becoming a judge, (2) back-dating the certificate of service on a brief, (3) overcharging her client and misrepresenting to her client how much work she performed on the appeal, (4) making serious and substantial falsehoods in a deposition she gave in the malpractice

suit arising out of her mishandling of the appeal, (5) depositing some of the cash payments from the client into her own operating account, and (6) failing to advise parties when an attorney who represented the judge in pending, personal civil litigation appeared before her. (1) In June 1996, the judge had entered into a written contract to handle an appeal in a family law matter on behalf of Ms. McBee concerning an order modifying the primary residential custody of McBee's minor child. The judge mishandled the appeal from the beginning. It was initially filed in the wrong court, and the record was delayed by inaction by counsel. The judge did not seek a stay of the order or ask that the case be expedited because it concerned custody of a minor. (2) Apparently because of the time constraints of running for judicial office, the case was referred to another lawyer, Dwight Olsen, to write the brief. The due date for the brief was November 8, 1996. The brief was actually filed on November 19, 1996, after being sent by Federal Express from the judge's office on November 18, 1996. Although the brief was 10 days overdue, the court accepted it and did not grant the motion to dismiss the appeal because of the late filing. The court did strike the brief and allow an amended brief because the original brief lacked record references, which the judge should have realized. The brief contained a certificate of service signed by "Deborah Ford-Kaus" with a confusing handwritten date showing "8th" to have been written over and "10th" or possibly "18th" superimposed. The brief was accompanied by a letter dated November 10, 1996, that advised the clerk that the original brief was being forwarded that date. (3) The judge charged her client McBee more than \$9,000 in fees and never advised her that Olsen had done all of the work on the brief for a \$1,000 fee, plus \$28 in costs. The election occurred on Tuesday, November 5, 1996, and the Ford-Kaus billing records in her own handwriting showed work on the appeal of 8 hours on November 6, 8 hours on November 7, and 8 hours on November 8. When McBee asked about the bills for November 6, 7, and 8, the judge told her the dates were wrong. McBee paid in cash, and the judge admitted that she deposited some of the cash directly into her own operating account and spent the money rather than depositing the payment into a trust account as a credit against future fees and services. McBee asked the judge to return the sums paid her, but she wrongfully refused to do so, in part because of her displeasure with the attorney who replaced her in the appeal who had had a relationship with a political adversary. (4) McBee sued the judge, and in her deposition in the case, the judge blamed the bills on a secretary when she did not even have a secretary at the time. (5) McBee paid in cash, and the judge admitted that she deposited some of the cash payments directly into her own operating account and spent the money rather than depositing the payment into a trust account as a credit against future fees and services. (6) After she took office, she was represented by two lawyers in personal civil litigation. The judge did not advise the parties or counsel of her relationship with one of the attorneys when the attorney appeared before her in contested matters. *In re Ford-Kaus*, 730 So.2d 269 (Florida 1999).

Approving the report of the Hearing Panel of the Judicial Qualifications Commission, the Florida Supreme Court removed a former judge who had (1) virtually abandoned her law practice and neglected several client matters during the time she ran for county court judge, (2) gave inaccurate, incomplete, and misleading testimony in a domestic violence proceeding against her ex-husband, and (3) in her dissolution of marriage action, failed to produce tapes when ordered by the court to do so and failed to provide a sufficient reason for her failure. The court also ordered the former judge to pay costs. (1) While running for office, the former judge had failed to properly communicate with clients, failed to properly document fee agreements, failed to meet deadlines, made misrepresentations to the court of appeal and the investigative panel of the Commission, made misrepresentations to clients, failed to pay her bar dues, and allowed her operating and trust accounts to become overdrawn. (2) During a domestic violence proceeding, the judge had claimed that she had tape recordings of her husband making threats of physical violence. (3) During her dissolution of marriage action, she failed to produce those tapes when ordered to do so by the court, and the tapes she ultimately produced did not contain any threats or otherwise correspond to the testimony she gave in the domestic violence proceeding. *Inquiry Concerning Hapner*, 718 So. 2d 785 (Florida 1998).

Affirming the findings and recommendations of the Judicial Qualifications Commission, the Florida Supreme Court removed a judge who had engaged in a pattern of conduct in which he acted with hostility towards attorneys, court personnel, and fellow judges, including (1) intimidating two attorneys into with-

drawing from representation of a client by threatening to recuse from all of their cases; (2) entering an order directing a litigant to show cause why she should not be held in indirect criminal contempt for writing a letter to the governor complaining of the judge's handling of her case; (3) seeking to hold a guidance clinic counselor in contempt and threatening to put the clinic out of business; (4) limiting the rights of pro se petitioners with domestic violence complaints by requiring employees of the domestic abuse shelter to submit affidavits that stated that they did not furnish any assistance to the petitioners, which chilled the willingness of victims and staff to come forward with legitimate claims, and falsely stating in a letter to a newspaper that the staff of the shelter agreed to use the forms; (5) engaging in a pattern of antagonism with court staff and other judges; (6) independently investigating a bailiff by interviewing a witness without notice to the bailiff and without counsel on his behalf, intending to release the information to a newspaper; (7) slamming a door in a bailiff's face; (8) inappropriately criticizing a bailiff; (9) entering an order in a capital case improperly implying that two attorneys were guilty of unethical conduct without allowing an opportunity to respond and threatening that he would refer any failure of counsel to comply with his directives to the chief justice; (10) denying a motion for recusal and then entering an order inaccurately criticizing defense counsel without affording them an opportunity to respond; (11) improperly suggesting that attorneys in a domestic violence case were encouraging their client to disobey his orders when they filed motions for a stay and improperly finding the client in contempt; (12) falsely accusing an assistant state attorney of attempting to make ex parte contacts with him and threatening to report him to The Florida Bar; (13) falsely accusing an assistant state attorney of stating that the judge had engaged in ex parte communications; (14) improperly seeking to involve third parties in an internal dispute concerning court administrative matters by publicly disseminating his version of events; (15) verbally attacking fellow judges in a judges' meeting; (16) violating the confidence of another judge by disclosing the contents of a confidential memorandum; and (17) threatening to assess attorney fees against the clerk of the circuit court. The court also directed the judge to pay costs. *Inquiry Concerning Shea*, 759 So. 2d 631 (Florida 2000).

Approving the findings and recommendation of the Judicial Qualifications Commission, the Florida Supreme Court removed a judge for (1) promising in his campaign to favor state and police and to side against defense, (2) making unfounded attacks on his incumbent opponent and on the local court system and local officials, and (3) presiding over a court case despite a personal direct conflict of interest. The court also ordered the judge to pay costs. (1) While running for county court against the incumbent, Judge Brown, McMillan had sent materials to "Fellow Police Officer[s]" with a subheading declaring: "A Fellow Police Officer Speaks Out: Good Ole Boy Politics Hurts the Street Officers." The same publication declared: "Imagine a judge who will go to bat for you"; "Street officers are unhappy with my opponent. You have told me that Judge Brown has never been a friend to law enforcement in the Courtroom." (2) In the same letter, the judge falsely claimed that Judge Brown had improperly pressured the county sheriff not to support McMillan and law enforcement officers to give preferential treatment to his children. The judge also issued a campaign brochure asserting that the county had lost over \$12 million dollars and that victims of crime had lost over \$10 million dollars when fines and court costs had been reduced at the end of court-imposed probation periods. The \$12 million figure also included the more numerous circuit court cases, which the brochure did not mention, although the judge admitted to having been aware that the figures were not limited to county court or to Judge Brown's cases. The judge's campaign also issued a brochure entitled "16-Year Judge Brown Treats Crime Like a Part-Time Problem" and made statements in a written submission to the editorial board of *The Bradenton Herald* newspaper. Statements in the campaign submission included: (a) "For the last four years 16-year incumbent Judge Brown has served in the criminal court, he has averaged only 14 hours a week on the bench;" (b) "In 1997 he took 84 days off from court and in 1996 he took 86 days off from court;" (c) "We hear all the time how overloaded our court system is, and it's no wonder with working hours like that;" and (d) "But, what's even more amazing, we pay him over \$98,000 a year to do this job." In calculating the Brown's days off, McMillan included any time Brown spent time handling matters in chambers; handling any duties or responsibilities as the county administrative judge, which he had been for all of his 16 years on the bench; handling any duties as a designated circuit judge;

handling first-appearance hearings; or handling any of the other myriad responsibilities that a judge has that do not require sitting on the bench in open court. While a candidate, the judge stated in campaign literature sent to *The Bradenton Herald* that “Judge Brown has consistently failed to enforce *the geographical relocation provision*, which allows a judge to enjoin a prostitute from returning to the vicinity where she was arrested.” However, there was no geographical relocation statute or ordinance in the county, and McMillan submitted no evidence as to any such law or Brown’s awareness of such a law, much less Judge Brown’s failure to apply it. The judge also falsely stated in a packet of campaign materials submitted to *The Bradenton Herald* that “[m]y own research on Brown’s rulings has shown a pattern of credit-for-time-served sentences on offenders who barely spend a day in jail Why go through the hassle of making an arrest when you know the sentence will be a meaningless slap on the wrist” A McMillan campaign brochure entitled “16-year Incumbent Judge George Brown Gives Criminals a Good Deal” “essentially declared” that Judge Brown was soft on crime and that “Court records show Judge Brown gives criminals such light sentences that of 91,000 cases, only 300 people have asked for a jury trial.” However, negotiated pleas and other case dispositions agreed upon by the state drastically reduced the overall numbers, and the 300 requests for jury trials were not related to the 91,000 figure. (3) After Judge McMillan became a judge and while Commission proceedings arising out of the election were pending, the judge testified that he saw Ocura driving in a manner leading him to believe that Ocura was intoxicated. The judge then called law enforcement on his cell phone to arrest Ocura, stopped at the scene, and signed a witness statement describing Ocura’s erratic actions. Ocura’s first appearance on the criminal charges arising out of the driving episode was scheduled in county court the next morning in front of Judge Robert Farrance. Judge McMillan went to the room where first appearances are held and asked Judge Farrance if he wanted Judge McMillan to take over. Judge Farrance testified that he initially refused, but upon Judge McMillan’s insistence, he agreed to let him preside. During the proceedings, Judge McMillan addressed Ocura:

I’m the guy that was behind you in the car that called the police and had you arrested. So I am probably not a good person to address the issue of your bond except that you blew over a .30 and quite frankly sir, you almost hit several cars and . . . at one point you made a u-turn and I thought you were going to run head on into me.

....

Okay, I’m going to set your bond at \$100,000 for now, but I’m going to have it reviewed by another judge later, tomorrow, okay? And make sure I’m not out line. Okay we’ll see you tomorrow.

Inquiry Concerning McMillan, 797 So. 2d 560 (Florida 2001).

Georgia

Accepting the recommendation of the Judicial Qualifications Commission, the Georgia Supreme Court removed a municipal court judge from office because his mother was the mayor of the city. *In re Webb*, 499 S.E.2d 319 (Georgia 1998).

Following the recommendation of the Judicial Qualifications Commission, the Georgia Supreme Court removed from office a judge who had (1) refused to set appeal bonds for two misdemeanor defendants when the law clearly obligated her to do so, (2) issued bench warrants for the arrests of two misdemeanor defendants when their attorney had been late even though the defendant themselves had been in court, and (3) forced a defendant to enter a plea of guilty in the absence of his counsel. *In the Matter of Vaughn*, 462 S.E.2d 728 (Georgia 1995).

Accepting the recommendation of the Judicial Qualifications Commission, the Georgia Supreme Court removed a magistrate from office for an uncooperative working relationship between the magistrate and the county board of commissioners. The magistrate had issued orders to the sheriff and each of his deputies ordering them

to comply with the statutory provisions that require a sheriff to perform the duties of constable if no provision is made for appointment of constables. When a sheriff's deputy refused to serve the orders, the magistrate ordered the coroner to do so, but the coroner also refused. The magistrate issued a rule nisi to determine whether the deputy should be held in civil contempt and a rule nisi for criminal contempt against the coroner. At the civil contempt hearing, the magistrate stated she was the plaintiff and called and cross-examined the deputy, verbally issued the orders to the sheriff's deputies, the majority of whom were in attendance, and stated that the deputy was purged of contempt. The magistrate issued an indefinite stay with respect to the coroner's hearing. The county board, at a meeting, publicly read a letter to the magistrate that stated: "We have decided to give you 30 days to see if you can get your act together. If you continue with your present attitude, causing problems and conflict in the county government, we will have no choice but to rescind your salary increase and return you to the original salary granted to you by the previous commissioners." The magistrate obtained felony warrants from a magistrate in a distant county, against the members of the board for intimidation of a court officer. After a special prosecutor dismissed the warrants, the magistrate issued a lengthy public statement justifying her actions in seeking the warrants and detailing her dispute with the board and the sheriff. The magistrate contended that the orders addressed her concern over a lack of courtroom security and delays by the sheriff in serving warrants and in turning over money collected by the sheriff's department. *Inquiry Concerning O'Neal*, 454 S.E.2d 780 (Georgia 1995).

Adopting the recommendation of the Judicial Qualifications Commission, the Georgia Supreme Court removed from office a magistrate who had failed to complete the required training for magistrates for 1991. The Commission had notified the magistrate in October 1991 of the failure and given him the opportunity to explain whether the failure was caused by facts beyond his control. As of January 1992, the Commission has not received a response from the magistrate and sent him a letter directing him to attend a February training session, but the magistrate did not attend the session. *In the Matter of Holcomb*, 418 S.E.2d 63 (Georgia 1992).

Illinois

Based on a complaint filed by the Judicial Inquiry Board, the Illinois Courts Commission removed from office a judge who consistently, brazenly, and outrageously evinced a complete lack of judicial temperament and demeanor, a disrespect for judicial process and procedures, and a deep-seated personal contempt and disrespect for citizens appearing in his courtroom. (1) The judge, after telling people in the courtroom in his opening remarks that they would go to jail if they could not pay their fines, had said "Isn't that right Mr. Byrd" to an individual in the courtroom who had previously been jailed for failing to pay a fine. (2) The judge had sentenced a layperson to 96 hours for contempt for asking questions out of turn. (3) The judge had sentenced a layperson to 24 hours in jail for contempt for being persistent, demanding, and impatient in the judge's courtroom prior to her trial. (4) The judge had jailed a man for contempt for whispering something to his wife that was inaudible to the judge. (5) The judge had held a litigant in contempt for being a few hours late for court without inquiring into his reason for being late. (6) When a doctor asked for a continuance because she had an office full of patients, the judge had asked the people in the courtroom for a show of hands of how many had had to wait for their doctors and refused to give the doctor specific information concerning when her trial might be, despite his knowledge that it would probably occur before noon. (7) The judge had twice told a defendant's mother to shut up. (8) The judge had yelled at a defendant to induce him to plead and willfully accepted a plea of guilty that the judge knew or should have known was from a party who was in fact not guilty based on the state's attorney's statement that it wished to drop the charge. (9) When a woman appeared in court to present proof of insurance on behalf of her husband, who was a hearing officer with the tax appeal board, the judge had asked what would happen if someone did not show up at her husband's hearings and threatened to issue a warrant for the husband's arrest if he failed to show on that day. Later when a family friend appeared, the judge had threatened to call the friend's boss and report that he was there on state time, left the courtroom, returned in 10-15 minutes, and intentionally made the wife and her friend wait until all other cases were heard before he would hear their case. (10)

The judge doubled a fine from \$75 to \$150 when the defendant asked about supervision and threatened to double the fine again if she spoke further. (11) Because a defendant was five minutes late to court, the judge would not accept the prosecutor's recommendation of a \$75 fine and 30 days' suspension and would have increased the fine by \$25 and doubled her period of suspension if she had pled guilty. The judge also answered "maybe" to the defendant's questions whether a bench trial would occur on the same day. *In re Keith*, No. 93-CC-1, Order (Illinois Courts Commission January 21, 1994).

Based on a complaint brought by the Judicial Inquiry Board, the Illinois Courts Commission removed a judge who had engaged in "intimidating and sexually inappropriate behavior" in the courtroom and chambers toward four assistant state's attorneys and twice had sexual intercourse in his chambers with a court reporter. Two members of the Commission would have suspended the judge for 12 months. The judge's conduct toward the four assistant state's attorneys included commenting on their bodies and clothing in suggestive ways, seeking their company for drinks or dinner, giving out his phone number and seeking theirs, demonstrating his appreciation for their appearance by kissing his fingers, persistently seeking to be alone with them by inviting them to chambers, and ignoring their refusals. He touched the clothing of one of the attorneys above her left breast and kissed one of the other attorneys. He rubbed the third attorney's hand, told her that her body distracted him in court, asked her to chambers, then grabbed her, wrapped his arms around her, rubbed her back, suggested she was sick and her husband was not taking care of her, kissed her on the mouth, and when she pushed him away and told him she was married, commented that they could talk about it over drinks and dinner. On two occasions, the judge had sexual intercourse in his chambers with a court reporter, once in the late afternoon on a Friday or day before a holiday and once on a Sunday evening, without affecting court business or other personnel. *In re Spurlock*, No. 98-CC, Order (Illinois Courts Commission December 3, 2001).

Indiana

Reviewing a report by three special masters and the recommendation of the Commission on Judicial Qualifications, the Indiana Supreme Court removed from office a judge who had a participatory role in harassment directed toward a court employee and her family, including the sending of a letter to the employee that contained a used condom. The court also suspended the judge from the practice of law for no less than two years, after which, the judge can petition for reinstatement. The judge gave an employee two gifts of \$100 each, asked her to have dinner at a location over 50 miles away, and told her she would fit in well with his family. After the employee had observed the judge near her apartment and she and her boyfriend had followed his vehicle, the judge had falsely told two other judges that he had gone to an intersection near the employee's apartment after receiving an anonymous phone call alerting him to alleged trouble at an intersection. The judge had written letters to the employee and her father that contained vulgar language, vile sexual references, and threats. One letter contained a condom that, according to DNA tests, had been used by the judge. *In the Matter of McClain*, 662 N.E.2d 935 (Indiana 1996).

Reviewing a report by three special masters and the recommendation of the Commission on Judicial Qualifications, the Indiana Supreme Court removed from office a judge who had (1) solicited and accepted from an attorney a \$2,000 loan, failed to report the loan on his statement of economic interest, failed to disclose the loan to the other parties and attorneys in lawsuits over which the judge presided that involved the attorney's law firm, and failed to disqualify himself from those cases, (2) falsely represented on his statement of economic interest the source of a loan from one of his girlfriends, (3) failed to report loans from one of his girlfriends and her mother, (4) solicited a large loan from his court reporter, and (5) to intimidate and retaliate against his ex-girlfriend and her mother for cooperating in the investigation by the Commission on Judicial Qualifications, assisted his son in preparing an anonymous, misleading letter that claimed his ex-girlfriend had been convicted of a felony, when in fact she had been convicted only of a misdemeanor, and mailing the letter to the state agency that regulates the day care center that employs his ex-girlfriend and that her mother owns. The court did find that the judge's

actions were not so egregious as to merit the further sanction of disbarment. *In the Matter of Drury*, 602 N.E.2d 1000 (Indiana 1992).

