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JUDICIAL CONDUCT REPORTER

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Judicial Ethics and Discipline on the Internet

by Timothy Eckley

Judicial Conduct Commission Web-sites

At least 42 state judicial conduct commissions maintain web-sites for public access, almost double the sites from six years ago. The proliferation of judicial conduct information sources reflects a growing awareness of the need to meet the public's demand for broader disclosure of disciplinary and court proceedings to further public trust and confidence in and respect for the justice system. The sites also provide an invaluable resource for judges seeking guidance on how to avoid even the appearance of impropriety. Links to the sites are available on the

AJS website at www.ajs.org/ethics/eth_conduct-orgs.asp.

While each site differs in appearance, content, and ease of navigation, overall the sites are increasingly sophisticated while remaining user friendly. A few contain little more than contact information, but most offer links to substantial amounts of information including commission function and structure, rules of procedure, codes of judicial conduct, budget and annual reports, ethics advisory opinions, complaint procedures, forms, and FAQ sections. Many sites offer search functions and links to related sources of information on the justice system. A

few states that are representative of the more thorough and helpful website offerings are described below.

The Arkansas Judicial Discipline & Disability Commission (www.state.ar.us/jddc) highlights easy-to-get-to sections presenting its constitutional provision and enabling legislation, the Arkansas code of judicial conduct, the rules of procedure, guidelines, and operating policies of the Commission, and biographies of Commission members. The Arkansas site also has links to the American Judicature Society and the Arkansas judiciary home page.

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Recent Cases: Judicial Demeanor

In several recent cases, judges have agreed to accept discipline for intemperate conduct in the courtroom. For example, pursuant to a stipulation, the New York State Commission on Judicial Conduct censured a judge who had exhibited rude and demeaning conduct toward witnesses in two proceedings. *In the Matter of Uplinger*, Determination (New York State Commission on Judicial Conduct March 15, 2006) (www.scjc.state.ny.us). In one case, even after learning that they had been absent with the prosecutor's permis-


sion, the judge sternly admonished two witnesses who had been unavailable to testify earlier, threatened to hold them in contempt, and ordered them to be confined in a witness room until they testified, forbidding them from using the bathroom facilities without permission.


In the second case, the judge demeaned and mocked the victim of an assault, repeatedly attempted to curtail his statement, and directed him to leave the courtroom when he finished speaking. Pursuant to the regular practice in the court, the victim began


reading a statement during a sentencing hearing in an assault case, but the judge repeatedly interrupted him. At one point, the judge said to the victim in a loud, angry voice, "I don't believe half of anything you said so I'd appreciate it if you'd sit down." At another point, the judge said to the defendant: "You don't have to listen to this if you don't want to." When the victim concluded his statement, the judge ordered him to leave the courtroom. When the prosecutor objected, the


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Recent Advisory Opinions: Recommendations and References


 A judge may recommend a lawyer only to a friend or a family member with whom the judge has a sufficiently close relationship with the friend or family member to automatically recuse from the case. *Colorado Opinion 06-1.*


 A judge should not write a letter of recommendation on behalf of an attorney applying for a life insurance policy. *New York Opinion 05-107.*


 A judge may write a letter of recommendation on behalf of a candidate for a bar association office as long as the letter does not exceed a factual record or actively promote the lawyer. *Pennsylvania Informal Opinion 7/17/02.*


 A judge may not write a letter of support on behalf of the judge's personal physician in a hearing by state medical licensing authorities considering whether the doctor may continue to practice. *Nevada Opinion JE04-004.*


 A judge may not write a letter in a support of a lawyer who is being investigated by a discipline committee but may respond to inquiries from the committee if the lawyer submits the judge's name. *Pennsylvania Informal Opinion 7/29/02.*


 A judge should not write a letter at the request of a court employee facing disciplinary charges attesting to the employee's good character, work ethic, and job performance. *New York Opinion 05-34.*


 A judge should not write a letter supporting an application for alien labor certification for a waiter the judge knows at a neighborhood restaurant. *New York Opinion 03-47.*


 A judge may write a letter for another judge who has been nominated to the federal bench whom the judge has known for a long time, outlining the judge's knowledge of the other judge and the other judge's background and qualifications and recommending that the other judge be appointed. *Pennsylvania Informal Opinion 2/16a/05.*

