



To promote
the effective
administration
of justice

JUDICIAL CONDUCT REPORTER

A publication of the American Judicature Society
Vol 22, No 3 Fall 2000

Recent Cases

Ex parte communications with experts

In a recent decision, the Nevada Supreme Court held that any ex parte communications between a judge and court-appointed experts should be limited to procedural or administrative matters and not involve the merits or substance of a case. *In the Matter of Fine*, 13 P.3d 400 (November 30, 2000).

Holding that the decision of the Commission on Judicial Discipline to remove a judge from office was sup-

ported by the record, the court concluded that clear and convincing evidence supported the Commission's findings that the judge had committed willful misconduct by engaging in numerous and repeated ex parte communications with experts appointed by her in child custody proceedings and by appointing her first cousin as the mediator in a case without informing the parties of their relationship. The court also held that the Commission

(continued on page 4)

Ethical Guidelines for Commission Members

Recognizing that they hold positions of public trust, judicial conduct commissions have begun to adopt ethical guidelines for commission members. For example, echoing the code of judicial conduct, the Washington Commission on Judicial Conduct "Member's Conduct Policies and Procedures" states that as the Commission "is charged with maintaining the integrity and independence of the judiciary, a member should participate in establishing, maintaining, and enforcing, and should personally observe high stan-

dards of conduct."

Several commissions have addressed a member's duty to maintain confidentiality. The "Ethical Guidelines for Commission Members" adopted by the Utah Judicial Conduct Commission, for example, state, "Members must maintain . . . confidentiality. Each member shall instruct personal staff about the requirement of confidentiality." The Arkansas Judicial Discipline & Disability Commission, the Pennsylvania Judicial

(continued on page 6)

Judicial Conduct Organizations Share Budget Data

The results of the Center for Judicial Conduct Organizations' annual survey of the budgets and staff of the fifty-one state judicial conduct organizations appear on pages 2-3 of this issue of the *Judicial Conduct Reporter*. (The table regarding complaint disposition was in the summer issue of the *Reporter*.) The Center greatly appreciates the efforts of the judicial conduct organizations in responding to this survey.

Caution is necessary in trying to compare judicial conduct organizations based on the information provided because there are considerable differences among them. For example, some judicial conduct organizations have their offices in private buildings and must pay rent, while other organizations are located in state buildings and have no rental expense. The budgets of some judicial conduct organizations include all salaries of their personnel, while other organizations receive personnel support from other state agencies.