Iowa

Pursuant to the recommendation of the Commission on Judicial Qualifications, the Iowa Supreme Court removed a judge who had (1) conducted initial appearances in her office, preventing others from being present; (2) clearly violated procedural requirements when conducting arraignments and no-contact orders; and (3) had frequent conflicts with almost all of the people with whom she came in contact. (1) For a time, the judge conducted initial appearances in her office, not allowing even the peace officers guarding the prisoners to be present in chambers and effectively preventing the county attorney, the public defender, domestic abuse case workers, and the public from being present. The court noted that the refusal to admit peace officers created safety concerns. On one occasion, the judge had her court attendant place a sign on the public doors to her courtroom stating, “Do Not Enter Courtroom When Court is in Session,” on a day when guilty pleas and sentencings were taking place. When members of the public came into her courtroom, she would inquire why they were there. Many witnesses testified there was an unwritten rule no one entered her courtroom while a hearing was taking place. (2) The court found that the judge persistently followed her own procedures for arraignments that clearly violated the requirements of the rules of criminal procedure. After approving the trial information prepared by the county, she would enter an order setting the arraignment for a time within a few hours of the time the information was filed, often making it impossible for attorneys to meet with their clients prior to entering pleas. Within a few hours of that order, she would sign a document called “record of arraignment,” indicating an arraignment was held, even though there had been no contact with the defendants or their attorneys and the arraignment did not take place in open court. The “record of arraignment” would routinely note a “not guilty” plea was entered and set the case for trial within four weeks. The court also found the judge was innovative in the way she handled no-contact orders. Contrary to statutory requirements, the judge’s orders did not state whether the person who was the subject of the order was to be taken into custody for a violation of the order. She seldom used the standardized form and would often simply note “no contact” on the record of initial appearance. Under this practice, there was no record of whether the subject of the order received a copy of it, and all parties involved were left to wonder if such “orders” were enforceable. Despite requests by local domestic abuse personnel, the judge adamantly refused to comply with proper procedures, except for a very brief period after which she soon reverted to her old ways. (3) The judge had frequent conflicts with almost all of the people with whom she came in contact, including the chief judge, other judges of the district, the district court administrator, court reporters, court attendants, clerk’s office employees, peace officers, domestic violence personnel, department of corrections employees, attorneys, and the public. The court found that the “depth and breadth of her hostilities must have touched every aspect of her judicial services” and she refused any meaningful attempts to discuss her problems with the chief judge. Her relationship with her regular reporter became strained, according to the judge, because the court reporter was gathering information about the then-county attorney and forwarding it to the county attorney’s opponent in the upcoming election, although the information gathered was public information — primarily the incumbent’s won/lost record in district court. Because of the escalating hostility, the court reporter transferred to another judge. The replacement court reporters were subjected to sarcastic remarks and other discourteous acts in the courtroom, and one quit because of the judge’s temper. Because the judge was widely viewed as being abusive toward her court reporters, the court administrator found it impossible to get an official reporter for her. The judge’s unique manner of conducting arraignments, entering not guilty pleas for defendants and setting their cases for trial without input from any of the attorneys created problems for court administration. Her self-created trial schedule placed approximately eighty cases for trial on the same day. The judge kept her own records. When another judge came to her court to fill in for the judge after she was suspended, he could not determine how many cases were pending, and the clerk’s office could not tell him because of the way the judge had done

her private scheduling. The judge refused to reply to inquiries from the court administrator or to accept a message from the court administrator regarding court reporter scheduling. The judge accused the court administrator of “spying” on her through others, although there was no evidence of this. When the court administrator twice wrote asking the judge for an explanation of her behavior toward one of her court reporters, the judge did not reply, although her lawyer responded in rather vague terms. The judge’s relationship with her fellow judges in her district was almost nonexistent — often hostile. From July 1995 until she was suspended in 1999, she did not attend any district or state judicial meetings. She obtained her continuing legal education in Minnesota, apparently dealing with Minnesota law. When a new judge was first appointed in a nearby district, he came to the judge’s court to observe a district associate judge in action, but the judge refused to meet him, and she told a court attendant to inform him she was too busy to see him, although her scheduled trial had been canceled. When another judge called her to discuss sentencing procedures, the judge “I don’t want to talk to you. Call one of the other judges,” and hung up the phone. The judge did not answer a letter or answer the phone when the other judge called. Another judge with offices on a different floor from the judge’s testified that once, when he started to enter an elevator with the judge, she refused to ride with him, saying she would take a different elevator. When he attempted to talk to her, the meeting soon turned into a shouting match, with the judge doing most of the shouting. Three court attendants testified about their treatment by the judge. One testified to public embarrassment at the hands of the judge, angry moods, and bizarre conduct that finally led her to resign. Another court assistant testified the judge created such stress in her life she went home sick on several occasions. A third resigned because of the judge’s hostilities toward her. One employee of the clerk’s office testified that the judge wrongfully accused members of the office of making a rubber stamp of the judge’s signature and using it on court reporter’s certificates. When another employee brought a misdemeanor ticket to the judge because the magistrate who would have ordinarily handled it had a conflict of interest, the judge told the employee in a rude way that she did not do simple misdemeanors. The clerk’s office also had problems with the judge keeping files with stamped documents in her chambers. She refused to return them in a timely manner, causing the clerk’s office to delay the mailing of notices. This led to many arguments between the judge and the clerk’s office. The judge also discarded envelopes designed to preserve the confidentiality of minutes attached to trial informations so that the minutes became open for public view, contrary to law and established procedures. Frequently, the judge would enter the clerk’s office shouting for assistance. The clerk found it difficult to find people in her office who were willing to deal with her. *In the Matter of Holien*, 612 N.W.2d 789 (Iowa 2000).

Kentucky

The Kentucky Judicial Conduct Commission removed a district judge from office for a disturbing course of judicial tyranny in the two weeks after losing his candidacy for circuit judge. The order became effective ten days after it was served because the judge did not file an appeal. On two dates in the week after the election, the judge took extreme and unwarranted action contrary to the customary practice in his court, including imposition of public defender’s fees of \$500, increased fines and jail time for offenses, and imposition of excessive bail for persons who would ordinarily be released on recognizance. Although \$500 was the maximum public defender fee allowed by statute, prior to the election, the judge’s customary fee had been \$52.50. The judge openly displayed a handgun on the bench in district court on two days. In one case, the judge imposed 90 and 30 day consecutive jail sentences for possession of marijuana and DUI although prior to the election in cases such as this he had imposed fines and costs but no jail time. The judge told an assistant county attorney that the election showed people did not appreciate the favors that he had done for them and that his new motto would be “don’t come crying to me.” Prior to the opening of court three days after the election, the judge told a state police officer that people did not appreciate him and things were going to change. Opening the court, the judge slammed his gavel on the bench and announced, “Sit down, shut up, hang on.” The deputy clerk was so frightened by the anger the judge exhibited during court that she asked to be relieved from her duties in his court. After the judge imposed

a \$500 public defender fee and remanded a defendant to custody without bond, when the defendant tried to speak, the judge cut him off and stated, "Be quiet, he's ready to go." In a traffic offense case, the judge remanded a defendant to custody until his fine of \$200 was paid in full. When the county attorney handed the judge a proposed diversion order, the judge tore it up and threw it on the floor in a trash can under his bench. The judge bound a defendant over to the grand jury without a hearing or waiver even though county attorney had moved to dismiss the offenses. On two court dates, the judge denied customary requests of the county attorney for traffic school, amendment, or diversion and, without notification to the county attorney, ordered bench warrants for the defendants who were not present even though the pre-election custom was that such defendants were not required to be present per agreement of the county attorney. On another court date, after being advised of a plea agreement, the judge said "Unless it's the maximums, it won't be acceptable," and set trial for the next day. When the defendant said he had no attorney, the judge responded, "Be here, be ready." The judge refused to permit a trooper to respond to a call to respond to a domestic violence in progress. *In re Woods* Final Order (Kentucky Judicial Conduct Commission June 27, 2000).

Louisiana

Pursuant to the recommendation of the Judiciary Commission, the Louisiana Supreme Court removed from office a judge who had pleaded guilty to one misdemeanor count of failing to file a federal income tax return and been sentenced to a twelve-month prison term, one year of active supervised probation, and a \$5,000 fine. *In re Huckaby*, 656 So. 2d 292 (Louisiana 1995).

Pursuant to the recommendation of the Judiciary Commission, the Louisiana Supreme Court removed from office a judge who had (1) abused his contempt power three times, (2) banned a prosecutor from his courtroom and then dismissed 41 cases when the prosecutor did not appear, (3) participated in a case as counsel for four years after becoming a judge, and (4) deliberately disobeyed orders of the administrative judge. The judge was also ordered to reimburse the Commission \$4,333 for costs. (1)(a) The judge recalled a bench warrant against a criminal defendant and reset the defendant's court date. The prosecutor for the court, James Pierre, was told that he should report to the judge's office to discuss the change, and after learning that Pierre would not immediately honor his request for a meeting, the judge issued a verbal order to the deputy marshal to bring Pierre to his courtroom. When the prosecutor was brought into the courtroom, the judge found him in direct contempt of court, sentenced him to 30 days in jail and fined him \$500. The judge testified that he later rescinded his order after realizing that the sentence imposed was inappropriate. Pierre, however, was handcuffed and detained for several hours in a holding cell adjacent to the courtroom. (b) The judge held Pierre in contempt for failing to request permission before leaving the courtroom to console a witness who was disappointed with the outcome of a case and for turning his back on the judge when the judge was explaining why such behavior was unacceptable. Again, without affording Pierre the opportunity to be heard or telling him why, the judge imposed a sentence of 24 hours in jail, and ordered him immediately transported to jail. Pierre was handcuffed, booked, and detained at the city jail for several hours. Subsequently, the judge stayed the proceedings and the execution of the contempt order and ordered Pierre not to discuss the matter with anyone outside the presence of the court. The local newspapers printed several articles about "the feud" between the judge and Pierre. (c) The city court clerk of court, Carol Powell-Lexing, did not distribute the paychecks for the judge and his staff at noon, as she customarily did, but when she returned from lunch. Later that afternoon, the judge summoned the clerk to his office to answer questions. When the judge's secretary reprimanded Powell-Lexing in a loud and disparaging manner regarding the tardiness of the checks, Powell-Lexing walked out, ignoring the judge's plea that she remain. On the following afternoon, without any prior notice to Powell-Lexing, the judge had a deputy marshal escort her to his courtroom from the court's parking lot. Upon her arrival, she was questioned on the record by the judge in an argumentative and beligerent manner. At some point during this hearing, Powell-Lexing refused to answer the judge's questions and asserted her Fifth Amendment privilege. The judge ordered Powell-Lexing "jailed" until she answered his ques-

tions and ordered her in “contempt of court.” After Powell-Lexing was transported to the police station to be booked, the judge ordered that she be returned to the courtroom whereupon the judge further interrogated her in open court. At the conclusion of this interrogation, the judge ordered the parties not to speak about the matter outside the presence of his court. Notwithstanding this order, the local media widely reported the incident. (2) In response to the adverse media attention surrounding the judge’s decision to twice hold Pierre in contempt, the mayor convened a meeting between himself, the judge, and Pierre in an attempt to resolve the conflict. During the meeting, the mayor told him that Pierre was willing to apologize for his actions. In response, the judge said, “As soon as he does that, he’s free to return to my courtroom,” and banned Pierre from his courtroom until he made an apology. On the day after the meeting, the judge convened criminal court, but because Pierre had been banned from the judge’s courtroom, no attorney was present to represent the city. The judge instructed a non-lawyer employee of the prosecutor’s office, who was attempting to continue the scheduled matters, to represent the city. After at least seven of the defendants whose cases were scheduled to be heard protested, the judge dismissed the charges against 41 defendants, including at least seven DWI cases. Although Pierre reinstated the charges against these defendants, some of these charges were challenged based on the constitutional prohibition against double jeopardy. (3) Prior to taking office, the judge represented the plaintiff in *Patterson v. Hutto, Inc.* Almost two years after taking office, he wrote a letter to opposing counsel seeking to close the file. The letter stated, “[t]he procrastination . . . has prolonged the time frame which I had given the judicial administrator’s office in regards to finalizing all cases from private practice. This case is and has been the only one lingering for an inordinate period of time.” On June 16, 1995, the judge signed a motion to dismiss that was filed during the judge’s second term of office. (4) In early 1998, in response to the judge’s quarrels with the other two judges on the Monroe City Court about administrative matters, the supreme court appointed a supernumerary judge pro tempore for the court to temporarily assume all administrative duties. The judges of the city court, including the judge, were expressly relieved of all administrative duties and ordered not to assume or discharge such duties. When the supernumerary judge saw on TV that the judge had signed an order directing a writ of habeas corpus to the director of the shelter ordering him to produce two dogs belonging to Dianne Hill, he suspected judge-shopping because it was unusual to file a writ of habeas corpus for the release of dogs and the petition was filed and a hearing set so quickly that service of process on the numerous witnesses would have been difficult or impossible to achieve. The supernumerary judge ordered the judge to produce the pleadings in the Hill matter. The judge refused to do so. Subsequently, the supernumerary judge ordered the judge not to hear the Hill case, which had been allotted to the September 1998 criminal docket to be heard by another judge. Although the judge received the supernumerary judge’s order, he presided over the case on September 15, 1998. *In re Jefferson*, 753 So. 2d 181 (Louisiana 2000).

Adopting the recommendation of the Judiciary Commission based on a stipulation of uncontested facts, the Louisiana Supreme Court removed from office a judge who owned and operated a company that provided pay telephone service for all inmates in the local parish jail. The judge was responsible for the management of the company, Cajun Callers and received substantial income from it (he earned \$684,744 in gross income, and approximately \$225,118 in net income from prison inmates’ use of pay telephones in jail facilities). Cajun Callers operated under an agreement between the sheriff and the judge that gave the company the exclusive right to provide pay telephone service for all of the parish jail facilities. Cajun Callers received a percentage of the pay telephone charges collected from jail inmates. *In re Johnson*, 683 So. 2d 1196 (Louisiana 1996).

Michigan

Adopting the findings of a master and the Judicial Tenure Commission, the Michigan Supreme Court removed a district court judge who had (1) routinely solicited and accepted bribes in return for improperly disposing of matters before him (generally traffic citations), (2) engaged in routine improper ex parte communica-

tions, (3) routinely accepted and failed to report improper gifts, favors, and loans from litigants, (4) personally retained a close friend as an attorney to prepare a writ of habeas corpus for an incarcerated person the judge believed to be the friend of another close friend and who signed the writ releasing the individual without being fully informed of the facts of the incarceration, (5) intentionally misrepresented his residential address on an automobile insurance application to defraud the insurance company, and (6) solicited an individual to commit perjury in a federal investigation of the judge. *In the Matter of Jenkins*, 465 N.W.2d 317 (Michigan 1991).

Adopting part of the recommendation of the Judicial Tenure Commission, the Michigan Supreme Court removed a judge from office for (1) an abuse of his contempt power by jailing the superintendent of a youth center for refusing to obey an order of the judge that conflicted with a directive of the chief judge with which the judge disagreed; (2) intemperate conduct with respect to court personnel and his insistence that his secretary/court reporter treat them in the same fashion; (3) willful neglect of the adoption docket and refusal to respond to requests by the administrative office; and (4) failure to file reports on undecided matters as required by court rules. (1) The chief judge had entered administrative orders that required youth home residents to have their hearings conducted at the youth home rather than the court. Judge Seitz disagreed with that order and found the superintendent of the youth home in contempt, ordering him jailed, for failing to obey his contrary order. (2) The judge had written a memo and sent a tape to his employee encouraging her to be uncivil toward other court personnel, describing his colleagues and others in offensive and obscene language, and demanding 100% loyalty from her. (3) The judge had persistently failed to perform judicial duties and violated the statutory directive that adoption cases are to have the highest priority in scheduling with an end to the earliest possible disposition. (4) The judge had failed to file required reports on undecided matters on five due dates, and a sixth report was almost three months late, despite many letters and telephone reminders from the administrator's office. *In the Matter of Seitz*, 495 N.W.2d 559 (Michigan 1993).

Adopting the recommendation of the Judicial Tenure Commission, the Michigan Supreme Court removed from office a judge who had (1) made public misrepresentations at a press conference, (2) attempted to introduce a fraudulent letter into evidence in a Commission hearing, and (3) throughout the proceedings, engaged in conduct that was inappropriate, unprofessional, and demonstrated a lack of respect for the proceedings. The investigation of the judge began when a Detroit newspaper published an article entitled "Recordings indicate judge slurred Jews, blacks and others." The article reported that in seven conversations with her ex-husband, the judge, who is white, used the word "nigger" or variations and also made other racial and ethnic slurs. The statements were recorded by the judge's ex-husband in an attempt to gain ammunition for their hostile custody battle over their twin minor sons. (1) At a press conference after the newspaper article, the judge had publicly stated the tapes were "fake" when she knew she had made the statements and, in fact, had filed a \$100,000,000 lawsuit against her ex-husband based on his taping her. (2) In the Commission hearing, a witness for the judge had submitted a letter stating that the judge was not racist purportedly written by the witness to a newspaper when the controversy first erupted. In fact, the judge had written the letter after the Commission hearing had begun. The judge tried to have the letter submitted as evidence twice. (3) During the hearing, the judge failed to observe appropriate courtroom decorum by interrupting opposing counsel and the master on several occasions, making snide side comments, and using half-truths and misleading statements in her testimony. The judge's testimony was so unnecessarily vague that it hindered the proceedings and significantly interfered with the administration of justice, for example, when she could not remember the taped statements that were played for her six days earlier and refused to divulge her phone number. *In re Ferrara*, 582 N.W.2d 817 (Michigan 1998).

Mississippi

Accepting the recommendation of the Commission on Judicial Performance, the Mississippi Supreme Court removed from office a justice court judge who had (1) engaged in ticket fixing by placing cases on a consideration docket in response to calls from the offenders and dismissing the cases without trial and, after the county

attorney objected to the judge's failure to make a sufficient inquiry into the circumstances, on 18 occasions making the motion to dismiss himself and having the tickets marked "not guilty," rather than dismissed, (2) failed in over a dozen cases to sentence criminals in accordance with statute, (3) dismissed 7 misdemeanor cases without requiring the payment of court costs as required by the statute in effect at that time, (4) failed to require the forfeiture of money seized in a gambling raid as required by statute, (5) amended a sentence after part of the sentence was served in response to ex parte communications with the father of the defendant and on a day when the arresting officer was not available and wrote to the defendant's employer that no charges were pending, (6) in three cases assigned to other justice court judges, had sought favorable treatment for the defendants, (7) on 27 occasions, ordered a party to pay a judgment in installments or partial payments and set up a payment schedule and in some instances ordered payment within five days from judgment, thereby not informing nor allowing appeals within the statutory ten day period, and (8) a highway patrol officer arrested for contempt of court for returning to the courthouse after leaving at the judge's order when the officer had a right to be where he was; the judge thought the officer was the one who had filed a complaint about the judge dismissing tickets. *Commission on Judicial Performance v. Chinn*, 611 So. 2d 849 (Mississippi 1992).

Accepting the recommendation of the Commission on Judicial Performance, the Mississippi Supreme Court removed from office a judge who had openly lived with a fugitive charged in Georgia with several drug-related felonies, allowed the fugitive to drive her car with a suspended license, actively participated in the felony case in Georgia, and married him after he was convicted. The court also fined the judge the amount of the salary she received since October 1, 1994, and assessed her the costs of the proceedings. The fugitive, Donald Bailey, had been before the judge for an initial appearance on charges of possession of alcohol and paraphernalia in July 1993. While he was being held, it was discovered that he had been indicted in Georgia for drug trafficking and related offenses and had jumped bond on those charges. In August 1993, the judge fined Bailey on the Mississippi charges and suspended his driver's license. Several witnesses testified that they saw the judge and Bailey together beginning in September or October of 1993. Bailey was seen in the yard of the judge's home and on several occasions driving her car. By late November, he was openly living at the judge's house with her and her children. After the judge and Bailey started seeing each other, the judge summarily dismissed his fugitive warrant without a hearing or motion by the county attorney. The judge travelled twice to Georgia to visit Bailey, kept in contact with Bailey's attorney throughout the proceedings, appeared in court when Bailey entered his plea, and solicited letters on his behalf from a Mississippi state senator. On June 10, 1994, Bailey pled guilty in the Georgia case, was convicted on a felony drug charge, and was sentenced to ten years probation and a fine. The judge and Bailey were married on June 16. *Commission on Judicial Performance v. Milling*, 657 So. 2d 531 (Mississippi 1995).

Accepting the recommendation of the Commission on Judicial Performance, the Mississippi Supreme Court removed from office a former judge who had (1) during a dispute between a pastor and several members of his church, issued an ex parte temporary restraining order against the pastor without notice, had the pastor arrested on several occasions, went to the church during one of the disturbances, and refused to allow the pastor to press charges against church members as a result of one of the disturbances; (2) entered into ex parte communications concerning the handling of tickets and dismissed cases without a hearing; (3) signed an execution of judgment without authority; (4) handled fine and bond money received from litigants contrary to statute and loaned litigants money; (5) allowed a defendant originally charged with driving while his license was suspended and driving under the influence second offense to plead to lesser charges although he did not have the authority to do so; and (6) circulated an order after being served with a formal complaint by the Commission to the constables and members of the justice court staff demanding that they deliver official and unofficial notes and evidence relating to the allegations against him and threatening punishment for contempt for failure to abide by his orders. The court also assessed costs against the judge. *Commission on Judicial Performance v. Dodds*, 680 So. 2d 180 (Mississippi 1996).

Adopting the recommendation of the Commission on Judicial Performance, the Mississippi Supreme Court removed from office a justice court judge who had (1) called an officer with the Bureau of Narcotics an s.o.b., knowing that the statement was likely to be published in the newspaper; (2) allowed clerks and other officials to

dismiss tickets without an adjudication; (3) on a regular basis, failed to timely sign dockets; and (4) entered into plea negotiations by dismissing tickets in exchange for information on other crimes. *Commission on Judicial Performance v. Hopkins*, 590 So. 2d 857 (Mississippi 1991).

Accepting the recommendation of the Commission on Judicial Performance, the Mississippi Supreme Court removed from office a judge who had (1) used his position to benefit a corporation, (2) engaged in the practice of law, (3) engaged in ex parte communications, and (4) been financially and legally involved in a matter pending before him. The judge began a relationship with Southern Landfill Management, Inc. by assisting those involved in the company to locate a barge landing site for a landfill. Once the relationship with the company was established, the judge began to use his position to benefit the company, for example, appearing before the county board of supervisors on behalf of the company and attending public hearings before the department of environmental quality regarding the issuance of permits for the landfill. The judge also became deeply involved with lease negotiations between the company and Marrion Green, who owned an interest in property adjoining the landfill, including advising Green on the benefits of the landfill and drafting the lease agreement. Green trusted the judge not only because he was a lawyer, but also because he was a judge. When a suit involving the validity of a will that also affected the property SLM wanted to lease was filed, the judge presided over the contest, allowed SLM to intervene, engaged in ex parte communications about the suit, and ruled in SLM's favor. Additionally, while acting as chancellor in the will contest, the judge formed a garbage hauling business that engaged in business with SLM. *Commission on Judicial Performance v. Jenkins*, 725 So. 2d 162 (Mississippi 1998).