 A judge may write a recommendation for a lawyer seeking to be placed on a federal court appointments list. *Pennsylvania Informal Opinion 6/23/03.*

 A judge may not testify as a character witness voluntarily but is obligated to comply with a subpoena. If a judge has been asked to provide character testimony, the judge should consider whether the interests of justice require his or her testimony and, if not, should consider attempting to discourage the subpoenaing party or lawyer from requiring the testimony. Whether the interests of justice require the judge's testimony depends on the nature and depth of the judge's actual awareness of the character of the person for whom the judge would testify, whether the judge is in a unique position to offer singular and meaningful testimony, and the forum in which the testimony will be given. *Colorado Opinion 06-3.*

 A judge who sentenced a defendant should not voluntarily provide a character reference for use at an executive clemency hearing before the prisoner review board but may do so if directly and formally requested by the review board; neither the petitioner's notification to the sentencing judge of clemency hearing nor the general invitation for comments published in a newspaper of common circulation constitute a formal request. *Illinois Opinion 05-6.*

 A judge may not write a letter in support of a presidential pardon for a person the judge knows, but if the pardoning authority solicits the judge's opinion, the judge may respond with factual information but not with character testimony. *Pennsylvania Informal Opinion 3/22/04.*

 A judge may respond to questions from a pardon board but may not serve as a character witness for a person seeking a pardon without the permission of the supreme court and may not sua sponte submit a letter supporting the grant of a pardon, attesting to the good character of the person seeking the pardon, or analyzing the adequacy of the person's legal representation and conviction. *Pennsylvania Informal Opinion 7/8/04.*

The Center for Judicial Ethics web-site has links to judicial ethics advisory committees sites at www.ajs.org/ethics/eth_advis_comm_links.asp.

Failure to Comply with the Law: Recent Decision

Accepting the recommendation of the Judiciary Commission, the Louisiana Supreme Court censured a judge who, in two serious felony cases, ordered expungements without notice, without convening mandatory contradictory hearings, and without making a legal and factual inquiry as to whether expungement was authorized by law. *In re Elloie*, 921 So. 2d 882 (Louisiana 2006)

For example, in 1992, Judge Ray Bigelow had sentenced Harden Reeves to five years hard labor, which was suspended, and two years probation, after Reeves pled guilty to possession of cocaine. On January 15, 1993, Reeves' probation was revoked, and his sentence was made executory. In 2001, a local minister approached Judge Elloie as he was leaving his chambers and told him that Judge Bigelow was not there that day but had expunged another matter for Reeves. Without giving notice to the prosecution, Judge Elloie signed the order expunging Reeves' conviction. Subsequently, the district attorney's office filed a motion to set aside the expungement before Judge Bigelow, who granted it.

The court found that Judge Elloie's failure to convene contradictory hearings before he ordered the expungements violated the clear and unambiguous language of the applicable statute and rose to the level of judicial misconduct. Emphasizing the manner in which the judge violated the law, the court noted that the judge ruled in cases not assigned to him without obtaining the consent of the assigned judges in violation of local court rules and did not rule on the motions in open

court, check the criminal records, or engage in the proper legal analysis. The court also criticized the judge for failing to understand that it was his duty to determine whether a conviction could be expunged and instead "blithely" assuming that law enforcement agencies would notice and correct any error he made.

The court noted that the judge's failure to give notice and hold a contradictory hearing or rule on the record prevented the appellate review by which legal error may be corrected. The court

The judge "showed a disregard for the established procedural rules by which his decisions should have been made."

stated that the judge "showed a disregard for the established procedural rules by which his decisions should have been made," an "attitude that cannot prevail" because "procedural rules are necessary, not only to avoid the appearance of impropriety or partiality on the part of the judge, or forum shopping on the part of the litigant, but also to promote the efficient operation of the court system."

Rejected defenses


The court held that the judge's defense that he had followed a long-standing procedure "cannot prevail when that procedure is in direct contravention to express written statutory law, about which there can be no misunderstanding or confusion." The court concluded that the judge was not following long-established custom but rather he and any other judges who followed this "custom" failed in their duty to be informed of the applicable law.