	Year	Budget	Staff	Exec. Director Etc.	Attorneys	Investigators	Admin. Assistants, Secretaries	Others	Judges subject to jurisdiction
Alabama*	10/98-9/99	231,651	2FT/1PT*	1FT	0	0	1FT	1PT*	689
Alaska	7/99-6/00	218,300*	2FT	1FT	0	0	1FT	0	62
Arizona	7/97-6/98	312,000	5FT	1FT	1FT	1FT	1FT	1FT*	475
Arizona	7/98-6/99	360,000	5FT	1FT	1FT	1FT	1FT	1FT*	475
Arkansas	7/97-6/98	311,253*	4FT	1FT	0	1FT	1FT	1FT*	400
Arkansas	7/98-6/99	323,703*	4FT	1FT	0	1FT	1FT	1FT*	400
California	7/98-6/99	3,101,000	26FT	1FT	14FT	0	9FT	2FT*	1,580
Colorado	1999	125,000	1FT/1PT	1FT	0	0	1PT	0	284
Connecticut	7/98-6/99	202,719*	1PT/1FT	1PT	0	*	1FT	0	294
Delaware	1998	*	*	0	0	0	0	0	113
Delaware	1999	*	*	0	0	0	0	0	124
D.C.	1/98-9/99	133,000*	2FT/1PT	1FT	1PT	0	1FT	0	93
Florida	7/98-6/99	516,428	1FT/3PT	1FT	2PT	0	1PT	0	799
Hawaii	7/98-6/99	64,249	1FT*	0	0	0	1FT	0	120
Idaho	1999	122,100	2PT	1PT	0	0	1PT	0	130
Illinois*	7/98-6/99	525,000	6FT	1FT	0	2FT	2FT	1FT*	923
Indiana	7/99-6/00	*	2FT	1FT	0	0	1FT	0	500*
Kansas	7/98-6/99	43,624*	5PT	1PT	1PT	2PT	1PT	0	500*
Kansas	7/99-6/00	49,926*	1FT/4PT	1PT	1PT	2PT	1FT	0	500*
Kentucky	7/97-6/98	101,451	5PT	1PT	1PT	2PT	1PT	0	404
Kentucky	7/98-6/99	126,958	5PT	1PT	1PT	2PT	1PT	0	404
Louisiana	7/98-6/99	541,134	8FT/1PT	2FT/1PT*	2FT	0	4FT	0	758
Louisiana	7/99-6/00	609,829	10FT/1PT	2FT/1PT*	3FT	1FT	4FT	0	760
Maine	1998	40,000	2PT	1PT	0	0	1PT	0	75
Maryland			1FT/4PT	1PT	1FT/1PT	0	1PT	1PT*	320
Michigan	10/98-9/99	916,800	7FT	1FT	3FT	0	3FT	0	1,058*
Minnesota	7/97-6/98	233,000	2FT	1FT	0	0	1FT	0	346
Minnesota	7/98-6/99	258,000	2FT	1FT	0	0	1FT	0	383
Mississippi	7/98-6/99	344,648	5FT	1FT	1FT	1FT	2FT	0	700
Mississippi	7/99-6/00	369,323	5FT	1FT	1FT	1FT	2FT	0	700
Missouri	7/98-6/99	216,496	1FT/3PT	1FT	0	1PT	2PT	0	650
Montana	7/99-6/00	15,000*	1PT	0	0	0	1PT	0	159
Nebraska	1998	20,000	2PT	1PT	0	1PT	0	0	135
Nebraska	1999	20,000	2PT	1PT	0	1PT	0	0	135
Nevada	7/99-6/00	375,997	2FT/1PT	1FT	0	0	1FT/1PT	0	174
New Hampshire	7/98-6/99	20,000	3PT	1PT	0	0	2PT	0	245
New Jersey	7/98-6/99	260,000*	3FT	1FT	0	1FT	1FT	0	850
New Mexico	7/98-6/99	224,751	3FT	1FT	1FT	0	1FT	0	282
New York	4/99-3/00	1,947,500*	26FT/1PT	1FT	8FT	6FT/1PT	9FT	2FT*	3,500
North Carolina	7/98-6/99	112,141	2FT*	1FT	0	0	1FT	0	330
North Dakota	7/97-6/98	255,963*	4FT*	0	2FT	0	2FT	0	135
North Dakota	7/98-6/99	248,000*	4FT*	0	2FT	0	2FT	0	135
Ohio	1998	1,328,024*	18FT	1FT	6FT	2FT	6FT	3FT*	1130
Oklahoma	7/99-6/00	302,000	2FT	1FT	*	0	1FT	0	600
Oregon	7/99-6/00	99,315*	2PT	1PT	0	0	1PT	0	500
Pennsylvania*	7/98-6/99	929,000	9FT	1FT	2FT*	2FT	2FT	2FT*	1000
Rhode Island	7/98-6/99	89,757*	1FT	1FT*	0	0	0	0	148
Rhode Island	7/99-6/00	121,209*	1FT	1FT*	0	0	0	0	148
South Carolina	7/98-6/99	*	2FT	1FT	0	0	1FT	0	775
South Dakota	7/98-6/99	29,000*	0	0	0	0	0	0	55
Tennessee*		100,000*	5PT	1PT	1PT	0	1PT	2PT*	590
Texas	9/97-8/98	691,257*	13.8FTE*	1FT	6FT/1PT	0	5FT/1PT	1FT*	3,500
Texas	9/98-8/99	691,257*	13.2FTE*	1FT	6FT/1PT	0	5FT/1PT	1FT*	3,500
Utah	7/98-6/99	216,700	2FT/2PT	1FT	0	1FT/1PT	1PT	0	233
Vermont	7/99-6/00	30,000	0	0	0	0	0	0	89
Virginia	7/99-6/00	411,452	3FT	1FT	1FT*	0	1FT	0	824
Washington	7/98-6/99	750,392	6FT/2PT	1FT		2FT/1PT	2FT/1PT	1FT*	415
West Virginia	1999	*	2FT/5PT	2FT	0	5PT	0	0	346
Wisconsin	7/98-6/99	199,700*	2FT	1FT	0	0	1FT	0	850
Wyoming	7/98-6/00	196,472*	1PT	0	0	0	1PT	0	135

Judicial Conduct Organizations' Budgets and Staff, 1998–2000

Budget: Unless otherwise indicated, budget includes litigation costs.