Accepting the recommendation of the Commission on Judicial Performance, the Mississippi Supreme Court removed from office a judge who had (1) engaged in ex parte communications, (2) demonstrated outrageous, erratic conduct and hostile demeanor toward litigants, court staff, witnesses, lawyers, and others, (3) failed to perform his duties, and (4) sexually harassed court staff. The court also assessed costs of \$9,455. (1) The judge had issued a written order that directed the justice court clerks to give his home telephone number to anyone who called him at work if he was not there and to have all his mail delivered to him unopened. The judge also had his home number published in the local newspaper. The court noted that these actions encouraged ex parte communications. The judge also made offers to "help" litigants with their charges and then failed to do so, creating an atmosphere of anger and hostility between those litigants and the judge. The judge did dismiss tickets issued to two friends as a result of ex parte communications. (2) Court staff, law enforcement officers, the county prosecutor, the other sitting justice court judge, and litigants testified to specific instances of the judge's conduct that were improper and intolerable, and placed the judicial office in disrepute. For example, when a litigant went to court to confront the judge after he told her that he would help her with her ticket, the judge told her to be quiet or he would hold her in contempt, raising his voice in a hateful manner while striking his gavel. Another litigant testified that when he went to court to see the judge about paying a fine for his brother-in-law, the judge asked him, "What damn business is it of yours?" Another litigant testified that the judge had called her on two occasions and cursed at her, calling her a "God-damn liar" and saying "he didn't know who I was and he didn't care who I was and that I would go to jail, pay my bond, and he would see my ass in court in front of him." Another litigant testified that the judge acted like he was God and tried to embarrass and humiliate him in court. The county prosecutor testified that the judge made snide comments constantly to her, the court clerk, and a police officer in open court, called her a liar in court, and told her she needed to resign. She also testified that during one court session the judge ate lollipops from the bench all day long. The other judge testified that she had to ask the judge to leave her courtroom because he caused a commotion in the courtroom and made a speech in court about his conflict with the bailiff. (3) At the time the complaint was filed, the judge had failed to dispose of 334 cases. The judge's attorney checked out the case files one week prior to the hearing before the Commission, and the judge signed those records so that the cases could be closed. According to the clerk, approximately 700 cases still awaited final disposition by the judge at the time of the hearing. (4) The court concluded that the record substantiated a number of improper comments to court staff that demonstrate the judge's tendency to sexually harass the female court personnel with whom he worked. The judge admitted

that he had told a clerk that he had seen a pair of small red panties folded and shaped like a flower that he had started to buy for her but had thought it might offend her. The clerk also testified that the judge had come over to her desk with a stress ball and asked her if she would like to squeeze his balls while looking down at his private area and laughing. The other judge testified that she had had a conversation with the judge where he talked about his strong sexual desire and on several occasions the judge made unsolicited comments of a sexual nature that she found offensive. Another staff member testified that the judge interrupted a conversation between her and the clerk and offered to wash her jeans for her if she would “take them off right now.” The clerk, the other judge, and another staff member testified that the judge made a crude comment about women’s “vaginal odors.” *Commission on Judicial Performance v. Spencer*, 725 So. 2d 171 (Mississippi 1998).

Adopting the recommendation of the Commission on Judicial Performance, the Mississippi Supreme Court removed a justice court judge from office for at least 30 counts of misconduct. The Commission found that the judge had (1) accepted payment or partial payment of fines payable to the justice court; (2) suspended fines for violations of the implied consent law; (3) dismissed a DUI charge on his own motion; (4) engaged in ex parte communications and improperly dismissed traffic citations for four defendants who did not appear in court; (5) improperly dismissed a DUI charge ex parte, on his own motion, without the defendant being present and without any testimony; (6) rendered a verdict of not guilty related to a hunting violation; (7) engaged in ex parte communications and conducted justice court business at his tire and pawn shop; (8) rendered a not-guilty verdict following ex parte communications; (9) conducted a hearing concerning an alleged violation of probation in which the defendant did not receive notice and was not advised of his due process rights, his right to an attorney, or his right to remain silent; (10) suspended a fine without the authority to do so and without knowledge of the underlying charges; (11) utilized a criminal process to collect a civil debt; (12) dismissed a criminal conviction and canceled the ordered restitution; (13) dismissed a case ex parte; (14) contacted a law enforcement officer regarding a criminal case; (15) contacted law enforcement officials during a criminal trial, engaged in other ex parte communications, and dismissed criminal charges; (18) issued an arrest warrant for someone who did not actually owe any fines; (19) reduced the interest rate in a contract that was the subject of a civil action; (20) dismissed a speeding charge in the absence of both the arresting officer and the defendant; (21) conducted ex parte communications with the defendant regarding citations for hunting violations; (24) conducted a contempt hearing where there had been no sworn affidavit or warrant issued; (25) issued a citation for contempt of court without providing any notice or advising of rights; (28) convicted a defendant without creating a file and without notice or hearing; (29) sentenced the justice court clerk to contempt without notice and refused her repeated requests for an attorney; and (30) interfered with the administrative functions of the justice court by refusing to allow the justice court clerk or deputy clerk to appear in court when the judge is conducting court. The court also taxed the judge with costs. *Commission on Judicial Performance v. Willard*, 788 So. 2d 736 (Mississippi 2001).

Missouri

Concurring in the recommendation of the Commission on Retirement, Removal and Discipline, the Missouri Supreme Court removed a judge for lacking the competence to handle the duties of the office. The judge’s duties had been limited by local court rule to traffic cases (excluding driving while intoxicated and driving while license revoked cases), small claims cases, and administrative and uncontested probate matters; he was generally disqualified from contested probate matters, did not handle domestic or criminal cases, and was not assigned any jury trials. The judge had failed to take action on matters of concern in court files, even after they had been brought to his attention by the clerks. The judge had failed to follow the law in probate cases, for example, failing to require the filing of annual statements and reports by personal representatives and guardians, failing to require that proper notice be given to interested parties, and failing to hold hearings. The judge had offered ex parte legal advice to litigants who subsequently appeared before him on the same matter. The judge had ordered defendants or wards of the court who did not exhibit symptoms of alcohol abuse to attend Alcoholics Anonymous meetings, even when the underlying offense was not alcohol-related. The judge allowed a Michigan lawyer

to represent an estate and approved an attorney's fee in the matter, although the lawyer had not complied with the requirements of Supreme Court rule regarding non-resident attorneys. The judge had made a number of rulings that were so far contrary to established law as to demonstrate a lack of understanding of the law or an unwillingness to apply it. The judge had admitted the substance of the allegations but challenged the legal conclusion of incompetency. *In re Baber*, 847 S.W.2d 800 (Missouri 1993).

Nebraska

Rejecting the recommendation of the Commission on Judicial Qualifications, the Nebraska Supreme Court removed from office a juvenile court judge who had (1) on a regular basis, and contrary to previous supreme court opinions, conducted disposition hearings without providing for a verbatim record in order to discourage appellate review, (2) improperly ordered parties out of the courtroom, prevented the attorney from the department of social services from making a record and excluded her from meetings, and received information out of court that affected his decision, and (3) ordered law enforcement officers to take two juveniles into custody and place them in the custody of the county administrator, instead of designated youth detention facilities or probation officers, as a way of prompting the county board of commissioners to provide a county juvenile detention facility and as a retaliatory move in a dispute over parking spaces. *In re Staley*, 486 N.W.2d 886 (Nebraska 1992).

Accepting the recommendation of the Commission on Judicial Qualifications, the Nebraska Supreme Court removed from office a judge who had (1) sent a death threat to another judge and ignited firecrackers in that judge's office, (2) consistently used intemperate, threatening language over a long period of time; (3) used false signatures and odd bond amounts on court documents; and (4) consistently had close contacts with people placed on probation. (1) Judge Jones sent a note containing a death threat to Judge Ashford and set off fireworks in Ashford's office. (2) On one occasion, when Judge Jane Prochaska exited an elevator in which she had been riding with Judge Jones, Judge Jones said "fuck you" and "bitch" as the doors were closing. The judge told a court employee who answered Prochaska's telephone to tell Prochaska "to get her fat fucking ass over here and sign these papers." Prochaska testified that in addition to the message the judge also called her and said in a loud angry voice to "get your fucking ass over to the clerk's office right now and do your work that's been sitting there for two days, or a complaint will be filed against you with the Judicial Qualifications Commission by 4:30 this afternoon." According to Prochaska, two people who were not court personnel and a court employee were present and heard a portion of the judge's statement over the speaker phone. In a telephone call, Judge Jones indicated that he was angry with Prochaska for her absences from the court in order to serve on various task forces and committees and that he wanted her to forfeit her vacation. Prochaska testified that Jones then stated, "Come on, Jane . . . why don't you just come to your senses and give up your vacation and we can forget this conversation ever happened." Prochaska replied, "Yeah, Deacon [Jones], kind of like you'd like to forget that conversation ever happened last July when you ordered me . . . to get my, quote, fucking ass to the clerk's office to do your work." Jones replied, "Jane, what you'd really like to forget is the day that you offered me a blow job in return for my vote for you as presiding judge." Jones stated to the court administrator several times that Prochaska had offered him oral sex in exchange for his vote. The court administrator testified that over the past 6 or 7 years, he heard Jones call Prochaska names and believed that Jones used the terms "fucking cunt" and "bitch." Another judge testified that in 1994, Jones called Prochaska a "fucking cunt" because he was concerned she was not doing her job. Two court employees testified that Jones using various derogatory terms to refer to Prochaska when lawyers and others were present. Jones admitted referring to Prochaska by a number of profane and vulgar names. When Prochaska's bailiff refused, at Prochaska's direction through her administrative secretary, to unlock the door to Prochaska's chambers so that Jones could have access to the bathroom, Jones became angry and asked, "What the hell am I supposed to do?" and, referring to the administrative secretary, "Who the fuck does she think she is? Who the fuck does she think she works for, if it's not us?" The bailiff testified that there were people present when these comments were made and that Jones used a voice that was loud enough they could hear him. After the bailiff checked whether Jones could use another judge's facilities and found that those facilities were in use, Jones took his robe off and stated "[f]uck it, find yourself another judge," and left. Another judge filled in for a period of time, but Jones at some point returned

and finished the afternoon's business. At the close of business, apparently referring to the administrative secretary, Jones told the bailiff that he was going "to get the fucking cunt fired." The bailiff further testified that sometime after the incident occurred, Jones also stated that if he had a key, he would "shit on [Prochaska's] desk." The court administrator testified that Jones spoke with him and referred to the administrative secretary as a "fucking bitch." The judge stated to the court administrator that he would like to turn Prochaska's head into "pink mist" and to a court employee that if it were not for his wife and children, he would blow Prochaska away. The court administrator testified that over the past six or seven years, Jones made threatening statements about Prochaska almost every time he and Jones spoke together. For example, Jones spoke of putting dynamite in the tailpipe of Prochaska's car and of burying Prochaska in the sand up to her head, pouring honey over her head, and putting ants on her head. (3) Judge Jones signed plea forms, court registers, and bench warrants with names other than his own, such as that of a city prosecutor, a deceased judge, Adolf Hitler, Judge Creeder, Snow White, and Mickey Mouse. Jones admitted to signing plea forms with the names but stated that he did so in order to keep court employees "on their toes." He denied the intentional use of fictitious names on court registers or bench warrants. Jones also executed bond documents for odd amounts such as 13 cents and \$999.99, which created problems because court employees were not equipped to make change or enter uneven amounts into the computers and the odd amounts caused employees to question if the amount was right. Jones admitted to setting bonds at odd amounts and testified that he did it to amuse the court employees or "just to tease them a little bit." Jones also admitted to possibly setting a bond in a false currency for "a zillion pengos," testifying that the effect was the same as not setting any bond at all. (4) The judge had contact with people on probation without the probation officers' knowledge. In one instance, after the judge placed a man on probation and ordered treatment at a center, the treatment center reported directly to the judge rather than the probation officer, and the judge had information regarding problems with the client that he did not convey to the probation officer. The judge also referred a client to another treatment center without informing the probation officer, and after the client was discharged, he did not report to the probation officer as ordered but reported directly to the judge. The judge also ate meals at the homes of individuals whom he had placed on probation and discussed with a criminal defendant the defendant's alcohol problems and treatment options before the defendant entered a plea. The judge assisted in collecting a urine sample from a man who had been placed on probation, entering the restroom with the man, running water, and talking loudly to him before returning with a container and announcing that the man could not "pee." The judge also admitted that he would sometimes sentence a person to 90 days' jail time, and then visit the person 10 days later and re-sentence the person to probation; the judge testified that he had stopped doing this. *In re Jones*, 581 N.W.2d 876 (Nebraska 1998).

Nevada

Affirming the determination of the Commission on Judicial Discipline, the Nevada Supreme Court removed a judge from office for a variety of misconduct. (1) The judge borrowed money from court employees and did not always promptly repay the loans, forcing the employees to make oral and/or written demands for payment. (2) The judge publicly endorsed and campaigned for a candidate for judicial office and testified falsely to the Commission that, while going door-to-door campaigning for the candidate, he had only gone to houses where he knew the residents. (3) The judge conducted a personal business from his judicial chambers, storing antiques throughout the courthouse and selling those antiques to persons with whom he came in contact at the courthouse; the judge directed city employees and jail trustees to move antiques into and out of the courthouse. (4) The judge directed court employees during normal business hours of the court to perform personal errands such as providing Spanish translating services for his mother's nursery business, and chauffeuring him to and from his home and for various purposes including but not limited to antique shopping. (5) The judge directed or suggested to persons appearing before the court who had been found guilty to contribute money to certain charities in lieu of paying fines to the city thereby diverting money from the city treasury, which diversion was ordered partially to enhance his chances of being re-elected. The judge would decide not only the amount that the charity would receive but which charities would be on his list. He diverted approximately \$405,916 from the city treasury to his selected charities. (6) The judge used property owned in part

by him that was zoned for residential purposes for commercial purposes after having been personally advised in writing by the community planning department of the proper zoning for the property. The judge also caused his agents to trespass on the adjoining property to hook up water and sewer lines. *In the Matter of Davis*, 946 P.2d 1033 (Nevada 1997).

Affirming the decision of the Commission on Judicial Discipline, the Nevada Supreme Court held that removing the judge from office was warranted by his abuse of his contempt power six times (in three of the cases, the judge's contempt orders had been reversed on appeal), demonstrating a long-standing pattern of abuse of the contempt power. *Goldman v. Commission on Judicial Discipline*, 830 P.2d 107 (Nevada 1992).

Holding that the decision of the Commission on Judicial Discipline to remove a judge from office was supported by the record, the Nevada Supreme Court concluded that clear and convincing evidence supported the Commission's findings that the judge had (1) engaged in numerous and repeated ex parte communications with experts retained by the parties or appointed by her in child custody proceedings after having previously been disciplined by the Commission for ex parte communications with other district court judges, and (2) appointed her first cousin as the mediator in a case without informing the parties of their relationship and accorded her cousin special treatment by issuing an order to show cause when the parties failed to pay her cousin, which she did not routinely do when parties failed to pay experts for their services. (1) In late March 1993, the father in a custody proceeding pending before the judge hired Dr. Stephanie Crowley to perform a psychological evaluation of his daughter in connection with the proceeding. On March 28, 1993, the judge called Dr. Crowley at her home, and they had a conversation about Dr. Crowley's observations of the minor child. A minute order detailed the substantive conversation between Dr. Crowley and the judge. The same minute order indicated that the judge's law clerk spoke to Dr. Crowley and detailed the substance of what Dr. Crowley discussed with the judge's law clerk. Another minute order reflected that the judge had a conference in chambers to discuss whether the custody of the minor child should be changed with Dr. Sheldon from the district court's Family Mediation and Assessment Center and that Dr. Crowley and Dr. Lewis Etcoff, another psychologist involved in the case, participated by telephone. The minute order also expressly indicated that no parties or their attorneys were present at this conference and that the judge made findings of fact based on the discussions with Sheldon, Etcoff, and Crowley and entered an order that physical custody of the child should remain with the father and that the child must remain in Clark County. (2) In *Kinnard v. Kinnard*, the judge appointed Faith Garfield, a mediator in New Mexico where Mrs. Kinnard was temporarily living, to attempt to mediate the differences between the parties. Garfield and the judge were first cousins, which the judge had failed to disclose to the parties or their attorneys. The judge also appointed Dr. Marc Caplan, a psychologist, to perform evaluations on the parties involved. A letter from Garfield to Mrs. Kinnard reflected that Garfield billed Mrs. Kinnard for a telephone conference between Garfield, Dr. Caplan, and the judge but with no indication in the record that either party or their attorneys were informed of this telephone conference. Additionally, Dr. Ritchitt testified that she received a call from the judge's office and was informed that a hearing would take place in a few days in Kinnard and that there was a possibility that the judge might change custody of the minor child from the mother to the father. Dr. Ritchitt was also told that the judge wanted her at the hearing to assist the minor child with the transition if there indeed was a change in custody. Dr. Ritchitt also testified that at a hearing on December 5, 1996, the judge asked her to watch the minor child in the judge's chambers while the hearing took place. Dr. Ritchitt stated that she did not discuss the case with the judge, but was eventually called to testify as a witness at the hearing and was unaware of who had called her as a witness. The judge ordered the parties in Kinnard to make arrangements to pay Garfield for her services as a mediator or be held in contempt of court. During the hearing, either the judge or Garfield indicated that Garfield and the judge had previous ex parte communications about Garfield not being paid for her mediation services. In *Greisen v. Greisen*, the judge ordered Dr. Sheldon from the district court's Family Mediation and Assessment Center to perform an emergency evaluation to determine if it was in the minor child's best interests to be away from the father and to give her an oral report in chambers before he testified in court. Sheldon testified that no other judge had him give an oral

report in chambers regarding an assessment, without the parties or their attorneys present, before then testifying about the same report in open court. *In the Matter of Fine*, 13 P.3d 400 (Nevada 2000).

New Jersey

Accepting the recommendation of the Advisory Committee on Judicial Conduct, the New Jersey Supreme Court removed a former judge from office for using marijuana and supplying marijuana to another individual on one occasion and for arranging an introduction to help an individual obtain employment from a litigant who was a party to an action before the court on which the judge sat. The judge had resigned. *In the Matter of Pepe*, 607 A.2d 988 (New Jersey 1992).

Based on the presentment of the Advisory Committee on Judicial Conduct, the New Jersey Supreme Court removed a former judge who had (1) managed the affairs of a corporation while serving as a judge; (2) received funds from the corporation in compensation for his activities while serving as a judge; and (3) pled guilty to theft from the corporation. The judge had retired and consented to his removal from office. The judge had formed a corporation in 1962 in which he or his wife owned from 12.5% to 40% of the stock at various times. The judge had assisted in the management of the corporation's affairs and the office building that was its primary asset, receiving rent checks from the corporation's bookkeeper, assisting the bookkeeper in the payment of the corporation's bills, and assisting the corporation's accountant in filing tax returns. He performed other miscellaneous services for the corporation, including handling maintenance. Between 1989 and 1992, the judge obtained rent checks made payable to the corporation by tenants, endorsed them, and deposited them to his own accounts, converting to his own use approximately \$98,037. Between 1987 and 1992, the judge withdrew funds from the corporation's bank account for non-corporate purposes and for his own uses, diverting approximately \$29,000. The judge also issued checks drawn on the corporation's account in payment of personal expenses; issued other checks drawn on that account to himself and cashed them, applying the funds to his personal expenses; and issued other checks to payees to whom the corporation owed no money and then endorsed those checks, using the funds for personal purposes. The judge also took between \$15,000 and \$35,000 from the corporation's investment account for personal purposes. The judge entered a guilty plea to a charge of theft by failure to make required disposition of property received. *In the Matter of Imbriani*, 652 A.2d 1222 (New Jersey 1995).

On an order to show cause why a judge should not be removed from office, the New Jersey Supreme Court removed a municipal court judge who had (1) signed a personal letter "JMC" (meaning Judge Municipal Court); (2) failed to recuse from a case arising from questionable domestic violence complaints filed by a councilman with whom the judge had a close relationship; and (3) filed false accusations against his son's teacher and then arraigned the teacher. (1) In response to a letter from the president of the board of trustees of the private school attended by the judge's sons who believed the judge was delinquent in the payment of tuition, the judge wrote a letter and signed it "Wolf Samay, Esq., JMC," the "JMC" meaning "Judge Municipal Court." The judge sent copies of the letter to the school's headmaster and other school officials. (2) The judge had a long-term relationship with Benni Jakubovic, who was a city councilman. Benni signed two harassment complaints against his wife Susan alleging petty disorderly persons offenses and also signed a domestic violence civil complaint based on the same conduct. In response to those complaints, a police lieutenant contacted the judge by telephone shortly after 11:00 p.m. that night, and the judge authorized a TRO, a search warrant, and an arrest of Susan. No papers were ever presented to the judge. When the police officers executed the search warrant, they found no weapons and observed no conduct that justified the arrest of Susan at her home, but they arrested her around midnight and took her to the police station where she was subsequently released on the R.O.R. set by the judge in his conversation with the police lieutenant. The judge conducted Susan's first appearance or arraignment, advised her of the charges, accepted pleas of not guilty, and indicated "I'm fixing your bail at \$5,000. I'm releasing you R-O-R, and we'll notify you when to come back for trial." The judge indicated that he would recuse himself in subsequent proceedings. (3) After David Grassie, the gym teacher of the judge's son Patrick's, directed Patrick not to hang on the rim of the basket ball hoop,

they had a verbal confrontation that resulted in a conference the next morning with the headmaster, the judge, his wife, Patrick, Grassie, and a few student-witnesses. Subsequently, the judge called the headmaster and stated that unless the gym teacher was terminated within three days, the judge would bring criminal charges against him. A week later, the judge reported the matter to the city police department and stated that Patrick had informed him that Grassie had threatened to slap him, made verbal assaults toward him, and threatened to “bash Patrick’s head in and kill him” after a gym class. When a detective interviewed Patrick with the judge’s permission, Patrick informed the detective that Grassie threatened to slap him and to cause him bodily harm but denied that Grassie threatened to bash in his head or to kill him. The detective prepared a complaint and warrant charging the gym teacher with third-degree terroristic threats but instead of signing the complaint, notified the judge that it was ready for his signature. The judge went to the police department and signed the complaint and warrant knowing that Grassie would be arrested and brought before the municipal court. Grassie was arrested at the school, fingerprinted, and placed in a jail cell where he remained for approximately one hour before his release on bail set by a different judge. As expected, the gym teacher appeared before the judge, with counsel, for arraignment. When counsel noted that “the Court is the complainant,” the judge answered “I am the complainant in my individual capacity” and said that he was “just informing [Grassie] of the charges and somebody has to do it, nobody else is available. I’m doing it.” The matter ultimately was assigned to another municipal court where Grassie was acquitted of all charges. *In the Matter of Samay*, 764 A.2d 398 (New Jersey 2001).