The judge argued that his conduct did not meet the constitutional standard for discipline for engaging in persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute because "the public" would not have known anything about his expungement practices if the district attorney had not reported them. The court concluded that the judge viewed the constitutional provisions too narrowly.

The concept of "the public" for purposes of the constitutional provisions does not encompass only those persons outside of the judicial process. "The public" also includes lawyers, court personnel, parties involved in litigation

and all those people who come into contact with the judiciary. When there is a perception that a judge will participate in forum shopping, or that the proper procedures do not have to be followed, then the judicial office is brought into disrepute.

Rejecting the judge's argument that the complaint filed by the former district attorney was motivated by a political vendetta, the court noted the motive of a complainant who reports judicial misconduct is irrelevant and that the judge's "best defense would have been to obey the ethical rules that bind him as a judge and to follow clearly and unambiguously expressed statutory law."

Finally, the court held that, contrary to the judge's claim, there is no subjective intent requirement for judicial misconduct and an act does not have to be intentional to support judicial discipline. 

Campaign and Political Activity Developments

This article up-dates information on the states' responses to recent federal decisions holding unconstitutional several canons in the code of judicial conduct regarding political activity. Previous articles were published in the summer 2002, winter 2005, and summer 2005 issues of the *Judicial Conduct Reporter*. A cumulative description is at www.ajs.org/ethics/pdfs/DevelopmentsafterWhite.pdf.

Eleven states — **Arizona, Florida, Louisiana, Maryland, Minnesota, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, and Wisconsin** — have adopted the 2003 version of the canons from the American Bar Association that prohibit both judges at all times and judicial candidates during campaigns from making “with respect to cases, controversies or issues that are likely to come before the court, . . . pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.”

Questionnaires

The supreme courts in **North Dakota, South Dakota, and Tennessee** have adopted commentary that allows candidates to answer questionnaires from issue advocacy or community organizations seeking to learn their views on disputed or controversial legal or political issues but warns them to “proceed with caution if they choose to respond” and “make clear their commitment to keeping an open mind while on the bench, regardless of their own personal views.” That language has been proposed by the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct but not yet adopted by the ABA House of Delegates, which will vote on the Joint Commission's final submission in February 2007. South Dakota added the requirement that a copy of a response to such a questionnaire be

filed with the supreme court clerk.

Following a court decision holding the pledges and promises restriction unconstitutional at least as applied to questionnaires, the **Kentucky** Supreme Court amended the state's code of judicial conduct to provide:

A judge or candidate for election to judicial office shall not intentionally or recklessly make a statement that a reasonable person would perceive as committing the judge or candidate to rule a certain way on a case, controversy, or issue that is likely to come before the court.

The **Michigan** judicial ethics advisory committee stated that, although the pledges or promises clause “is presumed constitutionally valid and enforceable,” it must be “narrowly construed and cautiously applied to campaign speech.” *Michigan Advisory Opinion JI-131* (2005). Thus, the committee advised that candidates may respond to questionnaires eliciting the candidates' opinions on matters pending or impending in any court and to criticize the majority opinion of a divided court of last resort and the legal philosophy that underlies it.


Declining to consider whether the pledges and promises clause is unconstitutional, the **Kansas** advisory committee concluded that a candidate may not answer a questionnaire that asks for the candidate's views on, for example, whether the state constitution is intended to protect a right to assisted suicide. *Kansas Advisory Opinion JE-139* (2006).

Campaign fund-raising

The **South Dakota** Supreme Court amended the code to expressly allow a judge or candidate to identify himself or herself as a member of a political party at any time and to speak to gatherings on his or her own behalf at any time. Further, the court eliminated the prohibitions on a judge or judicial can-

didate acting as a leader in a political organization, attending political gatherings, paying an assessment to or making a contribution to a political organization or candidate, and purchasing tickets for political party dinners or other functions.

In addition, the **South Dakota** court eliminated the prohibition on personally soliciting campaign contributions, although candidates are encouraged to establish campaign committees. The court did establish a \$1,000 limit on contributions and a time limit for fundraising. Commentary provides that contributions should not be knowingly solicited or accepted (1) from a party to litigation that is before the candidate, may reasonably be expected to come before the candidate if elected, or “has come before the candidate so recently that the knowing solicitation or acceptance of funds may give the appearance of improper use of the power or prestige of judicial office” or (2) from “any firm, corporation or other organization that has as one of its purposes the promotion of one side of a legal issue which may reasonably be expected to come before the candidate if elected.” However, commentary allows the solicitation of contributions “from lawyers (including lawyers having cases before, or which may come before, the candidate), provided that the solicitation makes no reference, direct or indirect, to any particular pending or potential litigation.”