Alabama

Alabama has a 2-tier judicial disciplinary system. These figures are for the Judicial Inquiry Commission, which investigates complaints and files formal charges with the Court of the Judiciary.

Staff: The Commission may apply to the attorney general for the assignment of an investigator to a particular matter. The attorney general also provides attorney services except when a conflict of interest exists or may arise, or when the “interests of justice would not thereby be served.”

Other staff: Temporary clerical aide

Alaska

Budget: Only some attorney fees are included in the budget.

Arizona

Other staff: Records manager

Arkansas

Budget: If attorney general's office represents Judicial Discipline & Disability Commission, costs are paid by attorney general. If the attorney general is unable to represent Commission because of a conflict, Commission has funds in the budget to pay for litigation costs and to hire outside counsel. If counsel from attorney general's office is used, Commission pays litigation costs and attorney general's office pays attorney salaries.

Other staff: Program support manager (office manager)

California

Other staff: 1 systems analyst; 1 business services officer

Connecticut

Budget: Attorney general's office handles Judicial Review Council's litigation at no cost except for printing of briefs.

Investigators: Investigator is retained through renewable annual contract.

Delaware

Budget: Court on the Judiciary does not have a budget.

Staff: Attorneys who are appointed to serve as presenters to present the case before Board of Examiners and/or Court on the Judiciary serve pro bono publico. Court on the Judiciary does not have a staff. By operation of Supreme Court Rule 2 (providing that the Court shall designate a Clerk), a supreme court staff attorney serves as clerk of Court on the Judiciary.

District of Columbia

Budget: The annual budget of Commission on Judicial Disabilities & Tenure also covers costs for evaluations of active judges who seek reappointment and for fitness reviews of retired judges who wish to continue judicial service as senior judges.

Hawaii

Staff: The 7 members of Commission on Judicial Conduct perform many staff functions.

Illinois

Illinois has a 2-tier judicial disciplinary system. These figures are for the Judicial Inquiry Board, which investigates complaints and files formal charges with the Courts Commission.

Other staff: Legal assistant

Indiana

Budget: Budget for Judicial Qualifications Commission is part of supreme court budget.

Judges subject to jurisdiction: Plus pro tem judges and judicial candidates.

Kansas

Budget: Budget figure does not accurately reflect the dollars spent operating Commission on Judicial Qualifications each year. This figure reflects litigation costs only. Staff salaries, office space, telephone, copying, and faxing are absorbed in appellate clerk's budget. If these items were included, the budget would exceed \$150,000. Fees of examiner, an attorney retained by Commission, are only expenditures paid out of Commission funding. The executive director, known as the secretary, receives no additional salary other than that of appellate clerk.

Judges subject to jurisdiction: Plus assigned judges, pro tem judges, and hearing officers.

Louisiana

Staff: Chief executive officer is part-time. Commission Counsel and Special Counsel are full-time.

Maryland:

Other staff: Paralegal

Michigan

Judges subject to jurisdiction: Plus retired judges sitting by assignment

Montana

Budget: Litigation costs are not included in annual budget.

New Jersey

Budget: Budget is not separately stated for Advisory Committee on Judicial Conduct; it is funded through administrative office of the courts.

New York

Budget: Represents 4% increase over previous year.

Other staff: Budget/personnel.

North Carolina

Staff: Investigative services are provided by state bureau of investigation; special counsel is provided by attorney general.

North Dakota

Budget and staff: Budget and staff are shared with the Disciplinary Board of the Supreme Court.

Ohio

Budget: Figure is for Disciplinary Counsel of the Supreme Court of Ohio, which does both attorney and judicial discipline. Entire budget is from attorney registration fees and is supplied by Ohio Supreme Court.

Other staff: 1 office manager; 2 receptionist-intake clerks.

Oklahoma

Attorney: Contract attorney.