New Mexico

Granting the petition of the Judicial Standards Commission, the New Mexico Supreme Court removed a judge from office for (1) harassing and interfering with a court administrator, (2) refusing to obey legitimate orders of the chief judge, (3) verbally abusing a deputy sheriff, using profanity, and being discourteous, undignified, and disrespectful, (4) deliberately failing to devote to the court the number of hours required of a district judge, (5) making inquiries about an adoption proceeding that involved a relative of the chief judge and disclosing information from a file that by law is confidential, and (6) his relationship with a not-for-profit organization. (1) After other judges in the district began to express concerns about the judge’s ties to a program known as First CASA, which provided volunteers to assist children involved in abuse and neglect cases, the chief judge ordered the court administrator to reassign abuse and neglect cases to another judge. The judge ordered the administrator to ignore the chief judge’s order and, after she transferred 78 cases from the judge and directed that new cases would not be assigned to him, the judge issued an order to show cause directed to the court administrator, and the deputy sheriff conducted the court administrator to the judge’s courtroom. When she declined to answer until her attorney arrived, he ordered the deputy sheriff to arrest her and place her in the courthouse holding cell. Subsequently, the chief judge entered an order releasing the court administrator from custody. Acting on the court administrator’s behalf, the attorney general filed a petition for a writ of prohibition with the supreme court, and the court issued a writ prohibiting the judge from countermanding the orders of the chief judge. (2) The judge refused to comply with a memorandum from the chief judge asking all judges to provide copies of their daily docket sheets to the deputy sheriff. The judge refused to obey the chief judge’s order to comply with a schedule for hearing domestic cases and, when he did sit on two occasions, failed to hear all issues, referring the cases to a hearing officer to determine the child support issues and advising the chief judge that he would not hear or determine those issues himself. Although the judge had agreed to hear some domestic violence cases in order to relieve the load of the hearing officer was then experiencing, he later refused to hear any domestic violence cases except under special circumstances. When the chief judge intervened and twice ordered the judge to comply with the proposed schedule, the judge refused, then on two different occasions but failed to hear all issues, referring most back to the hearing officer to determine the child support issues. When the chief judge ordered the judge to hear all the issues, he summoned the hearing officer, ordered her to hear the child support issues, and advised the chief judge he would not hear or determine those issues himself. (3) After the deputy sheriff had repeatedly asked the judge’s secretary for a copy of his daily docket sheet, the judge in the common area of the courtroom yelled, using profanity, raising his voice,

and asserting that he was not going to provide the sheets because what went on in his courtroom was nobody's business. (4) The judge also worked very little from September 1993 through March 1994. (5) The judge questioned district court clerks about the adoption file and contacted a staff attorney for the Children, Youth and Families Department regarding the proceeding. He disclosed information from a file that by law is confidential. The adoption was handled properly, and the judge made reckless allegations to the contrary. (6) The judge had de facto control of First CASA, a not-for-profit organization whose purpose was to recruit, train, and oversee volunteers who served as court-appointed special advocates for abused and neglected children in juvenile dependency proceedings, and was regularly engaged in proceedings that came before the judge. The judge personally selected a majority of the board of directors and personally caused the hiring and firing of directors. His wife served as executive director for a salary and acted as First CASA's primary fund-raiser. She solicited contributions from lawyers who regularly appeared before the judge and used his chambers and telephone to solicit funds. The judge allowed the use of his name, title, and photograph in a brochure used to solicit funds, and the use of stationery with his official telephone numbers even after a finding by the Commission in 1992 that a solicitation sent out by the judge's wife was a violation of the code of judicial conduct. In 1993, one law firm made a contribution in the amount of \$1,000 to First CASA the same day that the judge ruled in favor of a client of that firm, and another law firm made a \$1,000 contribution at the same time that the judge was presiding over a criminal trial involving a relative of a member of that firm. The judge used First CASA funds to attend a national convention but did not attend most of the convention, leaving the convention before its conclusion to visit a relative of his wife. *In the Matter of Castellano*, 889 P.2d 175 (New Mexico 1995).

Approving and adopting the recommendations of the Judicial Standards Commission, the New Mexico Supreme Court removed a municipal court judge who had received money from two defendants in exchange for dismissing traffic citations pending against them. *In the Matter of Casaus*, No. 19,578, Order (New Mexico Supreme Court. January 30, 1991).

New York

The New York Court of Appeals upheld the determination of the State Commission on Judicial Conduct that a judge should be removed for (1) issuing a warrant of arrest pertaining to a dishonored check given to the judge's husband, the complainant, by the defendant; presiding over the defendant's arraignment; committing the defendant to jail in lieu of \$5,000 bail; failing to appoint counsel for the defendant at arraignment and refusing the advice of the prosecutor and a different judge that she disqualify herself; (2) requesting a young man, whom she had sentenced one day earlier, to return to court, accused the youth of writing obscenities on the court's table and, upon his denial, struck him across the face with a telephone directory; (3) sending a personal letter in a court envelope to tenants of an apartment building owned by judge's father about their use of well water; and (4) sent an attorney a letter in a court envelope concerning the quality of well water in the same apartment building. *In the Matter of Tyler*, 553 N.E.2d 1316 (New York 1990).

The New York Court of Appeals accepted the determination of the State Commission on Judicial Conduct that a family court judge should be removed for (1) frequently addressing parties and attorneys in an intemperate manner, (2) indicating that he presumed unproven allegations to be true, (3) using racially charged language on two occasions, (4) neglecting to inform litigants of their rights, (5) exerting undue pressure on parties to make damning admissions, and (6) sentencing one person to six months in jail based solely on an ex parte letter. *In the Matter of Esworthy*, 568 N.E.2d 1195 (New York 1991).

The New York Court of Appeals accepted the determination of the State Commission on Judicial Conduct that a town court justice should be removed for physically forcing himself on an unwilling victim. *In the Matter of Benjamin*, 568 N.E.2d 1204 (New York 1991).

The New York State Commission on Judicial Conduct determined that a town court justice should be

removed for consistently failing to remit court funds promptly to the state comptroller and failing to cooperate with the Commission. *In the Matter of Schwarting*, Determination (New York State Commission on Judicial Conduct March 15, 1991) (www.scjc.state.ny.us/schwarting.htm).

The New York Commission on Judicial Conduct determined that removal was the appropriate sanction for a village court justice who had (1) failed to remove himself from a case in which the complaining witness was a long-time acquaintance of the justice and a regular customer of a bar owned by the justice's mother, the incident occurred outside the bar where the justice lived, his father was a witness, and the defendant was a political adversary of the justice's father; (2) issued an arrest warrant and arraigned the defendant on a complaint that was clearly deficient on its face, then attempted to have a valid complaint drawn; and (3) given false testimony at the Commission hearing. *In the Matter of Mossman*, Determination (New York Commission on Judicial Conduct September 24, 1991) (www.scjc.state.ny.us/mossman.htm).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a town court justice who had (1) in three cases, committed defendants to jail without setting bail, in violation of a state statute, (2) in three cases, committed defendants to jail in lieu of bail without considering their community and family ties as required by state statute, (3) failed to disqualify himself in 11 cases in which his son was the arresting officer, complaining witness, and representative of the prosecution, (4) in six cases, failed to advise defendants of their right to assigned counsel if they could not afford a lawyer, in violation of state statute, (5) coerced guilty pleas in three cases, two of them involving the same unrepresented, 19-year-old defendant, (6) left an 18-year-old defendant charged with traffic infractions in jail for 26 days in lieu of bail by failing to set a date for his return to court, (7) summarily held three defendants in criminal contempt and sentenced them to jail for their behavior at arraignment on other charges without following proper statutory procedures and without completing the arraignments, and (8) handled 23 cases over which he had no jurisdiction. *In the Matter of Winegard*, Determination (New York Commission on Judicial Conduct September 26, 1991) (www.scjc.state.ny.us/winegard.htm).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a former town court justice who had (1) borrowed money from a client of his law practice, (2) caused his secretary to alter a car registration, and (3) driven an unregistered car. The judge had borrowed \$12,000 from a client who relied upon him for advice, ignored the best interests of the client, and did not ensure that she was protected by independent, disinterested counsel, and when the note came due, he did not repay it until two weeks before the Commission hearing. The judge had driven a car that he knew had not been registered, had plates that had been taken from another car and had not been re-registered, and had directed a typist in his law office to delete "Buick" from a registration sticker and type "Ford" in its place. He was later stopped and charged with improper plates, operating an unregistered motor vehicle, and operation while registration was suspended or revoked, and he pled guilty to a misdemeanor. *In the Matter of Wray*, Determination (New York Commission on Judicial Conduct November 6, 1991) (www.scjc.state.ny.us/wray.htm).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed a judge from office for (1) improperly continuing to act as a fiduciary in several estates, (2) continuing to perform business or legal services for clients, and (3) maintaining an inappropriate business and financial relationship with his former law firm, which had an active practice before his court. *In the Matter of Moynihan*, 604 N.E.2d 136 (New York 1992).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who failed to remit court funds and report cases to the state comptroller by the tenth day of the month following collection as required by statute, failed to deposit court funds in her official account within 72 hours of receipt as required by statute, failed to maintain adequate records of the receipt of court funds as required by statute, failed to remit to the state comptroller \$550 that she had collected, and failed to respond to three written inquiries by Commission staff counsel in connection with a duly-authorized investigation. *In the Matter of Armbrust*, Deter-

mination (New York Commission on Judicial Conduct December 16, 1993) (www.scjc.state.ny.us/armbrust.htm).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed a judge who had (1) by carelessness or calculation, mishandled \$1,173 in public money and made no timely effort to notify authorities or rectify the problem, (2) when confronted with the issue of the missing deposit by town officials after an audit had disclosed it, repeatedly gave a false explanation of its loss, and (3) borrowed and repaid a loan before presiding over nine cases in which the lender was a party, without disclosing the relationship and offering to disqualify himself. *Murphy v. Commission on Judicial Conduct*, 626 N.E.2d 48 (New York 1993).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a former judge who had (1) engaged in a course of offensive, undignified, and harassing conduct in which he subjected subordinate women in the court system to uninvited sexual activity, touching, and crude and suggestive comments and (2) taken advantage of his position as a judge and employer in a series of sexual encounters with his young court reporter and secretary, who was unsophisticated, sexually inexperienced, and submissive. (1) The judge repeatedly and persistently touched Ms. D, a court assistant assigned to the judge's courtroom, as he was leaving the courtroom; repeatedly leered at her and made suggestive comments about her appearance; often nuzzled her and whispered in a sensual tone; made crude comments in the presence of others; and twice touched her on the buttocks. The judge touched Ms. B, a city court clerk, at a function outside of the courthouse and commented in the courtroom to Ms. C, a city court clerk, implying that her appearance might incite rape. (2) Ms. A, the judge's court reporter and secretary, was an immature 19 year old when she started to work for the judge in 1976, and she was still unworldly, docile, and submissive two years later when the judge directed her in a series of passionless sexual experiments in his locked chambers over an eight-month period. *In the Matter of LoRusso*, Determination (New York Commission on Judicial Conduct June 8, 1993) (www.scjc.state.ny.us/lorusso.htm).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals concluded that removal was the appropriate sanction for a judge who had twice signed his dead mother's name to a credit card application in order to procure a user's card for himself and, when questioned by bank investigators, repeatedly misled them by implying his mother was alive. *In the Matter of Mazzei*, 618 N.E.2d 123 (New York 1993).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who, over the course of three days, used a shotgun, physical threats, vulgarities, and verbal intimidation to try to win the advantage in a personal dispute over property rights, which led to his conviction on menacing, trespass, and criminal mischief. *In the Matter of Gloss*, Determination (New York Commission on Judicial Conduct July 27, 1993) (www.scjc.state.ny.us/gloss.htm).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed from office a judge who had subscribed as witness on his own designating petition for re-election when in fact he had not been present when the petition was signed, in violation of state election laws. *In the Matter of Heburn*, 639 N.E.2d 11 (New York 1994).

Reviewing a determination of the State Commission on Judicial Conduct, the New York Court of Appeals found that the Commission's removal of a judge was supported by a preponderance of the evidence. (1) During a break in a case, the judge had said that he recalled a time when it was safe for young women to walk the streets "before the blacks and Puerto Ricans moved here" in order to hurt one of the attorneys in the case (whom the judge believed was Hispanic) because the attorney was involved in a controversy with another judge who was a friend of the sanctioned judge. (2) The judge had created the impression that he used his judicial office to retaliate against a part-time judge by making several comments indicating that he had ruled against the position of the part-time judge's law firm after the part-time judge, in a traffic case arising out of an accident the judge had had, found the other driver not guilty. When told the part-time judge had dismissed the case against the other

driver, the judge said, "It's a wheel. It goes around, and maybe someday I can do the same for him." The judge's court clerk overheard him remark to an attorney that he was angry with another judge because of the decision in the traffic case and that he intended to grant the summary judgment motion in the case pending before him because the defendant was represented by the other judge's law firm. The judge also commented to the prosecuting attorney that he was angry with the other judge because of the decision, stating, "That goddamn fucking [Judge] Meltzer. I'm hung heavier politically than Meltzer." (3) The judge had failed to keep adequate records and dockets of the disposition of more than 600 criminal cases and did not take prompt action to remedy the inadequate records or remit the surplus money despite repeated requests to do so from his court clerk and from the police chief. *In the Matter of Schiff*, 635 N.E.2d 286 (New York 1994).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had (1) failed to deposit court funds into his official account within 72 hours of receipt as required by statute, (2) failed to remit court funds to the state comptroller by the tenth day of the month following collection as required by statute, (3) failed to notify the Department of Motor Vehicles of the disposition of 272 traffic tickets as required by statute, (4) with respect to 170 traffic tickets, failed to notify the Department of Motor Vehicles of the defendants' failure to appear in court or otherwise answer the charges or to pay fines imposed by the court, (5) failed to respond to letters sent certified mail by Commission counsel, and (6) failed to appear for the purpose of giving testimony before the Commission even though he was notified by letter that his appearance was required by law. *In the Matter of Tiffany*, Determination (New York Commission on Judicial Conduct January 26, 1994) (www.scjc.state.ny.us/tiffany.htm).

The New York Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had converted \$6,150 in court funds to his personal use. *In the Matter of Sterling*, Determination (New York Commission on Judicial Conduct September 8, 1995) (www.scjc.state.ny.us/sterling.htm).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals held that a judge's involvement with someone who was engaged in drug-dealing and money-laundering schemes warranted removal. For example, the judge had told Selwyn Wilson to tell the FBI that he was unable to recall the identities of certain passengers whom he drove as the judge's chauffeur; not to mention that he drove certain persons, including a certain judge, to the "Inner Circle"; and to tell the FBI only that it was possible that a certain judge was a passenger, even though Wilson indicated that he clearly recalled having driven that judge; and to keep it very loose without pinpointing dates. After Wilson told the judge that he had been involved in illegal drug and money laundering activities and that he and an associate named "Lance" recently had "brought in 300 kilos" of cocaine, the judge said to "make sure [Lance] lays low," and that Wilson had a "duty to tell Lance" about news articles concerning a pending FBI investigation. There were other, similar conversations. At a subsequent meeting at her home, the judge accepted for safekeeping from Wilson a large sum of cash, and a week or two later, the judge returned the money to him but accepted \$1,500. The judge failed to report the \$1,500 as required. *In the Matter of Backal*, 660 N.E.2d 1104 (New York 1995).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a non-lawyer judge who had failed to successfully complete the training course required by statute before he could assume the duties of office. *In the Matter of Yusko*, Determination (New York State Commission on Judicial Conduct March 7, 1995) (www.scjc.state.ny.us/yusko.htm).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had (1) failed to remit court funds to the state comptroller by the tenth day of the month following collection as required by statute, (2) failed to respond to three letters sent certified mail by staff counsel, and (3) failed without explanation to appear for the purpose of giving testimony. *In the Matter of Driscoll*, Determination (New York Commission on Judicial Conduct March 20, 1996) (www.scjc.state.ny.us/driscoll.htm).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had (1) failed to remit court funds promptly to the state comptroller and (2) failed to cooperate

in the Commission's investigation. *In the Matter of Carney*, Determination (New York Commission on Judicial Conduct September 19, 1996) (www.scjc.state.ny.us/carney.htm).

The New York Court of Appeals accepted the determination of the State Commission on Judicial Conduct that a judge should be removed from office for two incidents in which he improperly jailed individuals for their purported failure to pay fines and restitution obligations that he had imposed. In a case in which the judge had required a defendant to pay restitution to a vehicle's owner for damage, the judge did not give the defendant a written record of the obligation, prepare a court record as required by statute, make a record of the defendant's payments, or deposit the funds in his court account. When he was erroneously informed in an out-of-court conversation that the vehicle owner had not been paid, the judge issued a warrant for the defendant's arrest, citing his failure to appear for a fictitious court date. When the defendant appeared on the warrant, the judge summarily sentenced him to jail for contempt, refusing to give him an opportunity to retain an attorney. The judge rejected efforts by the defendant's family to demonstrate that the fine and restitution obligation had been paid and refused to release the defendant when the defendant's sister offered to pay the restitution for a second time. The judge also ignored a subsequent letter from the defendant's attorney demanding an evidentiary hearing. In the second incident, an individual whom the judge had fined for speeding asserted that she was unable to pay, but the judge did not offer her a hearing under statute or advise her of her right to apply for resentencing but insisted that she pay. When the same individual appeared before the judge on a charge of issuing a check with insufficient funds, the judge directed her to pay restitution without ever taking a plea and thus imposed a sentence without the defendant ever having been convicted. Additionally, he noted on his docket that the defendant was obliged to pay a \$50 fine, but he never advised her of that penalty. Despite the defendant's assertions that she was unable to pay the required restitution, the judge did not conduct a hearing and did not suggest the alternative of applying for resentencing. In response to the defendant's request for an attorney, the judge told her that she had waived her right to counsel. When he was told in an out-of-court conversation that she had not paid, the judge issued a bench warrant for the defendant's arrest predicated on the defendant's failure to appear for a fictitious court date. The defendant periodically made small payments until the judge told her that she had paid everything she owed. Although receipts for these payments were issued, nothing indicated to which charge the money had been applied, and no court records were made of any payments that were applied toward the restitution obligation. More than a year and a half after her last payment had been made, the defendant received a letter from the judge asserting that her speeding fine had still not been paid. When the defendant told the judge that she was unable to pay any more, he suspended her license. *In the Matter of Hamel*, 668 N.E.2d 390 (New York 1996).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed from office a judge who had (1) engaged in a vituperative campaign against a lawyer with whom he had a personal feud by sending numerous harassing, threatening, and disparaging anonymous communications to the lawyer; (2) publicly disseminated a list of "13 suggestions for confrontational or intentionally offensive criminal defense attorneys;" (3) publicly criticized a defense being raised in a pending proceeding before his court; (4) filed a false report to a police official; and (5) given testimony during the Commission's investigation that was false, misleading, and lacking in candor. *In the Matter of Mogil*, 673 N.E.2d 896 (New York 1996).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had (1) failed to remit court funds to the state comptroller by the tenth day of the month following collection as required by state law and (2) failed to cooperate in the Commission's investigation of the matter. *In the Matter of Miller*, Determination (New York Commission on Judicial Conduct January 19, 1996) (www.scjc.state.ny.us/miller.htm).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed from office a part-time judge who had been disbarred for conduct involving dishonesty, fraud, and deceit in his handling of an estate in his capacity as a private attorney. He had taken \$242,745 in unauthorized fees from an estate for which he was an attorney and executor. *In the Matter of Embser*, 688 N.E.2d 238 (New York 1997).

Accepting the determination of the State Commission on Judicial Conduct that a judge should be removed, the New York Court of Appeals concluded that the Commission had established that the judge had violated the rules of judicial conduct by (1) presiding over cases involving his friends notwithstanding that he had been previously cautioned by the Commission against doing so, and (2) confronting a woman, in the presence of her employer, after she had sent a letter to the editor of the local newspaper criticizing the judge. (1) The judge had presided over four criminal cases and 17 contested motor vehicle cases in which the arresting trooper was someone he had known since about 1970, with whom he fished, socialized in each other's homes, and often had coffee in a local diner. The judge presided over five animal control violation cases filed by someone the judge described as a "friend of mine" and over 17 cases in which the defendant was that friend's son. The judge never notified any of the other parties of his relationship with the trooper or the family. Even after being notified that the Commission was investigating his handling of cases brought by the trooper and involving his friend and his friend's family, the judge continued to hear cases involving them. (2) The North Country Gazette published a letter by Hilda J. VanDerwarker in which she criticized the judge's handling of her speeding ticket. The following day, the judge went to the dentist's office where VanDerwarker was employed as a dental assistant and spoke to her and her employer. *In the Matter of Robert*, 680 N.E.2d 594 (New York 1997).