The **Missouri** Supreme Court amended the state's code of judicial conduct to allow candidates to solicit and accept campaign funds (except in a courthouse or on courthouse grounds) and to make a written solicitation for campaign funds to any person or group although candidates are prohibited from soliciting in person from persons likely to appear before the candidate if elected. 



The 20th National College on Judicial Conduct and Ethics

October 19-21, 2006 • Chicago

The Center for Judicial Ethics will hold its 20th National College on Judicial Conduct and Ethics on **October 19-21, 2006**, at the Embassy Suites Downtown Lakefront, 511 N. Columbus, Chicago, Illinois. The National College provides a forum for commission members, staff, judges, judicial educators, and attorneys to learn about and discuss professional standards for judges and current issues in judicial discipline. The College will begin Thursday October 19 with registration and a reception. Friday morning there will be one plenary session on “What do we mean by judicial impartiality?” followed by

concurrent workshops through Saturday noon. The topics for discussion are listed below.

The \$275 registration fee includes one set of conference resource materials, the reception (with cash bar), and Friday luncheon. The Embassy Suites Downtown Lakefront has reserved a block of rooms for College participants at \$199 a night (single occupancy), plus tax. Reservations must be made with the hotel by **September 20, 2006**. Hotel registration information is on page 8. **The Center will apply for certification for continuing legal education credit for the College.**

Plenary Session – Friday October 20 – 8:30 a.m.

What Do We Mean by Judicial Impartiality?

Judicial impartiality is one of the core principles of judicial ethics and is invoked in almost every context from campaign speech to treatment of pro se litigants to personal relationships to community activities. The concept apparently means different things to different people, however. The panelists and participants will articulate their views of judicial impartiality and the appearance of impartiality to try to

reach a consensus that can guide and challenge judges, courts, advisory committees, and conduct commissions.

Panelists: **James J. Alfini**, President and Dean, South Texas College of Law • **Justice Dana Fabe**, Alaska Supreme Court • **Gerald Stern**, former administrator and counsel, New York State Commission on Judicial Conduct • **Judge David Waxse**, U.S. Magistrate Judge, Kansas

Concurrent Workshop Topics

Revisions to the Model Code of Judicial Conduct

In February 2007, the American Bar Association House of Delegates will vote on revisions to the model code of judicial conduct proposed by a Joint Commission following a comprehensive review, comment, and drafting process. In an interactive session, representatives of the ABA Joint Commission and the American Judicature Society will discuss the proposed changes and debate the improvements and controversies in the proposals.

Facilitators: **Robert P. Cummins**, AJS’s liaison to the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct; Cummins & Cronin, LLC, Chicago, Illinois • **Judge Gordon L. Doerfer**, Massachusetts Appeals Court; chair of the advisory committee for the Center for Judicial Ethics • **George Kuhlman**, ABA Ethics Counsel • **Donald B. Hilliker**, member, ABA Joint Commission to Evaluate the Model Code of Judicial Conduct; McDermott Will Emery PC, Chicago, Illinois

The Aftermath of *Republican Party of Minnesota v. White*

This session will analyze the effect of the U.S. Supreme Court decision on enforcing restrictions on speech and political activity and focus on strategies for defending challenges to the canons.

Facilitators: **Thomas R. Phillips**, former Chief Justice, Texas Supreme Court; Baker Botts L.L.P. • **Robert H. Tembeckjian**, Administrator and Counsel, New York State Commission on Judicial Conduct

Determining the Appropriate Sanction

Examining recent judicial discipline cases, this session will review the criteria for imposing sanctions and discuss issues such as the relevance of a judge’s contrition and when removal is appropriate.



COLLEGE REGISTRATION FORM

20th National College on Judicial Conduct and Ethics
October 19-21, 2006
Embassy Suites Downtown Lakefront

College registration
also available on-line
at www.ajs.org/ethics

Name _____
Title _____
Address _____
City _____ State _____ Zip _____
Telephone _____ Fax _____
Email: _____
Organization you represent _____

- Check if you are a new member of a conduct commission.
 Check if you are a public member of a conduct commission.
 Check if you are a member of a judicial ethics advisory committee.