Oregon

Budget: Litigation costs are partially included in annual budget. Commission on Judicial Fitness and Disability's investigation and hearing budget is partially funded at \$50,000 for 99-01 biennium. If

Judicial Conduct Organizations' Budgets and Staffs, 1998-2000 *(continued from page 3)*

Commission needs additional funding, request is made of Ways and Means Committee of legislature or in years legislature is not in session, to legislative emergency board.

Pennsylvania

Pennsylvania has a 2-tier judicial disciplinary system. These figures are for the Judicial Conduct Board, which investigates complaints and files formal charges with the Court of Judicial Discipline.

Attorneys: Deputy counsel and assistant counsel.

Other staff: 1 paralegal, 1 receptionist/secretary.

Rhode Island

Budget: Funds for purchasing legal, accounting, and investigative services are requested from the state budget office on as-needed basis. As of fiscal year 2001, legal services will be included in the budget appropriation.

Executive director: Executive assistant to chair.

South Carolina

Budget: Operations of Commission on Judicial Conduct are funded as part of budget for Office of Disciplinary Counsel, which also supports operation of Commission on Lawyer Conduct. Many cases before Commission on Judicial Conduct are investigated and prosecuted by attorney general's office as well as staff of office of disciplinary counsel. Some litigation costs are paid by attorney general's office.

South Dakota

Budget: Litigation costs are not included in budget.

Tennessee

Budget: Budget is part of the budget for the entire judiciary,

which is submitted to legislature by supreme court.

Other staff: Part-time clerks

Texas

Budget: Attorney general's office incurs cost of civil suits against Commission on Judicial Conduct and federal court proceedings.

Staff: Full time equivalency

Other staff: Deputy director

Vermont

Judges subject to jurisdiction: Plus retired judges that act as part-time judges and judges appointed on an ad hoc basis.

Virginia

Attorneys: Assistant counsel.

Washington

Other staff: Information systems specialist

West Virginia

West Virginia has a 2-tier judicial disciplinary system. These figures are for the Judicial Investigation Commission, which investigates complaints and files formal charges with the Judicial Inquiry Board.

Budget: All budget matters are encompassed in the supreme court budget.

Wisconsin

Budget: \$35,000 of budget is allocated to separate agency Judicial Commission is required to staff and fund.

Wyoming

Budget: Figure for two years 7/1/98 to 6/30/00.

Recent Cases *(continued from page 1)*

did not err in considering uncharged conduct committed by the judge.

The judge argued that her ex parte contacts with court-appointed experts were permitted by the exception to the prohibition on ex parte communication for consultations "with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities." The court held that such experts "are an arm of the court," and are quasi-judicial personnel that can fall within the meaning of court personnel as used in the exception to Canon 3B(7).

However, the court stated that not every communication between a court-appointed expert and a judge is

permissible. Noting that the exception "was designed to give a judge some flexibility in supervising judicial employees in the performance of their duties," the court stated the exception:

was not intended to permit a judge to circumvent other provisions of the Canons or become an advocate for one of the parties. Thus a judge could not, under the auspices of communicating with court personnel, instruct a law clerk to independently gather evidence in support of a party's position.

The court concluded:

Because court-appointed experts are court personnel under the Canons for a limited purpose, the restrictions governing ex parte communications should be more se-

vere than those which may apply to general court employees. Any ex parte communications with court-appointed experts should be limited to procedural or administrative matters. Matters involving the merits or substance of a case must not be discussed outside the presence of the parties. Moreover, the content of procedural or administrative communications should be promptly documented and forwarded to the parties so as to afford them an opportunity to respond to the court's actions.

The court noted that the Commission had concluded that, in the cases at issue, the communications between the judge and the experts involved matters of substance after which the judge made decisions on disputed issues and that the judge's actions

Recent Cases *(continued from page 4)*

amounted to advocacy on behalf of the children. The court held, “This is not the type of communication permitted under Canon 3B(7)(c).”

Arguing that the Commission’s decision to remove her was not warranted by the record because she did not engage in willful misconduct, the judge contended that willful misconduct includes an element of bad faith or malice while the Commission found that she acted with “good intentions.” The court held that the relevant inquiry was into the intentional nature of the judge’s conduct and not whether the judge was acting out of malice or ill will, stating the fact that the best of intentions did not relieve the judge of liability. The court concluded that willful misconduct occurs when the judge knows he or she is violating a judicial canon and acts contrary to that canon in spite of such knowledge.