Without elaboration, the New York Court of Appeals accepted the determination of the State Commission on Judicial Conduct that removal was the appropriate sanction for a judge who had displayed bias and improper demeanor in a number of cases, including commenting to his court clerk, that "every woman needs a good pounding now and then," and stating to his clerk and another judge that he felt that orders of protection "were not worth anything because they are just a piece of paper," that they are "a foolish and unnecessary thing," and that they are "useless" and of "no value." *In the Matter of Roberts*, 689 N.E.2d 911 (New York 1997).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had improperly intervened on behalf of his daughter in three incidents. After his daughter, Donna Watson, had been arrested for driving while intoxicated, the judge went to the sheriff's department station at which she was being held, arriving as his daughter was about to be transported for arraignment. The sheriff's deputies recognized the judge, knew that he was a judge, and released Watson, rather than proceed with the arraignment. Appearing angry and upset, the judge loudly said to one of the deputies, "Wouldn't you have called me? You have my number." The judge also said, "Are you afraid of losing your job? With all my problems, you've caused me another one." The judge told one of the deputies that Watson did not need to be arrested and said that he "didn't need this shit right now." In the second incident, after his daughter told him his granddaughter, Carla Watson, had left home after a disagreement with her mother, the judge learned that Carla was at a police station and went to the station. When the judge asked one of the officers where his granddaughter was, the officer, who did not know the judge, refused to reveal her whereabouts. After the judge said that he was Carla's grandfather and the village justice, the officer then revealed that she had been sent to stay with a family named Ormsby. The judge was agitated and spoke loudly. He stood within two feet of the officer and, raising his hand, yelled, "Where the fuck do you live?," "How long have you lived in this fuckin' village," and, "Where do you fucking people get off doing what you did?" The judge said to the officer, "I'll have your fuckin' job." Upon learning where Carla was staying, the judge said, "The fuckin' Ormsbys; I can't believe you people." In the third incident, the judge's daughter told the judge that William Berry had come to the judge's home, attempted to remove a wheelbarrow, and verbally abused Watson and her children. Watson had an order of protection against Berry, which had been signed by the judge's fellow judge, William Danehy. The judge and a friend drove around the village looking for Judge Danehy until they spotted him pumping gasoline at a station on a public street. The judge approached Judge Danehy and stood above him about a foot away. The judge asked Judge Danehy about the order of protection. Judge Danehy responded that he had found no violation. The judge loudly berated Judge Danehy, exclaiming, "If you won't protect my daughter, who will?" The judge said that Judge Danehy was "no good" and was not worthy of being a judge. The judge was red in the face and gestured with his hands at Judge Danehy. The judge's friend and at least one other patron of the gas station observed the confrontation. Judge

Danehy was frightened and appeared shaken after the confrontation. *In the Matter of Chase*, Determination (New York State Commission on Judicial Conduct June 10, 1997) (www.scjc.state.ny.us/chase.htm).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals held that removal was the appropriate sanction for a judge who had (1) passed a note to his court attorney concerning the physical attributes of a female law intern, (2) suggested to the intern that she remove part of her apparel in his presence, (3) made false statements to the Commission, and (4) gave deceitful responses to the governor's screening committee and to the staff of the senate judiciary committee when they were considering his nomination to a different court. (1) The judge had passed a note to his court attorney that read, "She has some knockers — Look at those nipples sticking out," referring to a female law intern who was also in the room. (2) Shortly thereafter, the judge suggested that the law intern remove her jacket after she remarked that it was hot in the room, and when the woman replied, "Have you lost your mind? I don't have anything on underneath my jacket," responded, "Why don't you take it off anyway?" (3) During the Commission investigation, the judge, under oath, had denied that he ever suggested that the intern disrobe, despite the contrary testimony of the other two persons in the room at the time. The judge had also advanced under oath varying versions of the circumstances surrounding the note that were at odds with the testimony of the court attorney. (4) Two months after giving testimony in the Commission investigation, while under consideration for an appointment to a vacancy on the supreme court, the judge responded "no" to a question on a questionnaire from the governor's judicial screening committee that asked, "Have you ever been the subject of any inquiry or investigation by a federal, state or local agency (other than for routine background investigations for employment purposes)?" After the governor nominated the judge, the judge failed to execute a waiver authorizing the Commission to provide records relating to him to the senate judiciary committee. When counsel for the committee asked the judge whether there were any complaints or other problems with the Commission, the judge said "no." In subsequent testimony in the Commission's investigation, the judge falsely said that the committee's counsel had never asked him whether he had any disciplinary complaints before the Commission. *In the Matter of Collazo* 691 N.E.2d 1021 (New York 1998).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed a judge from office for (1) a pattern of knowing disregard of the law, (2) intemperate, disparaging name-calling of young prosecutors, and (3) insensitive remarks. (1) The judge willfully disregarded the law in disposing of criminal charges in 16 cases: 13 dismissals for facial insufficiency, one purportedly in the interests of justice, and two adjournments in contemplation of dismissal. Cases were dismissed without notice or an opportunity for the prosecution to be heard, without allowing an opportunity to redraft charges, without requiring written motions, and in the case of adjournments in contemplation of dismissal, without the consent of the prosecutor. (2) The judge demonstrated impatience and intolerance, even at times ordering prosecutors who disagreed with him out of the courtroom. For example, the judge subjected prosecutors to harsh, personal criticisms when they would not accept his view as to the "worth" of a case. The judge chastised prosecutors for their bail recommendations because he did not want to be criticized for setting low bail and his lectures about the unfair actions of "your society" or "your government" at times elicited laughter or applause in the courtroom. The judge conceded that on several occasions he made derisive remarks in open court, referring to prosecutors' allegiance to their office policies, calling them "good little soldiers," "good little soldier boys," "mannequins," and "puppets," or commenting that they were "earning another stripe on the arm" or "notch on the belt" every time they put someone in jail. In open court, he called them nicknames, such as "Princess" or "Princess Nancy," "Mr. Nuisance," and "Marshal Dillon" or "the Marshal." The lawyers testified they felt belittled, degraded, and demeaned by the judge's open-court sarcasm and ridicule. (3)(a) The judge heatedly accused a visually impaired prosecutor of having broken his lectern by leaning on it and telling him that he would "teach" him "how to properly stand up in court." A year later, when the judge ran into the prosecutor after business hours at a restaurant bar near the courthouse, he said in a manner that was "not kidding" or "jovial" — "he's the one who broke my lectern." (b) The judge told one female prosecutor that she was "too sexy" to wear flat shoes and that she had "nice legs" and told another that she looked better in shorter skirts. (c) In a case involving two African-American women, the judge, attempting to explain to a prosecutor why his disposition of the case was appropriate, stated: "At the risk

of sounding racist and sexist, [the case] is really just two women, and you know sometimes certain things are just cultural.” *In the Matter of Duckman*, 699 N.E.2d 872 (New York 1998).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had (1) failed to remit any funds to the state comptroller as required by statute even though she collected \$5,990 in fines, fees, and surcharges, and (2) failed to cooperate with the Commission. *In the Matter of Coble*, Determination (New York State Commission on Judicial Conduct February 5, 1998) (www.scjc.state.ny.us/coble.htm).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had (1) failed to fulfill his statutory duties to report dispositions and remit court funds to the comptroller, (2) failed to maintain a docket of motor vehicle cases, (3) failed to maintain a docket of criminal cases, (4) failed to maintain a cashbook, (5) failed to issue duplicate receipts, (6) failed to take action on 111 cases, failing to send fine notices to defendants who had pleaded guilty by mail and failing to schedule trial for defendants who had pleaded not guilty, and (7) failed to suspend the driving privileges of defendants who had not answered summonses, paid fines, or appeared for trial. *In the Matter of Sohns*, Determination (New York State Commission on Judicial Conduct October 19, 1998) (www.scjc.state.ny.us/sohns.htm).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals concluded that removal of a judge was justified by his intemperate demeanor, biased behavior against victims of domestic violence, disregard of the law, and an egregious assertion of influence for private gain. (1) After learning that Detective Viohl had criticized his bail decision in a case, the judge went to the police station, complained about the criticism, and, in a loud and angry manner, said to Detective Viohl, “If you have anything to say to me, grow some balls and say it to my face. You’re nothing but an asshole and everybody in town knows you’re an asshole. You’re nothing but a low life scumbag and everybody in town knows you’re shit.” The judge threatened to subpoena confidential hospital records from when Detective Viohl had been treated after a car accident and alleged that the records would show that the detective had been driving while intoxicated. Addressing a second detective (Detective Soto), the judge said, if he had anything to say, he should also “grow some balls” and say it to the judge. The judge then called the detective a “shoplifter and a thief.” In a letter on court stationery, the judge complained to the town board about Detectives Viohl and Soto and their supervisor. (2) The judge did not disqualify himself or offer to disqualify himself from an arraignment based on the complaint of someone who had been the judge’s client between six months and a year earlier. No prosecutor was present for the arraignment. The judge did disclose his prior representation of the complainant to the police detective who had called him for the arraignment. In the presence of the defendant and a police officer, the judge said that the case was weak and that the complainant was “no good” and “a piece of shit.” (3) When a friend and client of the judge consulted him about a property dispute with a neighbor, the judge advised him to file a complaint with the police department. After the friend told the judge the police had declined to file charges because they determined that the matter was not criminal, the judge went to the police station and asked that a criminal complaint be filed; when the desk officer declined, the judge then went to the police chief who also refused to file charges. The judge said that there were things that he could do for the chief with the town board and remarked, “One hand washes the other.” The chief terminated the conversation. The judge then spoke with the assistant district attorney assigned to his court and tried to persuade her to file charges, but she declined to do so. The judge spoke to the chief assistant district attorney and urged him to file charges. The chief assistant district attorney refused, but he directed that the matter be referred for mediation although ordinarily referrals are not made by the district attorney’s office unless criminal charges are pending. (4) During an arraignment, as he was reading the charges from the bench for a defendant charged with assault and violation of an order of protection for hitting his wife with a telephone, the judge stated “What was wrong with this? You need to keep these women in line now and again.” Both the judge and the defense attorney laughed. The defense attorney then said, “Do you know why 200,000 women get abused every year? Because they just don’t listen.” The judge and the defense attorney laughed, and the judge did not rebuke the lawyer for the remark. The defendant was present. (5) During an arraignment, when the judge

was reading the charges from the bench against a woman who was accused of sexually abusing a 12-year-old boy, the judge said, "What I want to know is where were girls like this when I was 12." The remark was made in the presence of the defendant and the arresting officer. The judge repeated the statement to the court clerk and court officer. (6) At various times between 1994 and 1996, the judge made statements off-the-bench to his court clerk and the assistant district attorney indicating that he believed that many domestic assault charges were exaggerated by women and unfair to men and that he was skeptical about the merits of domestic assault cases in which the primary witness was the victim and the complaint was signed by a police officer instead of the victim. The judge repeatedly questioned the assistant district attorney concerning orders of protection in such cases. He said that he did not favor issuing an order of protection or keeping an alleged abuser out of the home unless the victim had come to court with a turban of bandages on her head. The judge said, "If a female victim was truly frightened, [she could] leave the home and go to other family or friends or to the shelter." The judge also told the assistant district attorney several times that he did not like most domestic violence cases because they involve "he said, she said" issues. The judge periodically told the court clerk that the police and prosecutors should be "more discreet" with domestic abuse cases and that the police should not always arrest the defendant because, "most likely, the defendant is the father; he's the husband; he's the one who makes the money, and it's not right that they're told that they can't go back into the house." (7) At an arraignment, a woman who had filed a charge of harassment against the defendant told the judge that she did not want the defendant prosecuted. The judge told her to recant in writing on the complaint itself, without explaining the potential adverse consequences of recanting a sworn statement to the police. The complainant, who was not represented by counsel, recanted in writing on the complaint. No prosecutor was present, and the judge dismissed the charge without first obtaining the consent of the prosecution. (8) The judge arraigned a defendant charged with driving while intoxicated who had failed to make previous court appearances because he had been hospitalized with serious injuries. Although the assistant district attorney recommended that the defendant be released pending trial, the judge set bail at \$500. Detective Viohl then advised the judge that the defendant had been hospitalized and had surrendered, and assured the judge that the defendant would return to court. The judge replied in a voice loud enough to be heard throughout the courtroom, "Your word and \$500 ought to get him back in court." After court, Detective Viohl went to the judge's chambers and asked why the judge had embarrassed him in a courtroom full of people, and the judge replied, "Well, you stick up for a piece of shit like that, you know that's what happens." *In the Matter of Romano*, 712 N.E.2d 1216 (New York 1999).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had (1) neglected his judicial duties and (2) failed to cooperate in the Commission's investigation. The Commission found that, notwithstanding that he had handled not more than nine cases a month since 1995, the judge had failed to maintain proper court records, including dockets, case files, a cash-book, bank statements, canceled checks, and a check register; kept court records in an office in his home that he acknowledged was a "shambles" and that included personal records, newspapers, clothing, boxes, tools, garbage, and other litter; was unable to locate many of the records requested by the Commission; failed to report cases and remit funds to the state comptroller within ten days of the month following collection; failed to remit court funds in early 1995 in order to "get back" at the town board for refusing to give him additional compensation because he was handling additional cases during a period in which he was the only judge of the court; and between December 1995 and September 1997, failed to deposit court funds in his official account within 72 hours of receipt, as required. *In the Matter of Gregory*, Determination (New York State Commission on Judicial Conduct March 23, 1999) (www.scjc.state.ny.us/gregory.htm).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had (1) failed for over three years to file reports and remit court funds to the state comptroller by the tenth of the month following collection as required by statute; (2) failed to issue receipts for fines, complete dockets of his cases, or report cases and remit court funds to the comptroller for the matters that he had handled; and (3) in a small claims case, sent a summons to the defendant that stated that a warrant would be issued for his arrest if he did not appear in court in response to the claim. The judge had agreed with his fellow

judge to adjudicate all of the cases in the court except those from which he might be disqualified. The two judges had agreed that the other judge would issue receipts, prepare dockets, and report and remit to the comptroller in her own name, even though the judge had adjudicated the cases. Between March 1995 and August 1997, the judge failed to deposit court funds within 72 hours of receipt as required by rules; a \$350 fine remained undeposited as of the date of the charges. Even though he reported only 51 cases in his own name between January 1995 and March 1998, the judge failed to issue receipts in 15 of the 33 cases in which he received court funds in violation of statute; failed to maintain suitable records and dockets of all criminal and civil cases; and failed to maintain a cashbook in violation of rules. *In the Matter of Kosina*, Determination (New York State Commission on Judicial Conduct November 9, 1999) (www.scjc.state.ny.us/kosina.htm).

Agreeing with the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed from office a part-time judge who had (1) made inappropriate, obscene, and sexist remarks about another judge in the course of his judicial duties, (2) neglected his judicial duties by refusing to deal with more than 100 cases over eight months, (3) permitted an attorney with whom he shared office space, a business telephone, and mailing address to appear before him in six criminal cases over five years without disclosing their relationship or inviting objections, (4) permitted a private individual to sit at the bench and make ex parte recommendations with respect to the sentencing of certain defendants, and (5) represented his former court clerk in her action against the town in which he served as a judge. (1) Several times the judge had referred to a colleague, Judge Catherine Cholakis, in obscene and sexist terms to various court employees and also to a member of the town board in the context of a meeting in which the judge and his colleague were representing the town court. (2) The judge's neglect of more than 100 cases in spite of repeated reminders was not inadvertent or caused by calendar congestion but was motivated by his "pique over the suspension of his court clerk." (3) The judge presided over six cases in which an attorney, Lawrence Long, with whom the judge shared office space appeared. The judge paid no rent for the space, but he appeared for Long occasionally as an accommodation. The judge's name appeared on the office door below that of Long; the judge's professional stationery listed Long's address and telephone number; the judge received mail and telephone calls at the office; Long's secretary took phone messages for the judge and did typing for him occasionally; the judge had used the office to meet and to conduct closings. The judge did not disclose on the record that he shared office space with Long, nor did he ask whether there were objections to his presiding. (4) The judge had received a letter of dismissal and caution from the Commission about the judge's enlistment of the director of a private defensive drivers school in virtually an official capacity in his court, allowing him to review mailed-in pleas and sit at the bench and make recommendations as to whether certain defendants in traffic cases should be required to enroll in his own driving program, but continued to invite this individual to sit in the courtroom and then make ex parte recommendations regarding driver training of traffic offenders and to distribute pamphlets of that person's training program, only advising defendants who specifically asked, that any course approved by the Department of Motor Vehicles was acceptable. (5) The judge represented, as attorney of record, his former clerk in her suit against the town to vacate her dismissal. *In the Matter of Assini*, 720 N.E.2d 882 (New York 1999).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed a judge from office for (1) making derogatory racial remarks about a crime victim while attempting to influence a disposition, (2) making disparaging remarks about Italian-Americans, (3) displaying intemperate behavior and pressing a prosecutor to offer a plea for the judge's own personal convenience, and (4) testifying at a proceeding with reckless disregard for the truth. (1) During a conversation at a charity event with a prosecutor, the judge urged the prosecutor to "be reasonable" in offering pleas to two of the defendants in a pending, four-defendant murder case and not to worry about "giving away" the case because no one cared, since the 67-year-old murder victim was "just some old nigger bitch." (2) While at a charity dinner, the judge stated, "You know how you Italian types are with your Mafia connections" after the county district attorney, an Italian-American, in response to the judge's complaints about having to run against an opponent, stated, "Some of us have to run for office and others get it handed to them on a silver platter." The judge also admitted to "having made similar ethnically-charged comments to his opponent during an election campaign. (3) During jury deliberations in

a rape case held in Utica, fearing protracted deliberations, the judge declared that he detested Utica and wished to return to Syracuse because it was “men’s night out.” He accused the prosecutor of “overcharg[ing]” the case and pressed her to offer a plea to a misdemeanor charge so that he could “get out of this fucking black hole of Utica,” threatening to declare a mistrial if she refused. (4) The judge had testified during criminal proceedings that he had discussed the defendant with two named attorneys when, in fact, he had not. *In the Matter of Mulroy*, 731 N.E.2d 120 (New York 2000).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a judge who had (1) required indigent defendants to pay for assigned counsel by performing community service, (2) exhibited bias before conviction by threatening defendants with jail and calling them names, (3) failed to advise defendants of their right to counsel and took action against them without notice to their lawyers when he knew that they were represented, (4) repeatedly used intemperate language, (5) jailed without bail defendants who were statutorily entitled to bail, (6) summarily convicted on criminal contempt charges individuals whom he concluded without trial or guilty pleas had violated some court order, (7) sat on cases in which he was the complaining witness and in which he had knowledge of disputed evidentiary facts, and (8) frequently engaged in ex parte communication. Since 1990, the judge required defendants who received assigned counsel to work it off by performing community service and continued the practice even after three defense attorneys and the district attorney advised him it was improper. When the judge arraigned Bowman for criminal contempt for violating an order of protection, the judge threatened to put him “so far back” in jail that no one would find him, used the word “fuck,” and told him to stop “screwing around.” The judge ordered him committed without bail even though a statute requires bail for misdemeanors and the judge had no reason to believe the defendant would not reappear in court. The judge gave the defendant a conditional discharge and ordered him to serve 150 hours. When the probation department complained that he had not reported for community service, Bowman pled guilty to criminal contempt, and the judge sentenced him to four weekends in jail. Before being admitted to jail, the defendant had to have a TB test; the judge gave him a paper that said the tests are given on Tuesday when in fact they are given on Monday; because he did not take the test, the defendant could not start the sentence on the scheduled Friday, and the judge issued a bench warrant for arrest on criminal contempt. When the defendant appeared without counsel, the judge would not listen to his explanation, said he was not taking “the fucking blame,” and committed him to jail in lieu of bail. When the defendant appeared for arraignment, his attorney objected because the judge was the complaining witness, but the judge refused to recuse. When an 18-year-old defendant named Hulkow charged with DWI was arraigned, the judge called him a “con man” and a “finagler” without provocation; the judge did not know the defendant. Hulkow pleaded guilty and was sentenced to community service. Later that year, after Hulkow pled guilty to a charge of possession of a can of beer at the community service work site, the judge recorded a charge of violation of his conditional discharge even though no such charge had been lodged in the court, and the judge did not give him notice. The judge gave Hulkow a second conditional discharge requiring an additional 25 hours of community service and drug and alcohol evaluation but did not give the conditions to Hulkow in writing and Hulkow did not sign the discharge. When the judge was advised that Hulkow had not kept an appointment for an evaluation or arranged to complete his community service, the judge prepared and signed informations, supporting depositions, and bench warrants for Hulkow’s arrest alleging criminal contempt. The judge arraigned Hulkow and committed him to jail in lieu of bail even though he was the complaining witness. When a 19-year-old man named Velie with history of psychiatric problems was arraigned on a misdemeanor, the judge committed him without bail even though a statute requires that bail be set on a misdemeanor but released him the next day. After speaking with Velie and his father, the judge prepared and signed a supporting deposition and a bench warrant for arrest on the grounds that he had left his home for purposes other than employment. When he was brought before the judge, Velie refused to sit down and attempted to leave and was arrested for resisting arrest. Although the judge was a witness and filed his own supporting deposition, he again committed Velie to jail without bail and continued to preside and dispose of the charges. The judge found a neighbor guilty of harboring a dangerous dog and threatened to have it destroyed if she did not keep it confined. When her hus-

band questioned the judge, the judge said “I don’t know any stupid ass that would go to jail over a dog” and used the word “fuck.” Later, the judge saw the dog running loose and summarily issued an order to have it seized and destroyed; after consulting an attorney, the judge held a hearing even though he was witness; he ordered her to surrender the dog to be destroyed. The judge called twice and threatened to have her incarcerated if she did not surrender the dog. The judge refused a request to recuse, agreed to another hearing, and again ordered the dog destroyed. When the judge was informed that a defendant named Waldron whom the judge had sentenced to three years probation for criminal mischief had violated the terms of his probation, the judge issued a warrant without advising Waldron’s attorney, remanded Waldron to jail on a charge of criminal contempt without bail even though no accusatory instrument had been filed and a statute required that bail be set. When Waldron admitted to violating the terms of his probation, the judge assumed he was pleading guilty to criminal contempt. Arnold was charged with aggravated harassment stemming from a dispute over some construction work that he had done on the home of Mary Yanulavich whom the judge had known for many years and considered “more than a casual acquaintance but not a close friend” and who had told the judge of the threat. The judge did not advise the defendant of his rights. Without provocation, the judge told him to shut up and not say another word until he was done. The judge committed him to jail without bail. The judge acknowledged there was “something about Mr. Arnold” that made him think of “these gypsy contractors” and that he gave Yanulavich extra credibility in the case. After the judge was advised that a defendant named Frey had not completed the 40 hours community service to which the judge had sentenced him, the judge issued a warrant for arrest on criminal contempt. When Frey was brought before him, the judge did not assign counsel despite his request and remanded him to jail in lieu of bail. The defendant did not know he was charged with criminal contempt and did not plead guilty, but the judge recorded he had been convicted. When advised Frey had not completed community service, the judge issued a bench warrant on the charge of harassment and did not assign counsel despite Frey’s request. When advised a second time that Frey had not completed his community service, the judge issued a bench warrant; although Frey did not plead guilty, the judge recorded that he did and sentenced him to 15 days and increased his community service to 120 hours. The judge revoked the bail of a defendant who had been charged with harassment while on probation but did not schedule another court appearance for over two months, although a statute requires a prompt hearing. The judge acknowledged that he wanted to keep the defendant in jail for his own benefit. *In the Matter of Buckley*, Determination (New York State Commission on Judicial Conduct April 6, 2000) (www.scjc.state.ny.us/buckley.htm).