Registration fee is not refundable unless cancellation is received prior to **October 5, 2006**. Fee includes one set of conference resource materials, the reception (cash bar), and one luncheon.

Registration Fee: \$275 per person \$ _____

Please check the appropriate box(es)

- I plan to attend the reception Thursday, Oct. 19
 I will be bringing a guest to the reception
 I plan to attend the luncheon Friday, Oct. 20
 I will be bringing a guest to the luncheon Friday, Oct. 20

(Guest tickets \$25 each) \$ _____

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The Opperman Center at Drake University
2700 University Avenue
Des Moines, IA 50311
(515) 271-2284, Fax (515) 279-3090

**Hotel registration form is on
page 8 and must be sent or faxed
to the hotel directly.**

Facilitators: **Steven Scheckman**, Special Counsel, Louisiana Judiciary Commission • **Judge James Wolf**, First District Court of Appeal; chair, Florida Judicial Qualifications Commission

Correcting Judicial Demeanor

Some judicial conduct commissions have begun supplementing sanctions such as reprimand with measures such as required counseling, education, and mentorships. How amenable temperament problems are to such treatment, the pros and cons of those approaches, and advice for when and how to craft such a solution will be discussed in this session.

Facilitators: **David J. Biviano**, Ph.D., Seattle, Washington • **David M. Rothman**, retired judge, Los Angeles, California • **Randy Roybal**, Deputy Director & Chief Staff Attorney, New Mexico Judicial Standards Commission

What Judicial Conduct Commissions Should Know About Impairments

In an interactive session, misunderstandings and facts about impairments and recovery will be explored. The session will focus on alcoholism but also cover other addictions and mental disorders that may become an issue in judicial discipline proceedings.

Facilitators: **Seana Willing**, Executive Director, Texas State Commission on Judicial Conduct • **Judge Bonnie Hellums**, District Court, Harris County, Texas; member, Texas Amicus Curiae program

How Judicial Conduct Commissions Should Handle Judicial Impairments

Building on the preceding session, this workshop will consider the various approaches conduct commissions have taken in handling complaints about judges with impairments. The tension between protecting the public and assisting judges will be debated and possible ways of striking a balance will be sought.

Facilitators: **Jonathan Coughlan**, Ohio Disciplinary Counsel • **Seana Willing**, Executive Director, Texas State Commission on Judicial Conduct

Judicial Discipline for Abuse of the Contempt Power

When faced with a complaint about a judge holding a litigant, attorney, or witness in contempt, judicial conduct commissions must balance the need for judges to maintain control in the courtroom and the loss of liberty that results when the contempt power is misused. This session will review cases in which judges have been disciplined for abusing the contempt power to identify guidelines for both commissions and judges.

Facilitators: **Victoria Henley**, Director-Chief Counsel, California Commission on Judicial Performance • **Judge Thomas Klonick**, Town Justice, Perinton, New York; member, New York State Commission on Judicial Conduct

The Role of Public Members

Participants will share their experiences as public members of judicial conduct commissions and discuss what impact their perspective has on commission deliberations, commissioner training and qualifications, and the perception of the commission by the public and judges.

Facilitators: **Marianne Connelly**, member, Washington State Commission on Judicial Conduct • **David Smoak**, member, New Mexico Judicial Standards Commission

Introduction to the Canons for New Members of Judicial Conduct Commissions

This session will give new members of judicial conduct commissions an overview of the ethical standards they will be enforcing and focus on those provisions that result in the most judicial discipline cases.

Facilitators: **James C. Alexander**, Executive Director, Wisconsin Judicial Commission • **Judge William W. Teahan, Jr.**, District Court Justice; vice chair, Massachusetts Commission on Judicial Conduct

Charitable Fund-raising by Judges

This session will consider current issues involving participation by judges in fund-raising for charitable organizations including whether the rules should be different for organizations related to the administration of justice. Variations in the states' codes of judicial conduct on charitable fund-raising will be discussed.