The court noted that the Commission had disciplined the judge in 1995 for numerous *ex parte* contacts with two fellow family court judges in an attempt to influence their decision regarding a case in which she had served as counsel for one of the parties. In removing the judge, the court concluded: “Simply put, Judge Fine should have known better.”

Failure to comply with the law and violating confidentiality rules

Pursuant to the recommendation of the Judiciary Commission, the Louisiana Supreme Court publicly censured a judge who had (1) ordered “instanter trials” in 18 criminal cases immediately after the defendants pleaded not guilty and (2) violated the Commission’s confidentiality rules by asking a litigant who had filed a complaint against the judge if he wanted a recusal on the basis of that complaint. *In re Aucoin*, 767 So. 2d 30 (2000).

Immediately after Kirk Menard entered a plea of not guilty at his arraignment on a charge of criminal neglect of family, the judge ordered him to proceed to trial, even though Menard had not been notified that he would be required to be prepared for trial that day. The judge overruled his attorney’s objection. At the conclusion of the trial, the judge found Menard guilty. The court of appeal peremptorily reversed the conviction and held that the judge’s “decision to proceed with this case, instanter, was a clear abuse of discretion that resulted in prejudice to defendant’s fundamental right to present a defense.”

After the Menard decision, the judge used the “instanter trial” procedure in 17 criminal neglect of family cases in which the defendant pleaded not guilty, but adjusted the procedure by inquiring whether the defendant intended to call witnesses or present evidence. Before the Commission, the judge explained that other judges had employed the same procedure for many years but conceded that he might have been overzealous about clearing his docket and providing support for the defendants’ children.

The court held that the judge failed to comply with the law and disregarded the rights of the accused to present a defense and the basic tenets of due process. The court also held that the misconduct constituted egregious legal error and a disciplinary penalty was appropriate. That the judge was following a long-standing procedure used by other judges for many years, the court stated, was not an excuse for the judge’s failing to recognize an unconstitutional procedure, especially after it was called to his attention by the attorney’s objection in the Menard case. However, the court stated the fact that the judge did not institute the “instanter trial” procedure was a mitigat-

ing factor. Also in mitigation, the court noted that the court of appeal in Menard had not expressly stated that the procedure itself was constitutionally infirm and that the judge did modify the “instanter trial” procedure after the reversal. In further mitigation, the court stated that the “misconduct was isolated—not in the usual sense of the term, but in the sense that the misconduct was confined to criminal neglect of family cases, which by their nature are more given to informalities” Finally, the court noted that the judge expressed remorse and pledged not to use the procedure.

After the initial disciplinary charges were filed based on Menard’s complaint, the judge was advised by the Commission in a letter that he was “bound by the confidentiality rules,” and “may not discuss this letter, the investigation, or the basis of the complaint with others, except for your attorney and his or her staff and the Commission and its staff.”

When Menard appeared in court on new charges based on Menard’s failure to pay child support, the judge asked Menard if he wanted a recusal on the basis of the pending complaint filed by Menard with the Commission. Menard replied that he believed the judge would treat him fairly.

The court concluded, if there was a ground for recusal, the judge should have recused or if there were no grounds, the judge should have remained silent. Noting Menard obviously did not need to have his filing of the complaint called to his attention (or the attention of bystanders), the court stated the judge’s public reference to the complaint could have affected the willingness of Menard or others to file complaints.

(continued on page 6)

Recent Cases *(continued from page 5)*

Exchanging notes with staff that created an appearance of bias

Adopting the findings and recommendations of a special committee appointed by the chief judge, the Judicial Council for the United States Court of Appeals for the 9th Circuit publicly reprimanded a judge for writing and exchanging in open court notes that could reasonably be interpreted as reflecting bias and for condoning the practice among his courtroom staff. *In re McDonald*, Order and Memorandum (September 11, 2000). The notes were written by the judge on the bench or by his former courtroom deputy in the courtroom. Some were passed between the judge and his staff; others were exchanged between his former courtroom deputy and former court reporter without being seen by the judge. The notes dated from the latter half of the 1980s to perhaps as recently as 1997.