The New York Court of Appeals accepted the determination of the State Commission on Judicial Conduct that a town court justice be removed from office for (1) failing to deposit court funds in his official account within 72 hours after receipt, in violation of court rules, (2) failing to remit court funds to the state comptroller by the tenth day of the month following collection, in violation of statutes, (3) his conduct during a disagreement between the judge and a local attorney who represented a funeral home in an action against the judge for an unpaid bill, (4) acting in a retaliatory manner toward a second attorney, and (5) suspending a traffic defendant’s driver’s license out of personal animosity for the defendant’s attorney — a third attorney. *In the Matter of Corning*, 741 N.E.2d 117 (New York 2000).

The New York State Commission on Judicial Conduct determined that removal was the appropriate sanction for a part-time town court justice who had been convicted of two misdemeanors for physically abusing a mentally incompetent patient in a nursing home where she was employed as a licensed practical nurse. She had been convicted of third degree assault and endangering the welfare of an incompetent person. *In the Matter of Stiggins*, Determination (New York State Commission on Judicial Conduct August 18, 2000) (www.scjc.state.ny.us/stiggins.htm).

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals held that removal was warranted for a judge who had (1) engaged in a course of conduct, arising out of a personal relationship with his law clerk that detracted from the dignity of his office, seriously disrupted the operations of the court, and constituted an abuse of his judicial and administrative power, and (2) engaged in

favoritism by issuing an ex parte order terminating the suspension of the driver's license of a long-time acquaintance. (1) The judge had had a two-month relationship with his law clerk. When it ended, the judge took hostile and retaliatory actions against his law clerk, interfered with her then-boyfriend's service as a law guardian, and sent a letter to the district administrative judge expressing a willingness to fire his law clerk after she had been transferred to another court. The judge's behavior became increasingly erratic after his relationship with his law clerk ended. Following two panic attacks in one day, he had instructed his deputy clerk to adjourn all cases for the following week, seriously disrupting the work of the court. After the district administrative judge instructed the judge not to go back on the bench until after they met to discuss why petitioner unexpectedly took time off, the judge went to the court and questioned staff members about their conversations with the district administrative judge. The district administrative judge told him to leave immediately and then barred him from the building until further notice. The judge returned to the court at the end of June 1998 after meeting with the district administrative judge. In one incident, the judge followed the chief clerk to her office, pounded on her closed door, and yelled at her as she called the deputy administrative judge. (2) The judge prepared and signed an order to show cause that directed the Department of Motor Vehicles to terminate the license suspension of a social acquaintance, notwithstanding his failure to pay child support arrears although the judge was aware that he was in arrears. *In the Matter of Going*, 761 N.E.2d 585 (New York 2001).

North Carolina

Accepting the recommendation of the Judicial Standards Commission, the North Carolina Supreme Court removed a judge who had been arrested for possessing marijuana, cocaine, and drug paraphernalia and had pled guilty to three felony charges and received a one-year active sentence. *In re Sherrill*, 403 S.E.2d 255 (North Carolina 1991).

Pennsylvania

The Pennsylvania Court of Judicial Discipline removed a judge who had violated the conditions of probation set forth in a sobriety monitoring contract. The Court had previously suspended the judge for six months without pay and placed him on probation for the remainder of his term of office, subject to the judge's immediately entering a sobriety monitoring program contract with the Pennsylvania Bar Association's Lawyer's Assistance Committee. *In re Timbers*, 692 A.2d 317 (Pennsylvania Court of Judicial Discipline 1997).

The Pennsylvania Court of Judicial Discipline removed a former judge from office and declared him to be ineligible thereafter for judicial office for violating laws that prohibit knowingly maintaining devices used for gambling purposes and knowingly permitting premises to be used for unlawful gambling. *In re Chesna*, 659 A.2d 1091 (Pennsylvania Court of Judicial Discipline 1995).

Reviewing a final report filed by the Judicial Inquiry and Review Board recommending removal, the Pennsylvania Supreme Court ordered a judge removed from office for failing to recuse from at least 33 cases involving close personal friends from whom the judge's husband had borrowed \$15,000 to be used in a bar business owned jointly by the judge and her husband or the lender's company. *Pekarski v. Judicial Inquiry and Review Board*, 639 A.2d 759 (Pennsylvania 1994).

The Pennsylvania Supreme Court ordered a justice of the peace removed from office and declared ineligible thereafter for judicial office on the basis of his convictions on misdemeanor charges or hindering apprehension or prosecution and obstructing justice, noting the record was inadequate to sustain a determination that the justice had been convicted of a crime involving misuse of the judicial office. *In re Scott*, 596 A.2d 150 (Pennsylvania 1991).

The Pennsylvania Court of Judicial Discipline removed from office a former justice of the Supreme Court who had been found guilty of two felony counts of criminal conspiracy, ordered that the justice be ineligible to hold judicial office in the future, and disbarred him. *In re Larsen*, No. 4 JD 94, Opinion (Pennsylvania Court of Judicial Discipline December 31, 2000), Order (February 2, 2000).

Based on stipulations of fact in lieu of a trial, the Pennsylvania Court of Judicial Discipline removed a former judge from office and disbarred him for his conviction on the federal felony charge of conspiracy to violate civil rights based on a conspiracy to “fix” cases before the statutory appeals division of the court of common pleas involving *de novo* review of decisions on matters such as traffic offenses and municipal ordinance violations. *In re Melograne*, No. 1 JD 99, Order (Pennsylvania Court of Judicial Discipline September 29, 2000).

Rhode Island

Accepting the recommendation of the Commission on Judicial Tenure and Discipline, the Rhode Island Supreme Court removed a former judge from office and imposed a monetary sanction for being regularly absent from his courtroom during normal working hours to gamble in a public casino and pleading guilty to three federal felony counts of making false declarations in his voluntary petition for bankruptcy. When his calendar was completed, whether in the morning or afternoon, the judge departed, apparently for the day to go to a casino. The judge admitted he had a gambling addiction. As the result of a failed real estate investment, the judge filed a voluntary bankruptcy petition in which, under the pains and penalties of perjury, he claimed that he had made no payments in excess of \$600 to any of his creditors within ninety days of the filing of the petition although he had, in fact, made such payments to five separate creditors. *In re Lallo*, 768 A.2d 921 (Rhode Island 2001).

The Rhode Island Supreme Court removed an active retired associate justice of the superior court from the bench (and terminated his pension as of the date the court issued its order) for (1) appointing an attorney as a receiver, special master, or similar position in return for payment of approximately 25% of the fees paid to the attorney (approximately \$40,000 in 20 payments); (2) failing to notify all counsel of record in a criminal case that he had business dealings with one of the attorneys of record and with one of the defendants; and (3) although the justice was informed that the defendant in the case was asserting that he had bought the justice, taking no action to deny or discourage that statement. Although noting that the court did not have express statutory authority to suspend pension benefits, the court held that its inherent power to supervise the courts gave it the authority to do so. *In the Matter of Almeida*, 611 A.2d 1375 (Rhode Island 1992).

South Carolina

Agreeing with the findings of the Board of Commissioners on Judicial Standards, the South Carolina Supreme Court removed from office a judge who had issued an arrest warrant at the request of his daughter and released the arrested man from jail after the arrestee paid his daughter \$500. The judge had issued an arrest warrant against Harold Stevens at the request of his daughter charging Stevens with petit larceny and disorderly conduct. The judge's daughter had demanded \$1000 for dismissal of the charges, and Stevens was only released from jail after his girlfriend paid \$500 to the judge's daughter, who then notified the judge to release Stevens. Another \$500 had been promised to the daughter after Stevens's release. Stevens subsequently paid the judge \$500 in two installments. The judge gave Stevens a receipt for both payments indicating the payments were for bond and remitted the payments to the city treasurer. The judge advised Stevens that he would mislead Stevens's probation officer by telling him Stevens was posting bond for someone else. *In the Matter of McKinney*, 478 S.E.2d 51 (South Carolina 1996).

Texas

Affirming in part and reversing in part the findings of the State Commission on Judicial Conduct, and affirming the recommendation of the Commission, the special review tribunal appointed by the Texas Supreme Court removed from office a judge who had (1) made sexual comments and gestures to female attorneys appearing in his courtroom, (2) displayed impatience and disrespect to attorneys appearing before him, and (3) had a deputy sheriff confined pursuant to a writ of attachment. (1) At a Christmas party, the judge had motioned to an assistant district attorney by crooking his index finger as if he wanted her to approach, and stating to her, “I just wanted to see if I could make you come [reach an orgasm] with one finger.” At the same Christmas party, the judge had told an assistant district attorney that she must be on her period because “[W]omen always carry around their purse when they’re on their period.” The judge had told an assistant district attorney who sought to return to her office while a jury deliberated that “[Y]ou are so nice to look at, if you leave, all I’ll have to look at all afternoon are swinging dicks.” The judge periodically referred to female assistant district attorneys as “babes.” (2) During the trial of a criminal case, when an assistant district attorney asked a witness whether he had seen any evidence of another individual being capable of fabrication or lying, the judge sustained a defense objection to the question. The attorney then asked the witness, “In your treatment of her and the knowledge that you have of her and her life and family, have you developed an opinion as to her character for being truthful.” The judge immediately asked counsel to approach the bench and stated to the assistant district attorney, “I can’t believe you just asked that question. I feel like coming across the bench and slapping the crap out of you.” When an attorney in a case did not appear in court, but instead sent one of his associates to attempt to reset the case, after the associate related a remark made by the attorney about the court, the judge replied, from the bench, “[the attorney] can go screw himself” The judge’s comment was quoted in the *Texas Lawyer*. (3) The judge ordered a writ of attachment to be issued to bring a sheriff’s deputy who had not responded to a defense subpoena before him, even though neither the prosecution nor defense had requested such a writ nor filed an affidavit that the deputy was a material witness, without reviewing the recitations in the subpoena and writ of attachment, contrary to the state and federal constitutions. The judge set bail at \$50,000 with the intent that the deputy spend time in jail without receiving evidence as to the deputy’s financial condition. The judge excluded the deputy’s counsel from being present with his client as his client was being addressed by the judge from the bench. The judge stated that he wanted to have the deputy “smell the smells” and “feel what it is like to be in jail,” that he did not want to fine the deputy or hold him in contempt, stating “I don’t want to be a big asshole, I want to be a small asshole,” and that his desire was to “rub the department’s nose in it to get the message across.” *In re Barr*, 13 S.W.3d 525 (Special Court of Review Appointed by Texas Supreme Court 1998).

Accepting the recommendation of the State Commission on Judicial Conduct, the special court of review appointed by the Texas Supreme Court removed from office a judge who had (1) asked another judge to submit a false report to the Commission stating the judge had complied with education requirements imposed by the Commission, (2) called a parking lot attendant a “nigger,” and (3) engaged in self-help to enforce an order he had entered. The tribunal also barred the judge from ever holding judicial office in the future. (1) In February 1996, in response to a finding of misconduct, the Commission privately reprimanded the judge, directed him to complete eight hours of judicial training, and directed him to ask the director of the justice court training center to have a mentor judge appointed. The Commission requested that the judge provide no later than November 30, 1996 the date of completion or the reasons for failure to accomplish the training. During the week of November 25, the judge contacted his mentor judge and learned that the mentor judge could not meet with him before the Commission’s meeting. The judge then asked his mentor, “Well, why don’t you fudge it—why can’t we fudge on it.” His mentor asked what he meant by “fudging,” and the Commission found that the clear understanding of both men was that the judge meant advising the Commission that the work had been completed, when it had not. The mentor judge responded, “I think you’ve misjudged me considerably, that I would not do that.” The judge failed to obtain the eight hours of additional education by the Commission’s December meeting, nor had he completed the training by the meeting in February 1996, nearly one year after the original sanctions were imposed. (2) When an attendant at a parking lot near the courthouse informed the judge that there was a \$3.00

fee for parking in the lot, the judge refused to pay, displayed an identification badge, and stated he was a judge and that he had not paid a parking fee in the past. When the attendant informed the judge that the parking lot was under new management and that the judge would no longer be entitled to free parking, the judge replied that he would move his car to the county employee reserved parking space, which the attendant advised him could result in his car being towed by the county. The special master found by a preponderance of the evidence that when the attendant asked the judge his name, the judge stated, "Can't you read, black mother-f---er?" or "Nigger, can't you f---ing read?" The incident was reported in the *Dallas Morning News*. (3) In a small claims case against a car parts dealer brought by a car owner who claimed the engine he had bought was defective, the judge had ordered the car parts dealer to replace the engine with a used engine within 30 days. The order was not complied with, and when the car owner asked the judge how he could enforce the order, the judge called the car parts dealer, asked him why he did not follow his court order, and ordered him to repair and return the car the same day. The judge then went down to the car parts dealer, placed both the plaintiff and the individual defendant under oath, found the dealer in contempt, and fined him \$2,000. *In re Lowery*, 999 S.W.2d 639 (Special Court of Review Appointed by Texas Supreme Court 1998).

Affirming the recommendation of the State Commission on Judicial Conduct, the special court of review appointed by the Texas Supreme Court removed a judge from office for (1) conspiring to extort money from a probationer, (2) ex parte alterations of conditions of probation, and (3) granting credit for time served in excess of time actually served. (1) The judge was an active participant in several discussions with Danny Mendez and Hollis Mathews, the object of which discussions was to effect the transfer of \$500 from Mathews to the judge for "taking care" of criminal matters pending against Mathews, who was on misdemeanor probation as well as a defendant in a pending criminal proceeding. (2) In 6 cases, the judge took ex parte action to modify or alter conditions of probation, for example, waiving imposed fines or fees, entering an order that driver's license and privileges not be suspended, reducing sentences, and terminating probation, without giving the district attorney's office the opportunity to be heard. (3) In 8 cases, the judge, acting ex parte, granted credit for time served in excess of time actually served. *In re Thoma*, 873 S.W.2d 477 (Special Court of Review Appointed by Texas Supreme Court 1994).

Approving the conclusions of the State Commission on Judicial Conduct, a review tribunal selected by the Supreme Court of Texas removed from office, and prohibited from ever again holding judicial office, a judge who had (1) altered and fabricated criminal docket sheets, official receipts for fines, and monthly reports of collection, (2) furnished those false documents to the Commission, (3) failed to report money he collected in his capacity as justice of the peace to the county auditor as required by statute and practice, (4) cashed certain checks and money orders received in his capacity as justice of the peace but failed to remit the monies to the county treasurer, and (5) failed to forward an abstract of the record of convictions in six cases to the department of public safety. *Judge Lewie Hilton*, Judgment (Special Court of Review Appointed by Texas Supreme Court February 7, 1991).

Washington

Agreeing with the decision of the State Commission on Judicial Conduct, the Washington Supreme Court removed from office a judge who had filed travel vouchers relating to four out-of-state trips that contained false and misleading statements where the judge's claimed judicial business was minimal and wholly incidental to the personal nature of the trips and the reimbursement sought for car and lodging expenses went beyond that needed for the judicial activities in which he was engaged. For example, on the travel voucher related to one trip, the judge indicated he was attending a judicial conference in Florida for the purpose of judicial education, and he received reimbursement for his entire air fare (\$300), 11 days lodging (\$471), and the entire car rental bill (\$187). However, the judge attended no formal conference, but, in the two weeks he was there, met with a local judge and personal friend, and visited a state attorney's office in one county, a criminal complex in one city, and the offices of the Salvation Army. *In re Ritchie*, 870 P.2d 967 (Washington 1994).

The Washington Supreme Court removed a judge from office for (1) continuing to serve after becoming a judge as president of three corporations included in an estate; (2) while an adjustment of the purchase price for one of the assets of the estate was being negotiated, accepting payments of his car loan from the purchaser and failing to disclose the payments to the trustee of the estate; and (3) failing to disclose the payment of the car loan on public disclosure forms. The Commission on Judicial Conduct had recommended suspension for four months without pay and ordered that the judge be censured, attend a judicial ethics course, and amend his filings with the public disclosure commission. In 1989, while a part-time judge, the judge became the personal representative of the estate of Charles Hoffman, a long-time client. The estate included three business corporations, one of which operated a bowling alley, and the judge became president of the three corporations. Although he became a full-time judge on January 8, 1998, the judge did not resign as president of the three corporations that were part of the Hoffman estate until mid-October 1998. On September 19, 1992, the judge and his friend William Hamilton signed an agreement in which Hamilton agreed to purchase the estate's bowling alley business after certain conditions were met. Although the agreement included an open-ended closing date, the judge and Hamilton both testified that they intended the closing date to be September 1, 1992. The judge testified that, if there was a delay in closing, he and Hamilton anticipated that the sales price would have to be adjusted because the price set in the agreement assumed that Hamilton would receive cash flow from the bowling alley during its fall season. Although the judge testified that after September 1, 1992, he basically had nothing to do with the management of the bowling alley, he continued to conduct business on behalf of the corporation. The sale of the bowling alley business was not closed until December 4, 1992. On or about the first week of January 1993, the Hoffman estate was closed and its assets, including the stock of the corporations, were transferred to a trust. Fisher, the judge's former law partner, was appointed trustee. On December 24, 1992, the judge purchased a Cadillac El Dorado, taking out a loan from a bank. On or about January 8, 1993, the day the judge was sworn in as a full-time judge, Hamilton made arrangements to pay for the judge's car loan. Hamilton testified he offered to make the payments because he had never paid the judge for over 15 years' of advice and counsel and friendship that he had received from the judge. According to the judge, he initially declined Hamilton's offer to make the car loan payments, but that Hamilton insisted. Between January 1993 and May 1995, Hamilton made monthly payments on the judge's Cadillac, totaling \$31,185, out of the business account of his company. On March 9, 1993, Fisher, the judge, Hamilton, and his accountant, Iverson met to discuss a price adjustment for Hamilton's purchase of the bowling alley business and agreed to reduce the price by \$92,829. Fisher, in deciding to make the adjustment, relied on the judge, Hamilton, and Iverson for information about the transaction in September 1992. The judge testified that he did not disclose the car loan payments to Fisher before or during the negotiations. The judge also admitted that he did not indicate the receipt of car loan payments on his filings with the public disclosure commission because he understood them to be a gift. The judge's wife testified that the judge told her when he brought the car home that the Cadillac was a commission for the sale of the bowling alley. *In the Matter of Anderson*, 981 P.2d 426 (Washington 1999).

APPENDIX III

**SUMMARIES OF JUDICIAL DISCIPLINE CASES RESULTING
IN AGREED RESIGNATIONS, SUSPENSIONS UNTIL
THE END OF TERM, OR ORDERS BARRING FORMER
JUDGES FROM HOLDING OFFICE**

Agreements to resign

A judge under investigation by the Arkansas Judicial Discipline & Disability Commission resigned, leading to the cessation of proceedings against him. *Letter from Diggs to Arkansas Judicial Discipline & Disability Commission* (April 18, 1990).

Pursuant to a Memorandum of Understanding, a part-time municipal court judge resigned and agreed not to serve in a judicial office or run for judicial office in Arkansas, and the Arkansas Judicial Discipline & Disability Commission dismissed three complaints pending against the judge. The complaints alleged that the judge had been charged with unlawfully operating a motor vehicle while intoxicated, violating the implied consent law, and operating a motor vehicle without a valid driver's license, presided at a hearing where he assessed himself a fine for not having a valid driver's license, failed to promptly dispose of the court's business, gave preferential treatment on traffic tickets issued to two people, failed to properly administer his court or to comply with several state statutes; and signed an order that he had prepared in his capacity as an attorney, canceling a lien on land owned by a client. *Memorandum of Understanding between H. Paul Jackson and Arkansas Judicial Discipline & Disability Commission* (November 13, 1990).

The Arkansas Judicial Discipline & Disability Commission issued a letter stating no further action was necessary or appropriate when a judge had resigned and agreed not to seek elective judicial office following his federal indictment. *In re Hale*, No. 93-208 (Arkansas Judicial Discipline & Disability Commission October 22, 1993).

The Arkansas Judicial Discipline & Disability Commission announced that it had dismissed three complaints against a judge as part of an agreement in which the judge agreed to retire early from the judiciary effective March 15, 1994. The complaints apparently related to the judge's intoxication. *In re Plunkett*, Nos. 93-213, 92-227, and 93-233 (Arkansas Judicial Discipline & Disability Commission January 22, 1994).

The Arkansas Judicial Discipline & Disability Commission noted that a judge had admitted that there was sufficient evidence in four complaints pending against him to warrant imposition of a sanction by the Commission and that the judge had agreed to resign and to never seek or accept a position as a judge within the state. One complaint, filed by a state representative, concerned the judge's involvement in presenting a check to that representative in the capitol during a legislative session on behalf of the Arkansas Municipal Judges Council. One complaint concerned the operation of and comments by the judge in the truancy program in the municipal court. Two complaints concerned the judge's actions as described by the judge's testimony in the "Whitewater" trial under a promise of immunity. *Letter to Judge Watt* (Arkansas Judicial Discipline & Disability Commission June 18, 1996).