Facilitators: **Judge Julie Conger**, California Superior Court, Oakland; member, California Judges Association Committee on Judicial Ethics • **Marla N. Greenstein**, Executive Director, Alaska Commission on Judicial Conduct

The Appearance of Impropriety Standard

Despite its traditional place in the code of judicial conduct, some critics have argued that the appearance of impropriety standard is at best merely aspirational and at worst unconstitutionally vague. This session will examine how the standard has been applied in case-law and develop an analysis of the standard to respond to those criticisms.

Facilitators: **Reiko Callner**, Executive Director, Washington State Commission on Judicial Conduct • **Cynthia Gray**, Director, Center for Judicial Ethics, American Judicature Society



HOTEL REGISTRATION FORM

20th National College on Judicial Conduct and Ethics
October 19-21, 2006—**Group Code: AJS**

Name _____

Title _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____ email _____

Organization you represent _____

Sharing a room with _____

Check-in 4:00 p.m.

Type of Room Required

___ (single rate) 1 person \$199 + 15.4% tax

___ (double rate) 2 persons \$219 + 15.4% tax

___ (triple rate) 3 persons \$239 + 15.4% tax

___ (quad rate) 4 persons \$259 + 15.4% tax

___ Please check if you request a non-smoking room.

___ Please check if you require special facilities in accordance with the Americans with Disabilities Act.

Check-out 11:00 a.m.

Arrival Departure

Month _____ Month _____

Day _____ Day _____

Credit Card Name _____

Number _____ Exp. Date: _____

Signature _____

Space is limited. Please make reservation as soon as possible. After **September 20, 2006**, reservations will be accepted on a space available basis only.

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Cancellation Policy: Should cancellation of this reservation be necessary, there will be no penalty provided the reservations office is notified 24 hours prior to arrival date. Should cancellation occur after this time or if the hotel is not notified of cancellation, the deposit will not be refunded. In the event you need to check out prior to your confirmed departure date, please notify the hotel prior to or at check-in to avoid an early check-out fee of \$20.

Judicial Ethics and Discipline on the Internet *(continued from page 1)*

The site allows visitors to access complaint forms, recent press releases that include disciplinary action by the Commission, and statistical data, which classify complaints received by source, the court on which the judge sits, the nature of the litigation giving rise to the complaint, and the types of allegations. Like many commission sites, the Arkansas site includes a complaint form and instructions for filing complaints.

Similarly, the web-site of the Massachusetts Commission on Judicial Conduct (www.mass.gov/cjc) includes a complaint form, the text of the state's code of judicial conduct, the authorizing statute, rules, and narrative and statistical portions of the Commission's annual report. The Massachusetts site includes a short but thorough power point flowchart of Commission procedures. The site contains the Commission's press releases since 2002, which describe the formal charges filed by the Commission and the public sanctions. For example, it includes a November 28, 2005 press release describing an agreed disposition between the Commission and Judge Robert Murray in which the judge agreed to a one-year suspension without pay and a \$50,000 fine for inappropriate conduct toward two female court employees.

The Massachusetts Commission site also has an FAQ section, providing questions and answers such as:

Q. What is the process for filing a complaint? A. Download a complaint form from the website, fill it out as completely as possible, and mail it back to us. If you have any questions, call the Commission (617-725-8050), and a staff member will assist you.

Q. Must the judge disqualify himself or herself from my case if I file a complaint? A. No. Filing a complaint has no bearing on whether or not the judge continues hearing your case.

Q. The judge's decision was wrong. Can I change it or get it overturned by filing a complaint? A. No. Nothing the Commission can do will affect the decision in your case. The Commission is not a court and has no authority to grant relief to litigants. Commission proceedings are not a substitute for an appeal. The Commission

the home page provides a clear and succinct introduction to the Commission's charge and jurisdiction and an easily understood definition of "Disciplinary Action." The welcome page includes a section titled "News," which summarizes the most recent Commission decisions and cases pending in the Court of Appeals with links to full procedural histories and complete documents for the highlighted matters.