(1) One note was written during a case in which an African American named Jesse Jackson was plaintiff and stated “Old shoeless Jesse is going to argue.” According to the judge, he

wrote the note to himself, and it referred not to race but to the white baseball player “Shoeless Joe Jackson.”

(2) One note written by the judge stated “Ah is Im potent” and was written immediately following testimony by an African American witness. According to the judge, he was referring to himself in a self-deprecating way.


(3) One note stated, “In my experience, a Mormon money man makes the Jews & Chinese look like rank amateurs” and was written by the judge during the testimony of a Mormon witness.

(4) One note written by the judge during a trial involving a union stated “Guys in Black suits are union mafia. Don’t they look like mafia. Why would any?” According to the judge, he was commenting on why a trial lawyer would have permitted his clients to appear in court dressed in a stereotypical manner.

Most of the notes had been made public by the judge’s former court reporter, who had been terminated and filed suit against the judge; other notes

had been removed from a courtroom wastebasket by an attorney after court had recessed. The notes were reported in newspaper articles. The committee found that one of the notes discussed in the articles—stating, “It smells like oil in here—too many Greasers”—was written by the courtroom deputy during a trial with Hispanic defendants and lawyers present and was not shown to the judge prior to the investigation.

The special committee specifically found that the judge “is not and was not biased against any ethnic, racial, or religious group.” However, the committee concluded that the judge

on occasion violated the statutory standard of conduct by his practice, and by his condoning the practice among his courtroom staff, of writing and exchanging in open court, notes that could reasonably be interpreted as reflecting bias. Regardless of their intent as to meaning or audience, they certainly created an appearance of impropriety, undermined the public’s confidence in an impartial judiciary, and impugned the dignity and seriousness of the ongoing court proceedings. 

Ethical Guidelines for Commission Members *(continued from page 1)*

Conduct Board, and the Washington Commission have similar rules.

Public comment and media contact by commission members regarding a pending case are restricted in several states. The Washington Commission policy provides:

A Commission member shall not speak publicly about a confidential disciplinary proceeding, or about a public disciplinary proceeding before the Commission until the matter is final, i.e., no appeal has been filed and the time for appeal has expired, or if there is an appeal, until the mandate of the Supreme Court has issued.

The Pennsylvania Court of Judicial Discipline has adapted the code of ju-

dicial conduct for application to members of the court on the issue of public comment. The guidelines for the Utah Commission provide:

If a member or staff member is contacted by the media or the public about a new, pending, or closed matter that has not been the subject of a JCC press release, or a public order by the Supreme Court, such individual shall not discuss the matter, except to inform the media or public that matters are confidential pursuant to statute and JCC rules.

The Arkansas “Guidelines and Operating Policies for Commission Members, Alternates, and Staff” contain a similar rule and add that a member

may refer inquiries to the executive director of the Commission. Rules for the Alaska Commission on Judicial Conduct, the Washington Commission, and the Louisiana Judiciary Commission prohibit members from communicating with the news media regarding commission business but direct members to refer press inquiries to the executive director and/or the chair. If the inquiry is about non-confidential matters not related to a specific case, commission guidelines allow members to discuss the commission’s purpose, history, procedure, or composition.

Ex parte contacts between commis-

Ethical Guidelines for Commission Members *(continued from page 6)*

sion members and judges are proscribed by rules in Arkansas, Louisiana, Pennsylvania, and Texas. The Texas Commission on Judicial Conduct provision states:

A Commissioner, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider ex parte contacts with any judge who is the subject of an investigation being conducted by the Commission or involved in a proceeding before the Commission.

The Arkansas Commission's guidelines provide:

If a Commission member, alternate, or staff member is contacted about a new or pending matter by a Judicial Officer, a Judicial Officer's attorney, or other agent, or a Judicial Officer's family or friends, the Commission member, alternate, or staff member shall not discuss the matter unless the Commission has given appropriate authorization.

If a Commission member, alternate or a staff member is contacted by a complainant about a new, pending, or closed matter, such individual shall refer the complainant to the Executive Director.

The rules of the Louisiana Judiciary Commission provide: "No Commission member may make or respond to contacts with . . . persons involved in Commission proceedings concerning allegations, investigations or other Commission proceedings, or the ad-

ministration of the Commission, unless so authorized by the Commission." The Pennsylvania Court of Judicial Discipline has adapted the code of judicial conduct for application to members of the court on the issue of ex parte communications.