Pursuant to the judge's agreement to resign and never again serve as a judge in Arkansas, the Arkansas Discipline & Disability Commission agreed to take no further action relative to 26 formal charges pending against the judge. The charges included verbal and physical assaults on his first and second wives, adultery, using and selling illegal drugs, driving while intoxicated and hitting a parked car, failing to report the accident to police, filing a fraudulent insurance claim, and lying to police during an investigation of the accident. *Morley*, Nos. 94-163 & 96-107, Memorandum of Understanding (Arkansas Discipline & Disability Commission August 7, 1997).

In a memorandum of understanding, a judge agreed to cease to perform judicial duties and never to seek or accept appointment or election to judicial office, and the Arkansas Judicial Discipline & Disability Commission agreed to take no further action on the complaints filed against the judge. According to newspaper reports, the judge was being investigated because he had taken a 17-year-old boy to a casino and given him money with which to gamble. *In re Swindell*, No. 98-164, Memorandum of Understanding (Arkansas Judicial Discipline & Disability Commission November 11, 1998).

The Arkansas Judicial Discipline & Disability Commission announced that no further action was necessary against a judge who had resigned and agreed not to run again for judicial office. The Commission had charged that the part-time judge presided in proceedings involving his personal clients in eight cases; made threatening remarks to an individual who filed a judicial ethics complaint against him; attempted to use his judicial office to have a sheriff

“help” him to have a speeding ticket dismissed; directed a police officer not to arrest and to release a minor in possession of three kegs of beer; issued temporary driver’s permits to people whose drivers licenses had been revoked; used his judicial office to have a client released from jail; after an improper ex parte meeting with defense counsel, dismissed criminal charges against an individual, allowing the defense counsel to use the dismissal to avoid a parole revocation; without the presence of or notice to the prosecutor, accepted a guilty plea to a lesser charge; accepted gifts and favors from a car dealership while presiding over cases involving that car dealership, ruling in favor of the car dealership 43 times and against it once; and wrote approximately 166 checks with insufficient funds in the checking accounts. *In the Matter of Thomas*, Nos. 96-215, 97-238, Press release (Arkansas Judicial Discipline & Disability Commission May 31, 2001).

The Arkansas Judicial Discipline & Disability Commission announced the resignation of a judge who had been arrested and charged with a felony for fraud-drug paraphernalia and knowingly and intentionally acquiring a controlled substance by theft or fraud. *In the Matter of Lawrence* (Arkansas Judicial Discipline & Disability Commission December 14, 2001).

Resolving a formal complaint filed against a judge, the Mississippi Supreme Court approved an agreed statement of facts and recommendation following the judge’s admission to the allegations (although he provided explanations); his resignation and his agreement not to serve in a judicial office, file to run for future judicial office, or file a certificate with the court for designation as a senior judge. The order does not describe the conduct for which the judge was charged. *In re Maples*, 611 So. 2d 211 (Mississippi 1992).

Based on a stipulation of facts, the North Carolina Supreme Court accepted the Judicial Standards Commission’s recommendation that a judge be censured for (1) making handwritten entries of “guilty” in the cases of two individuals who previously indicated their intent to enter pleas of “not guilty”; (2) attempting to have a defendant plead guilty with the knowledge that the defendant was represented by counsel and that the counsel was not present in court; (3) sentencing a defendant to a 45-day active sentence but refusing to credit defendant with jail time served pending disposition as required by law; and (4) making statements and taking actions, in and out of court, that could be considered by some as less than patient, dignified, and courteous to attorneys, witnesses, litigants, and court personnel. The judge resigned and, in her letter of resignation, stated she would not seek re-election or serve in any judicial capacity within North Carolina. The judge also waived a formal hearing and agreed to accept a recommendation of censure. The Commission agreed to dismiss all charges not addressed in the stipulation. Noting that the resignation of a judge does not deprive it of jurisdiction or limit the sanctions available, the court found that the conduct warranted removal, but accepted the recommendation of censure based on the judge’s acknowledgement of wrongdoing, her resignation from office, and her agreement not to hold future judicial office. *In re Renfer*, 493 S.E.2d 434 (North Carolina 1997).

The Texas State Commission on Judicial Conduct accepted a voluntary agreement to resign in lieu of disciplinary action from a judge who had been charged with (1) engaging in inappropriate speech and conduct toward a court employee, who had filed an EEOC complaint; attempting to bring criminal charges against the employee’s husband; having a consensual sexual relationship with a subordinate at his office after hours; giving \$100 to his clerk and other employees who had been called as witnesses during an EEOC hearing on a complaint against the judge (purportedly to pay for lunches); attempting to communicate with the EEOC administrative law judge that the employee’s husband had allegedly retaliated against one of the judge’s witnesses; submitting a false affidavit to the Commission; and giving inconsistent testimony concerning his sexual relationship with the subordinate, and (2) during his campaign for judicial office, filed a complaint written on court stationery with the sheriff alleging that his opponent, a deputy sheriff, had accepted a bribe to perform personal services for a prisoner and stating that the judge would withdraw his complaint if the deputy withdrew from the race. The judge denied the charges but agreed to resign and to be disqualified from sitting or serving as a judge in Texas. *In re Christian*, Nos. 00-0452-JP and 00-0567-JP, Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action (Texas State Commission on Judicial Conduct December 7, 2001).

The Texas State Commission on Judicial Conduct accepted a voluntary agreement to resign in lieu of disciplinary action from a judge who had pleaded guilty/nolo contendere to a felony information alleging theft of over \$20,000 but less than \$100,000. *In re McCully*, CJC No. 02-0097-MU, Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action (Texas State Commission on Judicial Conduct December 6, 2001).

The Texas State Commission on Judicial Conduct accepted a voluntary agreement to resign in lieu of disciplinary action from a judge who had been charged with (1) presiding in a case in which one of the attorneys was a personal friend and making decisions that were inconsistent with the law because of the relationship and having the attorney represent the judge at no charge in a custody modification matter while the case was pending; (2) meeting with the attorney and others at the judge's home and discussing the case, a pending sanctions motion, and the judge's probable ruling; (3) appointing a local attorney/mediator with whom he had a personal relationship to a case pending in his court and refusing to substitute another mediator; and (4) refusing to accept service of a lawful subpoena. The judge denied the charges. *In re Gibson*, No. 83, Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action (Texas State Commission on Judicial Conduct December 6, 2001).

Pursuant to a judge's agreement to resign effective January 1, 1997, the Washington State Commission on Judicial Conduct agreed to close a matter based on charges that the judge had failed to comply with an earlier order. The judge denied these allegations but agreed that the interests of justice would best be served by his resignation and the closing of the matter. The judge also agreed not to serve in any judicial position subject to the code. In the earlier order, the Commission had censured the judge and ordered him to undergo an evaluation for chemical/alcohol abuse and, if recommended, continue his treatment and to continue psychological counseling and treatment focusing on his failure to respect appropriate personal boundaries of others, particularly women. The censure was for a pattern of inappropriate sexual behavior, for assaulting his then-wife, for improperly requiring a party to file an affidavit of prejudice against him after he had recused himself, for conducting a mitigation hearing on a traffic citation received by a woman he was dating, and for inappropriately touching a pregnant court employee and commenting, "I can't get you pregnant, obviously." *In re Wilcox*, No. 94-1693-F-53, Commission Decision (Washington State Commission on Judicial Conduct December 1, 1995).

Pursuant to a stipulation with the Washington State Commission on Judicial Conduct, a judge resigned, effective January 1, 1996, and agreed not to serve in any judicial capacity without first securing approval from the Commission. The Commission stated it believed that the judge suffered from a health problem that rendered her unable to continue her service in the judiciary and by her conduct had violated the code of judicial conduct. The judge did not admit that she suffered from a health problem or that she had violated the code, but she did not dispute that the Commission could take appropriate action. *In the Matter of Bordlemay*, No. 95-2017, Stipulation and Order (Washington State Commission on Judicial Conduct October 13, 1995).

Based on a judge's agreement to accept a reprimand and to resign from office effective December 31, 1994, the Washington State Commission on Judicial Conduct reprimanded a judge for (1) intemperate behavior toward another judge, consisting of written notes and verbal comments witnessed by other persons; (2) derogatory remarks about defendants within the hearing of court personnel and other persons; (3) verbal abuse of court personnel or derogatory comments about them to third persons; (4) comments of a sexual nature that were vulgar and unwelcome; (5) lack of impartiality in administrative duties regarding personnel; and (6) asking court employees under his supervision and control to engage in activity in support of his re-election campaign during court time. The judge also agreed not to seek or serve in any judicial capacity under the jurisdiction of the Commission. *In re Allan*, No. 92-1257-F-44, Order of Reprimand and Closure (Washington State Commission on Judicial Conduct June 3, 1994).

In a stipulation and agreement with the Washington State Commission on Judicial Conduct, a judge who had twice intentionally struck and caused bodily harm to his then-spouse and entered a plea of guilty to two counts of assault agreed and stipulated to resign and terminate his judicial duties no later than December 1, 1993. He also agreed not to seek or serve in any judicial office in Washington unless the Supreme Court granted a petition for reinstatement of eligibility. *In re Perkins*, No. 93-1474-F-42, Stipulation and Agreement (Washington State Commission on Judicial Conduct October 21, 1993).

In a stipulation, a judge resigned and agreed not to seek or serve in any position without first securing approval from the Washington State Commission on Judicial Conduct. According to newspaper stories, the judge was under criminal investigation because it had been alleged that he stalked and raped a woman who was a defendant in his court. *In re Baechler*, No. 98-1912-F-71, Stipulation and Order (Washington State Commission on Judicial Conduct December 4, 1998).

The Wyoming Commission on Judicial Conduct and Ethics submitted to the Governor and the Chief Justice a letter of resignation from Justice Richard V. Thomas of the Supreme Court. The judge had prepared the letter as part of a conditional settlement agreement in 1999 in which the Commission agreed not to submit the letter as long as the justice remained current in the circulation of opinions. In December, 2000, the Commission learned that the justice was again delinquent in the circulation of opinions and voted to invoke the retirement provision of the settlement agreement; however, because several significant cases were pending before the Supreme Court, the Chief Justice asked the Commission to allow the resignation to become effective March 31, 2001. The Commission agreed, contingent upon the justice's continued timely circulation of opinions. In late January, 2001, the Commission determined that Justice Thomas was not circulating opinions. *News Release (Thomas)* (Wyoming Commission on Judicial Conduct February 5, 2001).

Suspensions until the end of term

The Alabama Court of the Judiciary censured and suspended from office a judge with pay until June 30, 1998, and without pay for the remainder of his term, for (1) an ex parte communication with an attorney concerning a case pending before the judge and suggesting or directing that the attorney walk out of a deposition if questions were asked concerning the operation of the judge's office; (2) sleeping on the bench on several occasions during court proceedings; and (3) failure to dispose of uncontested matters within a reasonable time. *In the Matter of Cothren*, No. 28 (Alabama Court of the Judiciary January 22, 1998).

The Arizona Supreme Court suspended until the end of his term without pay a judge who had used the words "fucking niggers" in a proceeding and, notwithstanding a prior admonition and a prior reprimand from the Commission on Judicial Conduct, used profane expressions in a case. The Commission had recommended suspension without pay for three months and counseling. Six days after the oral argument before the court, the judge advised the court that he would not seek retention in the 1994 general election. *In re Goodfarb*, 880 P.2d 620 (Arizona 1994).

The Arizona Supreme Court suspended until the end of her term a former judge who had signed an order releasing her boyfriend from jail after he had been arrested on suspicion of domestic violence, criminal trespass, and disorderly conduct. The Commission on Judicial Conduct had recommended that the judge be publicly censured, suspended without pay for 60 days, and required to complete a counseling program for victims of domestic violence. The judge had called the police after her boyfriend had awakened her, subjected her to several hours of verbal abuse, and refused to leave her house. Based on the judge's order, the boyfriend was released, without bond, on his signature, several hours before he was scheduled to be arraigned. Two days later, the judge reported her conduct to the presiding magistrate of the municipal court, the chair of the Commission, and the presiding judge of the county superior court. *In re Jett*, 882 P.2d 426 (Arizona 1994).

Considering the recommendation of the Commission on Retirement, Removal and Discipline, the Missouri Supreme Court suspended a judge for the remainder of his term for (1) writing an "open letter," published in a local newspaper, imploring citizens to support the police chief in his struggle with the mayor, (2) ordering a blanket reduction in fines and release of prisoners to compel the payment of his health insurance, and (3) failing to recuse from a case involving the daughter of the mayor with whom he was feuding. The Commission had recommended that the judge be removed. *In re Hill*, 8 S.W.2d 578 (Missouri 2000).

The Washington Supreme Court censured a former judge and suspended him from office until the end of his term for intentionally striking or pushing his wife, causing her to fall. The court also ordered that the judge complete

a domestic violence program before he could serve in any future judicial capacity. The judge had not stood for re-election in 1998. The State Commission on Judicial Conduct had recommended that the judge be removed. *In the Matter of Turco*, 970 P.2d 731 (Washington 1999).

Order or agreement barring former judge from holding office

Approving and adopting the joint recommendation of a justice of the peace and the Commission on Judicial Conduct, the Arizona Supreme Court ordered the judge to never again seek or serve in a judicial office subject to the jurisdiction of the Commission on a permanent or a pro tempore basis, by election, appointment, or otherwise. An operational review conducted by the Administrative Office of the Courts had indicated 21 areas of concern regarding judicial function and administrative practice in the judge's court. The court noted that, to conserve the resources of the judiciary, it was in the public's best interest to resolve the matter by stipulation rather than an evidentiary hearing because the matter could not be brought to a final conclusion prior to the expiration of the judge's term of office in January 1995. He had been defeated in the primary election. *In re Garcia*, 884 P.2d 180 (Arizona 1994).

The Arkansas Judicial Discipline & Disability Commission reached a memorandum of understanding with a former judge in which the Commission agreed to take no further action on four complaints against the former judge and he agreed never to serve as a judge or accept appointment or seek election to judicial office. During the Commission's investigation, the judge had completed his term. The complaints alleged that the judge had presided over criminal cases involving his sister and his nephew, continuing his sister's case seven times, and continuing the trial of his nephew's case a number of times and setting aside another judge's decision requiring a cash bond for his nephew. *Memorandum of Understanding with Ross* (Arkansas Judicial Discipline & Disability Commission February 1, 2001).

The California Commission on Judicial Performance censured a former judge and barred him from receiving assignments, appointments, or reference of work from any California state court for having a clandestine, intimate relationship with one of three co-defendants, continuing to preside over their cases, allowing the relationship to influence his actions, and engaging in numerous improper ex parte communications. *Inquiry Concerning Trammell*, Decision and order (California Commission on Judicial Performance January 5, 1999).

The California Commission on Judicial Performance censured a former judge, and barred him from receiving any assignment, appointment, or reference of work from any California state court for (1) malingering by falsely claiming to be ill; (2) failing to cooperate in the administration of court business; (3) giving non-judicial activities precedence over, and allowing them to interfere with, his judicial duties; and (4) persistent failure to perform his judicial duties. The Commission had originally voted to remove the judge but after the Commission entered its order, it was informed that the judge's letter of resignation was received by the governor's office on May 9, 2001 and his judicial pay was terminated at the end of May 4, 2001. Therefore, the Commission resolved that the order of removal be considered a public censure and a bar from future service. *Inquiry Concerning Murphy*, No. 157, Decision (California Commission on Judicial Performance May 10, 2001).

Adopting the recommendation of the Judicial Qualifications Commission, the Georgia Supreme Court permanently barred a senior judge from active service for conduct during a hearing on a petition by a former husband for a change of custody based on his former wife's living with a man to whom she was not married. *In the Matter of Noland*, 407 S.E.2d 743 (Georgia 1991).

Agreeing with the findings and conclusions of the Judicial Qualifications Commission, the Georgia Supreme Court forever prohibited from holding judicial office a former judge who had pled guilty to the offense of driving under the influence in Tennessee and had been convicted of the misdemeanor offense of malpractice in office (in connection with illegally removing more than \$15,000 in county funds from the county magistrate's court). The judge had been defeated in his bid for re-election. *Inquiry Concerning Campbell*, 426 S.E.2d 552 (Georgia 1993).

The Indiana Supreme Court permanently enjoined a former judge from ever seeking judicial office of any kind in the State of Indiana; disbarred him from the practice of law and permanently enjoined him from seeking rein-

statement as a lawyer; and fined him \$100,000. While serving as a part-time court commissioner, the former judge (1) was paid with sexual relations by Penny Lambert for his representation of her in the dissolution of her marriage; (2) gave Lambert a fake divorce decree from the circuit court that contained his signature stamp in his capacity as part-time commissioner and contained the signature stamp of the circuit court judge; (3) filed a handwritten dissolution petition without his name on it in the same court in which he served as a probate commissioner after Lambert discovered that the decree had no legal effect and contacted him; (4) denied to two judges that he had represented Lambert; (5) heard three cases involving child custody and visitation disputes involving another former client with whom he had a continuing sexual relationship and to whom he often gave between \$300 and \$500 per week; and (6) after being appointed as a full-time judge pro tempore, had continued to serve and be paid as a part-time commissioner and as a part-time deputy city attorney for the city of Muncie and also continued to engage in the private practice of law. The court stated that the fine would be suspended if the former judge documented to the satisfaction of the Commission on Judicial Qualifications that he had reimbursed the state for all judicial salaries he received as a part-time commissioner and had reimbursed the city of Muncie for the pay received as a part-time deputy city attorney during the time he was full-time pro tempore judge. *In the Matter Edwards*, 694 N.E.2d 701 (Indiana 1998).

The New Jersey Supreme Court terminated the recall of a retired judge after he publicly and improperly humiliated a litigant in open court by lecturing and demeaning the litigant because she was an unwed mother on welfare, which was not relevant to the legal proceedings. *Judge Eugene P. Kenny*, Order (New Jersey 1991).

The Texas State Commission on Judicial Conduct accepted a voluntary agreement to resign in lieu of disciplinary action from a retired justice of the peace who had been charged with inappropriately touching and making sexually suggestive comments to one of his clerks and making racial slurs referring to African American court employees and African Americans in general. The justice of the peace had retired less than two months after the notice of formal charges was filed. The justice of the peace did not admit the charges (there was also a civil case by the clerk pending) but did agree not to sit or serve as a judge in the state, stand for election or apply for appointment to judicial office, or perform or exercise any judicial duties, including performing weddings. The agreement provides that "the Commission may enforce this Agreement through any legal process necessary, including injunctive relief . . ." *In re McElroy*, CJC Nos. 00-0454-JP & 00-0640-JP, Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action (Texas State Commission on Judicial Conduct November 5, 2001).

The Washington State Commission on Judicial Conduct closed a case against a former court commissioner who stipulated that he would not serve in any judicial office in any state and would not seek judicial office in Washington without applying for and receiving a favorable recommendation from the Commission. Noting that in 1982, the commissioner had been charged with a misdemeanor trespass involving charges that he looked through a neighbor's window, the Commission stated that it had received allegations that he had put his hand in his pants pocket in the presence of female court employees that they perceived as inappropriately touching his genitals, asked female court personnel to arrange dates for him, discussed with female court personnel his out-of-office dating activities, and kept a personal diary that included references to his personal sexual experiences, and other behavior, that, if true, would evidence a pattern of behavior consistent with a medical/psychological condition relating to the prior criminal charge and made it inappropriate for him to hold judicial office. The commissioner denied the allegations of the complaint (except with respect to the diary, which he kept at the suggestion of a counselor) and the Commission's determination that his conduct violated the code of judicial conduct but did not contest the determination. *In re Adams*, No. 90-991-F-23, Stipulation and Order of Closure (Washington State Commission on Judicial Conduct August 26, 1991).

Based on a stipulation, the Washington State Commission on Judicial Conduct closed a matter against a former court commissioner who, allegedly, had appointed as a therapist for the child in a custody case a doctor with whom the judge had a social relationship. The stipulation also noted that the judge had resigned in May 1998, agreed not to seek or serve in judicial office, and agreed that the Commission may release information to a government agency or judicial qualifications organization. *In the Matter of Slusher*, Stipulation and order (Washington State Commission on Judicial Conduct February 4, 2000).