In addition, some commissions (California, Florida, Massachusetts, Michigan, Nevada, Washington) include formal charges and the judge's response on their web-sites. For example, by clicking on "formal proceedings" on the site for the Michigan Judicial Tenure Commission (jtc.courts.mi.gov), a user can review pending and resolved

formal complaints. Thus, the user can follow a recent proceeding against Judge Dana Fortinberry, beginning with the Commission's formal complaint, continuing with the judge's answer, through the Commission's decision and recommendation, and finishing with the decision of the Michigan Supreme Court to censure the judge for raising questions regarding the moral fiber of a judicial candidate and her husband without any first-hand knowledge of the truth or falsity of her statements and without independently verifying the truth or falsity of the representations.

The web-site opens with the following helpful and succinct statement of the purpose of the Michigan Commission: "The Commission strives to hold state judges, magistrates, and referees accountable for their misconduct without jeopardizing

The sites also provide an invaluable resource for judges seeking guidance on how to avoid even the appearance of impropriety.

cannot advise you about this, or give you any other legal advice. You may wish to consult an attorney to review your right to appeal the decision in your case.

Decisions and other pleadings

The sites for the commissions in Arkansas, California, Florida, Massachusetts, Michigan, Nevada, New York, Pennsylvania, and Washington include the text of the decisions or recommendations of the commissions. The New York State Commission on Judicial Conduct (www.scjc.state.ny.us/), for example, has a "commission decisions" link on its home page to a list of the Commission's decisions alphabetically by the judge's last name. The decisions may also be accessed using a search function.

The New York site also briefly describes the Commission's mandate and history and gives contact information for each of the Commission's three offices. The overview link at the top of

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Judicial Ethics and Discipline on the Internet *(continued from page 9)*

or compromising the essential independence of the judiciary. The basis for Commission action is a violation of the Code of Judicial Conduct or Rules of Professional Conduct.” The sidebar links on this site are arranged in a particularly helpful way. The first, “Commission Jurisdiction & Legal Authority,” takes the user to the state constitutional provision establishing the Commission, the Michigan Court Rules setting forth the procedures governing the Commission, its investigations, and formal proceedings, and the state code of judicial conduct. Next is “How to File a Grievance,” which provides for downloading a Commission request for investigation form with instructions. “The Complaint Process” link provides a thorough explanation of Commission investigation and complaint procedures.

The Washington State Commission on Judicial Conduct also provides on its web-site (www.cjc.state.wa.us) a list of formal charges and the judges’ answers as well as decisions and agreed orders, with a chronological list on the home page of the filings from the last year the most recent marked “new.” The site also has a “Filing a Complaint” link that offers the user an overview of the complaint process, downloadable forms, and access to applicable confidentiality provisions. The Washington site provides a telephone number and an offer of assistance for those with disabilities that might prevent them from filing a complaint.

Of special note on the Washington Commission site is its judicial discipline database. The database provides information on all public Washington judicial discipline

actions since the Commission’s creation in December 1980. The database allows users to search for decisions by the judge’s name, the nature of the discipline, the county, the court level, and date. For example, by choosing the discipline category “censure & removal,” the user can review the three instances in which judges were censured and removed pursuant to Commission action sorted by name, title, court, method of resolution, date, and county.

At least 32 state judicial ethics committees and the United States Judicial Conference now maintain web-sites for researching advisory opinions.

Judicial Ethics Advisory Committee Web-sites

At least 32 state judicial ethics committees and the United States Judicial Conference now maintain web-sites for researching advisory opinions. All of the sites can be accessed through the AJS web-site at www.ajs.org/ethics/eth_comm_links.asp.

The Delaware Judicial Ethics Advisory Committee site (<http://courts/delaware.gov/jeac/>) is exemplary. It contains every advisory opinion the Delaware Committee and its predecessor (the Judicial Proprieties Committee) have issued. The site provides brief summaries of the opinions organized by date with links to full texts accessed by clicking on the opinion number. There are also options to “Search all Opinions” and to locate opinions by year or by subject. The subject categories include “disclosure/recusal/disqualification,” “fund raising,” “gifts,” “elections,” “letters,”

“memberships,” “practice of law,” “testimony,” “work habits,” and “conduct toward lawyers, parties, witnesses, court personnel.”

The University of New Mexico Judicial Education Center maintains the New Mexico Advisory Committee on the Code of Judicial Conduct web-site at jec.unm.edu/resources/advisoryopinions/index.htm. The site provides advisory opinions issued since the adoption of a new code of judicial conduct in 1995 and organizes the opinions in a variety of helpful ways including date, opinion number, topic, and code provision. The site explains matters such as the confidentiality of the inquiries leading to the opinions.