Attorney-members of the commissions in Alaska, Utah, and Washington may not represent a judge before the commission during the member's term or within two years after the member's term has expired, with Utah rules extending the restriction to representing complainants and witnesses in a matter before the commission.

Recognizing that decisions are enhanced by the participation of all members, several commissions impose attendance, notice, and voting requirements on members. For example, the "Member's Conduct Rules" of the Pennsylvania Judicial Conduct Board provide, "A member shall not be absent for more than 20% of the scheduled meetings, nor shall a member miss three consecutive meetings without just cause." The Washington and Utah rules impose similar requirements. Rules for members of the Washington Commission and the Pennsylvania Board prohibit abstention and require a member to vote in favor of or in opposition to each mo-

tion brought to a vote during a meeting, unless the member is disqualified.

Some rules cover a commission member's political activities, particularly with respect to campaigns for judicial office. Unless the member is himself or herself running for judicial office, commission members in Arkansas and Washington may not participate in a judicial campaign, including making contributions or endorsements. Similarly, non-judicial members of the Pennsylvania Court on Judicial Discipline should not solicit or contribute funds for a candidate for judicial office nor "serve as officers, members or volunteers in the campaign of a candidate for judicial office." (Judicial members are governed by the code of judicial conduct.)

With respect to political activity other than campaigns for judicial office, the members' conduct rules for the Pennsylvania Board provide, "A member of the Board involved in a political campaign shall not make reference to the member's affiliation with the Judicial Conduct Board in any way that may indicate support for the candidate by the Board." The Washington Commission has a similar rule. The rules for the Pennsylvania Court provide that a non-judicial member should not hold office or act as a leader in any political party or organization or engage in inappropriate political activity.

Rules in some states govern members' financial dealings. The Utah Commission's guidelines require a member to "refrain from financial and business dealings that directly or indirectly reflect adversely on impartiality, interfere with the proper performance of JCC duties, or exploit the member's position as a member." The Washington Commission and Penn-

(continued on page 8)

Judicial Conduct Reporter

Fall 2000

Allan D. Sobel
*Executive Vice President
and Director*

Cynthia Gray
*Director, Center for
Judicial Conduct
Organizations*

**American Judicature
Society**
180 N. Michigan Ave.
Suite 600
Chicago, IL 60601

Phone: 312-558-6900
Fax: 312-558-9175
E-mail: cgray@ajs.org

World Wide Web:
www.ajs.org

Published quarterly,
\$28 per year; single copy \$8

© 2000
American Judicature Society
ISSN: 0193-7367

An index to the *Judicial Conduct Reporter* is available on the AJS web site at www.ajs.org/ethics7.html. The index begins with Volume 15, No. 1.



180 N. Michigan Ave.
Suite 600
Chicago, Ill. 60601

Nonprofit Org.
U.S. POSTAGE
PAID
Chicago, Illinois
Permit No. 2482

JUDICIAL CONDUCT REPORTER


Ethical Guidelines for Commission Members *(continued from page 7)*

sylvania Judicial Conduct Board have similar rules. The rules for the Pennsylvania Board also prohibit a member from using or disclosing information acquired while serving as a member “in financial dealings or for any other purpose not related to the member’s Conduct Board duties” or financially profiting “as a result of any confidential information submitted to the Board.”

Miscellaneous provisions include prohibitions on a member:

- publicly commenting on the qualifications of any sitting judge (Alaska).

- participating in an organization’s endorsement or rating process for judicial candidates (Washington).
- testifying voluntarily as a character witness in a commission proceeding (Washington).
- discussing, when a public hearing is underway, testimony or evidence with anyone, including other members, until deliberations have begun (Utah, Washington).

Rules specifying when a member is disqualified from a case were discussed in the summer-fall 1998 issue of the *Judicial Conduct Reporter* (vol. 20, Nos. 2-3). 

Inside This Issue:

- **Judicial Conduct Organizations Share Budget Data**
- **Judicial Conduct Organizations Budgets and Staff, 1998–2000**
- **Recent Cases**
- **Ethical Guidelines for Commission Members**