APPENDIX IV

SUMMARIES OF JUDICIAL DISCIPLINE CASES RESULTING IN SUSPENSION WITHOUT PAY

Suspension without pay¹

In the Matter of Woodard, COJ 26, Final Judgment (Alabama Court of the Judiciary October 14, 1994) (6 months for touching females under the age of 21 who were the subject of proceedings before him and touching adult females who worked in the court system)

In the Matter of Robertson, No. 27, Final Judgment (Alabama Court of the Judiciary August 14, 1997) (1 month for retired judge who paid personal expenses with checks drawn from court fund, endorsed check made payable to the fund and deposited it in his personal checking account, and cashed seven checks made payable to the fund)

In the Matter of Gumaer, 867 P.2d 850 (Arizona 1994) (90 days for acting as intermediary between an acquaintance and the owner of a Nevada casino with respect to the establishment of gambling operations in Mexico; discussing proposed enterprise to recover stolen property from Mexico for insurance proceeds; inducing a pro tem justice of the peace to sign an injunction in a case from which the sanctioned judge had recused himself; involving himself in police investigation of a domestic complaint brought against a court clerk by her husband; permitting ex parte contacts by criminal defense lawyers, including discussions about the terms of release for their clients in custody; allowing others to gain the impression that a local attorney enjoyed a favored position with the judge; failing to report wife's employment with a Nevada casino on financial disclosure statement; occasionally ignoring established court procedures and dismissing or otherwise disposing of traffic tickets for acquaintances; allowing staff to receive gifts from persons and organizations doing business with the court; requesting that the police issue a traffic citation to a truck driver who passed him in a no passing zone, then presided over the matter in his court; failing to disclose to litigants and counsel that certain attorneys appearing in his court had represented him personally in the past; carrying a concealed weapon without a license; attempting to obtain information from his staff about the Commission's investigation, then in a deposition denying having done so; signing without authority a letter purporting to appoint a certain acquaintance as a justice court police officer)

In re Lorona, 875 P.2d 795 (Arizona 1994) (90 days plus conditions for influencing another judge's handling of traffic matters concerning a friend and a relative)

In re Braun, 883 P.2d 996 (Arizona 1994) (agreed disposition; 30 days plus conditions for repeatedly failing to decide cases in a timely manner and failing to administer competently, fairly, and diligently day-to-day-operations of the court; the judge also agreed not to again seek election or accept appointment to any judicial office)

In the Matter of Pearlman, No. JC-98-003, Judgement and Order (Arizona Supreme Court December 10, 1998) (2 months for inappropriate or offensive comments, in and outside the courtroom, and failure to timely rule in two criminal case)

In the Matter of Flournoy, 990 P.2d 642 (Arizona 1999) (18 months for tampering with the official transcript in a case, repeated outbursts of temper, and shouting at a court clerk)

In re Zoarski, 632 A.2d 1114 (Connecticut 1993) (15 days for failing to disqualify from case)

In re Norcutt, Memorandum of Decision (Connecticut Judicial Review Council February 16, 1994) (30 days for failing to disqualify from the appeal of a criminal case in which the defendant was represented by an assistant public defender with whom the judge had had a close personal relationship that ended in a dispute shortly before the oral argument)

In the Matter of Barrett, 593 A.2d 529 (Delaware Court on the Judiciary 1991) (6 months plus public censure for frequent attendance at political fund-raising events, distributing tickets to such functions to court personnel, being late for court, purchasing jewelry from a defendant at the courthouse while court was in session and allowing court personnel to make purchases from the defendant at the same time, making gratuitous title searches for police officers and court personnel)

1. Appendix IV does not include judges suspended until the end of their term, which are summarized in Appendix III.

In the Matter of Williams, 701 A.2d 825 (Delaware Court on the Judiciary 1997) (3 months plus censure for part-time judge who failed to pay payroll taxes for his law firm's employee payroll and to timely file withholding reports and to pay property taxes; had 29 unpaid parking tickets; and failed to properly maintain his law office books and records and answered incorrectly questions on the supreme court certificate of compliance with client account reconciliation requirements; because legislation would eliminate the judge's part-time position in April 1998, the court stated it would withhold the suspension provided the judge agreed in writing to forfeit three months' judicial compensation without other diminution or reduction of his judicial service)

Inquiry Concerning Wilson, No. 94,587 (Florida Supreme October 28, 1999) (10 days plus public reprimand for judge who had knowledge of a theft from a restaurant but attempted to hinder law enforcement)

Inquiry Concerning Green, Report of Disposition Pursuant to Commission Rule 4(e) (Georgia Judicial Qualifications Commission October 13, 1992) (agreed disposition; 30 days plus public reprimand for permitting clerks and other employees of the magistrate court to use a rubber stamp to affix his "signature" to court documents that he had not seen or read; ordering clerical employees of the magistrate court to close the court in the middle of a normal working day in an unsuccessful attempt to deny newspaper reporters full and compete access to the public records of the court; making caustic, sarcastic, and injudicious remarks directed toward the local news media; threatening a group of concerned citizens with investigations by the secretary of state and the attorney general; referring to pending lawsuits concerning the language used on the city seal and the magistrate court as a "shame and disgrace" and "false and malicious;" public and repeated criticism of county Citizens for Clean Government and individual members of that group who had filed complaints against him; threatening said individuals with warnings, such as "some day there will be a day of reckoning," and "I'll see ya'll in Court"; a public confrontation and dispute with another judge over the use of a courtroom door and grossly intemperate statements concerning the incident to two deputy sheriffs)

Inquiry Concerning Cannon, 440 S.E.2d 169 (Georgia 1994) (90 days plus reprimand for failing to process or dispose of citations filed by certain rangers of the Game and Fish Division of the state Department of Natural Resources; stating there were too many laws dealing with fish and game violations, that he did not agree with those laws, that he could not stand a particular law enforcement officer of DNR, and that he was not accountable to anyone; dismissing citations without hearing evidence; stating that he would not accept cases initiated by a particular DNR ranger; failing to openly and forthrightly address the charges filed by the commission, seeking to justify his actions by relying upon a contention patently untenable in law or fact)

In re Goshgarian, Order (Illinois Courts Commission November 18, 1999) (agreed disposition; 3 months for criticizing a jury member for a not guilty verdict; saying "fuck you" in court to an attorney; withholding a payment voucher for a court reporter to retaliate because she signed a petition regarding him; using profanity in referring to other judges)

In re Radcliffe, No. 97-CC-3, Order (Illinois Courts Commission August 23, 2001) (agreed disposition; 3 months for conducting a hearing and entering an injunction without following correct procedures)

In the Matter of Sanders, 674 N.E.2d 165 (Indiana 1996) (agreed disposition; 7 days for meeting ex parte with a defendant and failing to disqualify from case in which that defendant was a key witness)

In the Matter of Cox, 680 N.E.2d 528 (Indiana 1997) (agreed disposition; 30 days for failing to disqualify after submitting written materials highly critical of the defendant in attorney grievance proceedings or to disclose that fact to the defendant; imposing a lengthier sentence on a defendant who demanded a jury trial; misrepresenting the law to a defendant and forcing her to choose between proceeding without counsel or exercising her right to counsel and facing contempt and incarceration)

In the Matter of Jacobi, 715 N.E.2d 873 (Indiana 1999) (agreed disposition; 3 days for entering an ex parte temporary restraining order without obtaining certification that the attorney filing the petition had given notice to the other side or of what efforts the attorney had made to give notice or why notice was not required)

In the Matter of Funke, 757 N.E.2d 1013 (Indiana 2001) (agreed disposition; 15 days for permitting practice whereby the clerk or her employees affixed the judge's signature stamp to protective orders when petitions were filed and before the judge reviewed the petitions, which led to the appearance that the judge granted his father a protective order; granting several emergency protective orders against a utility despite the property interests of his parents, aunt, and first cousin in the area, his father's protective order against the utility, and his first cousin's appointment to the utility's board, the legality of which the utility had challenged; after granting an automatic change of judge in one case and disqualifying himself in several other cases, sua sponte issuing orders of clarification in which he extended the effectiveness of the emergency protective orders against the utility; in another case, after having disqualified himself, issuing an order requiring the utility to remove a trencher from the petitioner's property; granting new protective orders for two petitioners whose 1999 protective orders had expired, although he should have known that a special judge had assumed jurisdiction of the cases and had indicated he would not extend the effectiveness of the orders)

In the Matter of Gerard, 631 N.W.2d 271 (Iowa 2001) (60 days for being dilatory in filing rulings and reports on unfinished rulings as required by a supreme court rule and having intimate relationship with assistant county attorney who regularly appeared before him without recusing or disclosing the relationship)

Summe v. Judicial Retirement and Removal Commission, 947 S.W.2d 42 (Kentucky 1997) (30 days for election campaign statements)

In re Woods, Order of suspension (Kentucky Judicial Conduct Commission March 1, 1999) (agreed disposition; 60 days plus public reprimand for presiding in cases in which his impartiality might reasonably be questioned because of a personal relationship with two individuals; sentencing defendants to home incarceration under administration of a company that employed his wife and placing defendants on probation under supervision of a business owned by his first cousin and the cousin's wife; failing to disclose the employment of his wife on a financial disclosure report; submitting on his official stationery a letter in support of an unemployment application, particularly because of the extreme language the judge used in characterizing a witness; during the commission's investigation, requesting a local police officer who was a personal friend to obtain a signature on an affidavit that exculpated the judge as to improper conduct allegedly reported by the affiant to another individual)

In re Furches, Order of public reprimand and suspension (Kentucky Judicial Conduct Commission April 17, 1999) (agreed disposition; 10 days plus public reprimand for twice calling a special judge regarding work release for her ex-husband)

In re Harris, 713 So. 2d 1138 (Louisiana 1998) (60 days for extra-marital affair with a felon while he was on parole from a prison sentence she had imposed)

In re Jones, 800 So. 2d 828 (Louisiana 2001) (30 days for failing to restrain temper, culminating in a physical fight with another judge)

In re Landry, 789 So. 2d 1271 (Louisiana 2001) (6 months plus two years probation for rendering default judgment against a defendant in a small claims case without serving the defendant with notice of the suit, a hearing, or receiving evidence from the plaintiff to make a prima facie case)

In the Matter of Jarasitis, No. 96-4, Press Release (Massachusetts Commission on Judicial Conduct October 31, 1996) (agreed disposition; 2 months plus public reprimand for communicating ex parte with another judge on a case involving the respondent judge's own interests and by volunteering to appear as a character witness)

In the Matter of Markey, 696 N.E.2d 523 (Massachusetts 1998) (agreed disposition; 3 months plus public reprimand for routinely failing to properly advise defendants during plea colloquies even though he knew the legal requirements and an ex parte communication to another judge that caused the other judge to dismiss an abuse prevention order that she had issued)

In the Matter of Hocking, 546 N.W.2d 234 (Michigan 1996) (3 days for intemperate and abusive conduct toward an attorney)

In re Milhouse, 605 N.W.2d 15 (Michigan 2000) (agreed disposition; 10 days plus censure for knowingly executing and filing in court records a judgment of sentence that falsely stated that the defendant had pled guilty to three misdemeanors and knowingly making false and misleading statements to the Commission)

In re Chrzanowski, 636 N.W.2d 758 (Michigan 2001) (12 months (with credit for six months) for appointing an attorney with whom she had an intimate relationship to represent indigent defendants and presiding over the cases, as well as presiding over a criminal case in which the attorney was retained counsel, without disclosing the relationship, and making false statements to police officers investigating the murder of the attorney's wife)

In re Moore, 626 N.W.2d 374 (Michigan 2001) (6 months for conduct in 8 criminal cases)

In re Brown, 626 N.W.2d 403 (Michigan 2001) (15 days for statements made to police officers after an accident with another driver)

In re Hathaway, 630 N.W.2d 850 (Michigan 2001) (6 months for inappropriately handling arraignment in one case; improperly attempting to induce defendant to waive a jury to expedite second case; displaying overall lack of industry)

In re Rice, 515 N.W.2d 53 (Minnesota 1994) (60 days plus reprimand and conditions for, on multiple occasions over a period of several years, responding in an angry and undignified manner to staff members)

Commission on Judicial Performance v. Peyton, 645 So. 2d 954 (Mississippi 1994) (15 days plus \$1,000 fine for ex parte communications from the defendant)

Commission on Judicial Performance v. Guest, 717 So. 2d 325 (Mississippi 1998) (90 days plus \$1,500 fine for assaulting a litigant and directing profane language at the defendant during the altercation)

Commission on Judicial Performance v. Bishop, 761 So. 2d 195 (Mississippi 2000) (90 days plus \$1,500 fine for harassing and intimidating a minor female who had accused the judge of engaging in sexual relations with her and for intimidating a high school student who had made suggestive remarks to the minor)

In re Conard, 944 S.W.2d 191 (Missouri 1997) (30 days for renegeing on agreement with a police chief to drop contempt charges if the police chief released an individual charged with domestic abuse, filing an incomplete and misleading contempt affidavit, and making a public statement regarding a pending case that reflected pre-judgment)

Complaint Against Coady, No. B-35-92001, Order (Nebraska Supreme Court March 27, 1992) (agreed disposition; 1 month for using "nigger" in court)

In re Empson, 562 N.W.2d 817 (Nebraska 1997) (6 months for offensive and unwelcome conduct toward female court personnel, citizens having business in the courts, and student interns that amounted to sexual harassment, and for disseminating religious materials to jurors)

In re Krepela, 628 N.E.2d 262 (Nebraska 2001) (6 months for altering a copy of a police report in a criminal case in 1984, while serving as a county attorney, providing the altered report to defense counsel, and asking the police officer who made the report to either alter his original report or alter his testimony to conform to the changes)

In the Matter of the Ungaro, No. 9901-955, Findings of Fact, Conclusions of Law, Decision and Imposition of Discipline (Nevada Commission on Judicial Discipline May 17, 2000) (6 months plus public reprimand for serving as referees for a township justice court and alternate municipal court judges while membership status with the State Bar of Nevada was "inactive" because he had failed to meet the obligation of obtaining annual continuing legal education)

In the Matter of Morrison, No. 9902-258, Findings of Fact, Conclusions of Law, Decision and Imposition of Discipline (Nevada Commission on Judicial Discipline May 17, 2000) (6 months plus public reprimand for serving as referees for a township justice court and alternate municipal court judges while membership status with the State Bar of Nevada was “inactive” because he had failed to meet the obligation of obtaining annual continuing legal education)

In re Snow, 674 A.2d 573 (New Hampshire 1996) (6 months for calling a police officer he knew personally after the officer had ticketed the judge’s brother)

In the Matter of Collester, 599 A.2d 1275 (New Jersey 1992) (2 months plus conditions for second drunk driving offense)

In the Matter of Seaman, 627 A.2d 106 (New Jersey 1993) (60 days plus conditions for sexually harassing behavior to employee)

In the Matter of Fenster, 649 A.2d 393 (New Jersey 1994) (7 months for permitting city’s mayor to make a speech that was political and prejudicial to the defendant)

In the Matter of Williams, 777 A.2d 323 (New Jersey 2001) (3 months for publicly confronting man with whom she had had a romantic relationship and his companion three times one evening and giving false and misleading information to police and when she identified herself as a representative of the police in a telephone call to a saloon)

In the Matter of Eastburn, 914 P.2d 1028 (New Mexico 1996) (1 year plus censure for entering an administrative order that provided that any peremptory election to excuse him as allowed by law would not be honored)

In re Perea, Nos. 98-65 & 99-06 (New Mexico Supreme Court August 17, 1999) (2-week unpaid leave of absence and public censure for delay in signing and filing a written judgment and sentence in two criminal cases; failure to impose the mandatory minimum sentences required by law in two cases; failure to submit abstracts of record to the department of motor vehicles in four cases; and an ex parte communication with a former court administrator about a case in which the administrator’s uncle was the defendant)

In re Sanchez, No. 99-16 (New Mexico Supreme Court August 17, 1999) (2-week unpaid leave of absence and public censure for agreeing with defense counsel to submit an abstract of record to the department of motor vehicles that would report the disposition of a case as “dismissed” when the judge had actually adjudged the defendant guilty of driving while under the influence of alcohol; approving and agreeing in a plea and disposition agreement to withhold from the department of motor vehicles an abstract of record upon the defendant’s completion of her probationary period; and failing to impose the mandatory minimum sentence required by law in a case)

In re Vigil, No. 99-4 (New Mexico Supreme Court June 13, 2000) (2 weeks plus reprimand for failing to timely file gross receipts tax reports and/or timely pay gross receipts taxes to the state for her private business, willfully failing to timely file personal state income tax returns, and to timely pay income tax due; using the facilities and equipment of the court for her private business activities and other non-judicial business; failing to timely pay the county for approximately \$1,155.95 of private business copying charges incurred at the county clerk’s office; and failing to file a written response to the commission’s notice of preliminary investigation)

Office of Disciplinary Counsel v. Ferreri, 710 N.E.2d 1107 (Ohio 1999) (18 months, with 12 months stayed, for derogatory remarks the judge made about various court officers)

Office of Disciplinary Counsel v. Evans, 733 N.E.2d 609 (Ohio 2000) (6 months for failing to closely supervise campaign activities, failing to report a township’s contributions of the use of a township garage for producing signs and the value of labor of inmates and welfare workers, and exaggerating his endorsements)

Office of Disciplinary Counsel v. Ferreri, 727 N.E.2d 908 (Ohio 2000) (6 months for ex parte communications with employees of the county department of children and family services)

Office of Disciplinary Counsel v. Hoague, 725 N.E.2d 1108 (Ohio 2000) (6 months stayed for judge writing a letter on court stationery to car owner after observing a car being operated erratically, telling her to contact the court and holding an inquisitory hearing without legal authority)

In re Schenck, 870 P.2d 185 (Oregon 1994) (45 days for refusing to recuse himself in several cases involving an attorney who had filed a complaint with the Commission after publicizing the complaint and his opinion of the complaint and of the attorney; meeting privately with the district attorney for about one half hour, at the judge's initiation, on the general subject of his disqualification in several cases with a specific reference to a case in which a disqualification motion was pending; writing a letter to the editor and a guest editorial published in a local paper that criticized the district attorney)

Inquiry Concerning Gallagher, 951 P.2d 705 (Oregon 1998) (6 months for using his judicial assistant's work time and other public resources to conduct personal and campaign-related business and using his official position to obtain an advantage in corresponding to various persons and entities regarding disputes he had with them)

In re Dagher, 657 A.2d 1032 Opinion (Pennsylvania Court of Judicial Discipline April 19, 1995) (7 days plus public reprimand for accepting and using 4 tickets to a college football game from a husband involved in divorce proceedings pending before the judge and for a pattern of unreasonable and unjustifiable delay in the disposition and decision of cases)

In re Timbers, 674 A.2d 1221 (Pennsylvania Court of Judicial Discipline 1996) (6 months plus probation for remainder of term subject to the judge's immediately entering a sobriety monitoring program contract; subsequently removed for failure to comply)

In re Trkula, No. 7 JD 96 (Pennsylvania Court of Judicial Discipline July 14, 1997) (60 days for contacting the supervisor of the statutory appeal unit regarding a defendant who had appealed from a sentence the judge had imposed and for making false statements to FBI agents about the contact)

In the Matter of Brown, 522 S.E.2d 814 (South Carolina 1999) (18 months for former judge who had been convicted of civil and criminal contempt after he failed to comply with order not to retain compensation for performing marriages and to disgorge to the county treasurer part of the compensation he had already received for performing marriages)

In the Matter of Lynah, 548 S.E.2d 218 (South Carolina 2001) (agreed disposition; 9 months for signing order giving public notice of a judicial sale and issuing the bill of sale at the behest of another magistrate even though the judge knew the requirements of the statute were not met)

In re Meyer, Consent Order of Formal Remand and Suspension from Office (Tennessee Court of the Judiciary October 4, 1994) (agreed disposition; 15 days for comments from the bench that trivialized rape)

In re Kroger, 702 A.2d 64 (Vermont 1997) (1 year plus public reprimand for making false, misleading, and deceptive statements)

In re Hammermaster, 985 P.2d 924 (Washington 1999) (6 months plus censure for making improper threats of life imprisonment and indefinite jail sentences to defendants who had not paid their fines, using a guilty plea form that denied defendants due process, holding trials in absentia, pattern of undignified and disrespectful conduct toward defendants, and asking Hispanic defendants if they are "legal")

In re Tollefson, No. 98-2699-F-81, Stipulation, Agreement and Order of Censure and Recommendation for Suspension (Washington Commission on Judicial Conduct August 21, 2000), approved, No. 70051-6 (Washington August 30, 2000) (agreed disposition; 5 months plus censure and conditions for engaging in abusive and intemperate language and behavior toward court staff and colleagues, improperly entering ex parte orders with-

out a hearing or notice to parties, and engaging in numerous ex parte contacts in a child custody dispute, including undertaking an ex parte investigation outside the courtroom)

In the Matter of Eplin, 416 S.E.2d 248 (West Virginia 1992) (6 months for special treatment of a criminal defendant in order to curry favor with a state senator)

In the Matter of Riffle, No. 26729 (West Virginia Supreme Court of Appeals October 25, 2001) (www.state.wv.us/wvsca/Fall2001.htm) (1 year plus censure for former magistrate who had been convicted of feloniously and fraudulently attempting to secure workers compensation benefits, providing false or misleading information to the state police, and falsely reporting an emergency incident)

In the Matter of Breitenbach, 482 N.W.2d 54 (Wisconsin 1992) (2 years for, on at least two occasions, going into court armed with a concealed and loaded revolver and placing the revolver in the wastebasket near the bench in his courtroom and forgetting it so that the revolver was discovered by maintenance staff; and during 14 court proceedings, being loud, angry, impatient, discourteous, intemperate, or lacking in dignity or decorum; judge stipulated that he had engaged in that behavior)

In the Matter of Dreyfus, 513 N.W.2d 684 (Wisconsin 1994) (15 days for failing to decide two cases for more than one year, filing certificates of pending case status for six months that falsely reported that he had no cases pending beyond the prescribed period, misrepresenting to the deputy chief judge that he had dictated decisions in two cases six months previously but that the decisions had not been entered because a clerk had failed to type them, and making the same misrepresentation to a Commission investigator)

In the Matter of Carver, 531 N.W.2d 62 (Wisconsin 1995) (15 days for failing to disqualify from a criminal case pending against a friend; expressing publicly, from the bench and on the record, his personal views concerning the criminal charge pending against his friend and similar charges pending in other cases; criticizing the gambling investigation in which he himself figured; failing to reveal that the defendant had contacted him; and misrepresenting that the defendant had not contacted him or sought special treatment)

In the Matter of Waddick, 605 N.W.2d 861 (Wisconsin 2000) (6 months for recurring delay in deciding cases between 1991 and 1998; filing certifications of status of pending cases that falsely represented that no cases were awaiting decision beyond the prescribed period; and stating falsely to the Judicial Commission that he had no cases awaiting decision beyond the prescribed period)

In the Matter of Crawford, 629 N.W.2d 1 (Wisconsin 2001) (75 days for threatening to make public his allegations against the county's chief judge, the chief judge's daughter (an attorney in the county district attorney's office), and the district court administrator unless the chief judge dropped his attempts to regulate the judge's court hours)

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