The Supreme Court of Ohio web-site includes advisory opinions of the Board of Commissioners on Grievances and Discipline (www.scotnet.state.oh.us/boc/Advisory_Opinions/). The site includes explanations of the advisory opinion process and regulations for issuance of advisory opinions. There is a “search advisory opinions” function for searching by keyword or phrase. An index also enables a user to search by subject. A status list indicates if an opinion has been withdrawn or modified or is considered not current.


The Arizona Judicial Ethics Advisory Committee web-site (www.supreme.state.az.us/ethics/Judicial_Ethics_Advisory_Committee.htm) offers the full text of all advisory opinions interpreting the code of judicial conduct since 1976. The site includes an “overview” link describing the make-up of the Committee (“nine members, seven of whom are judges from the appellate, superior, justice and municipal courts, and two of

whom are attorneys”), the appointment process and term (“members are appointed by the chief justice of the Arizona Supreme Court and serve three-year terms”), and explaining that the “full committee meets periodically but conducts most of its business by telephone and over the internet.”

The full texts of the Arizona advisory opinions are accessible by clicking on the year of the opinion and then the opinion number. The site also indexes opinions by year and title, subject, and

canon. There is a new “custom search” feature that allows a user to search using natural language and includes tips for searching.

With today’s technology and the increasing reliance on the internet by present and future generations of court systems users and stakeholders, it should be a matter of short time before all state jurisdictions make available some form of public information on a web-site. Public trust and confidence and understanding of the judiciary is

enhanced with transparency and responsible provision of fair, complete, and accurate information on all aspects of the justice system, including the accountability of judges, in whom it is crucial the public feels comfortable in placing its trust. 

Timothy Eckley is a staff attorney and publications associate for the American Judicature Society.

Recent Cases: Judicial Demeanor *(continued from page 1)*

judge sharply told the victim to sit in the back of the courtroom. During her discussion of the defendant’s sentence, the judge compared the victim to a fictitious pathological liar played by Jon Lovitz on the television program “Saturday Night Live,” using a mocking voice that was intended to be an impression of the character:

This man testified first that he did not follow him into the elevator. Oh yes, then he testified that he did follow him into the elevator. Then he testified to something else, and then he testified to some – I thought I was watching Saturday Night Live.

* * *

I think if you listen to Jon Lovitz, you might get an impression of how I felt when I was listening to this testimony.


The Florida Supreme Court ordered a judge to appear before it to

be publicly reprimanded for, in addition to other misconduct, beginning the call early and starting a small claims case in the absence of one party’s counsel; despite the disarray in the trial schedule caused by hurricanes, issuing a bench warrant with a \$100,000 bond when an expert witness in a case failed to appear; and repeatedly exhibiting rudeness and impatience with counsel, witnesses, and parties. *Inquiry Concerning Woodard*, 919 So. 2d 389 (Florida 2006).

The Washington State Commission on Judicial Conduct publicly admonished a judge for impatient, undignified, and/or discourteous demeanor in three cases. *In re Moore*, Stipulation, Agreement, and Order (Washington State Commission on Judicial Conduct April 7, 2006) (www.cjc.state.wa.us). In one case, the judge used inappropri-

ate humor, making light of a defendant’s personal circumstances during a hearing, and was overly critical of the same defendant for attempting to appeal her sentence in a subsequent hearing. In the second case, the judge reprimanded a defendant’s mother (an alleged victim of domestic violence) in an unreasonably abrupt, loud, and harsh manner for interrupting a proceeding. In the third case, the judge made comments that were mocking and dismissive of concerns expressed by a defendant’s mother and girlfriend.

Counseling

In all three cases, counseling for a temperament problem was included as part of the discipline or cited as a mitigating factor. In *Moore*, for example, the judge agreed to engage in training with a professional in behavioral dynamics, to complete that training to the satisfaction of the professional, and to provide proof of completion to the Commission within one year. In *Woodard*, the court ordered the judge to complete suitable anger management counseling. In *Uplinger*, the Commission noted in mitigation that the judge had, after the incidents at issue, voluntarily attended an educational session sponsored by the courts about control in the courtroom. 

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