

# JUDICIAL CONDUCT REPORTER



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## Consensual sexual relationships between judges and court staff

by Cynthia Gray

JUDICIAL  
CONDUCT  
REPORTER

FALL 2018

Without holding that a judge's consensual intimate relationship with a court employee necessarily constitutes misconduct, judicial conduct commissions and supreme courts find that other factors, such as adultery, sexual activity in the courthouse, disruption to the work of the court, or litigation, transform an arguably private affair into a violation of the code of judicial conduct.

For example, the Connecticut Supreme Court censured a former judge for his three-year affair with a married court reporter regularly assigned to his courtroom. *In re Flanagan*, 690 A.2d 865 (Connecticut 1997). The court reporter had filed a complaint alleging that the relationship had been coerced. The Judicial Review Council did not find probable cause to proceed with that allegation but did charge that the judge's consensual sexual relationship with the court reporter had violated the code of judicial conduct.

Rejecting the judge's argument that adultery should not be considered judicial misconduct because it was no longer a crime in Connecticut, the Court stated that, "the mere fact that conduct is less than criminal does not mean that, if a judge engages in it, he may not diminish public confidence in the judiciary." The Court acknowledged the difficulty of assessing the degree to which the public "may condone or disapprove of one having a sexual affair with a married person," but concluded that, "in general, such conduct is regarded as improper when it involves a subordinate in a professional, highly sensitive public context." As an example, the Court noted that the public could reasonably conclude that the relationship, or an acrimonious termination of the relationship, created an impermissible risk that the court reporter would fail to render an accurate record of the proceedings in the judge's courtroom. The Court held that "public confidence in the integrity of the judiciary is compromised by extended sexual relationships between judges and married court reporters assigned to their courtrooms."

Similarly, accepting an agreement for discipline by consent, the South Carolina Supreme Court publicly reprimanded a magistrate who had a consensual sexual relationship with a married administrative assistant employed at the court. *In the Matter of Harrelson*, 657 S.E.2d 754 (South Carolina 2008). Their sexual encounters during the five-month relationship took place outside of work hours and away from work locations. The magistrate, who was not married, occasionally provided gifts and financial assistance to the administrative assistant. Although the magistrate had no hiring, firing, or disciplinary authority over the assistant, he did supervise her when she was assigned to his courtroom during traffic court sessions.

When confronted by her husband, the assistant admitted the affair. Her husband reported the matter to the chief magistrate, who immediately

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re-assigned the magistrate so that the assistant would not work directly for him. The human resources department investigated but did not find sexual harassment.

## Sexual activity in the courthouse

The Louisiana Supreme Court stated that “an adulterous affair is not a per se violation of the Code of Judicial Conduct,” but concluded that a judge’s “rather open and notorious sexual conduct with his secretary at the courthouse, coupled with the other factors involved in the relationship, clearly brought the judicial office into disrepute.” *In re Miller*, 949 So. 2d 379 (Louisiana 2007). The Court removed him from office for this and other misconduct.

The judge had a 10-year adulterous affair with his secretary, Heather Viator, which began when she was his secretary in private practice and continued when he took the bench and she became his court secretary. After he became a judge, they engaged in sexual intercourse in his chambers once or twice a week after business hours. They met many times at the courthouse on Sunday afternoons and holidays when anyone passing could have seen their vehicles. There were rumors in the community that the judge was the father of Ms. Viator’s son.

The Viators separated, and the judge signed a consent judgment granting Ms. Viator a divorce and ordering Mr. Viator to pay her \$546.48 a month in child support. Ms. Viator testified that, after he signed the judgment, the judge said to her, “You are divorced and you are mine,” and they laughed.

In *In re Estes*, Order (Massachusetts Supreme Judicial Court May 24, 2018) (<https://tinyurl.com/ybtgguwt>), the Massachusetts Supreme Judicial Court stated that it had “no doubt that the Judge’s undisclosed sexual relationship with a member of his drug court team raises, at the least, the appearance of inappropriate influence and partiality in his decisions regarding drug court participants and thus puts the integrity of the drug court during his leadership into question.” Before or after some of their sexual encounters, they had discussed the drug court generally and communicated about a particular defendant, although the judge does not appear to have taken any action based on those communications. The judge also attempted to mediate problems between the staff member and other members of the drug court team.

The Court noted that respect for the judge’s office had been further damaged by his use of his chambers for several of their sexual encounters and his use of his court e-mail to communicate with the staff member. The Court concluded that, “[i]t is beyond dispute that these egregious, deliberate, and repeated acts of misconduct severely diminished respect in the eyes of the public not only for this judge but also for the judiciary.”

The Court noted that it was not addressing the staff member’s allegations of sexual harassment because the Commission on Judicial Conduct

**NCSC has a  
repository for  
resources to  
assist state courts  
develop or up-date  
training, policies,  
and procedures  
regarding  
workplace  
harassment**

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made no finding on that issue. The Court indefinitely suspended the judge without pay and publicly censured him; the Court, which cannot remove judges, also directed that its order be delivered to the governor and the legislature. The judge resigned after the Court's decision.

In *In re Spurlock*, Order (Illinois Courts Commission December 3, 2001) (<https://tinyurl.com/yc6ugkpa>), the Illinois Courts Commission did not appear to find that the judge's sexual relationship with a court reporter itself violated the code but held that the judge's "use of chambers as a venue to satisfy his sexual desires was more than ill-advised, and embarrassing. It calls into question and undermines his judgment." The judge had had sexual intercourse in his chambers with the court reporter once in the late afternoon on a Friday or the day before a holiday and once on a Sunday evening, without affecting court business or other personnel. The Commission removed the judge for this and other misconduct. *See also In re Casey* (Texas Special Court of Review May 9, 2017) (<https://tinyurl.com/ybyhzuph>) (public reprimand of judge who admitted requesting and receiving oral sex from his chief clerk/court manager at least 10 times, often in his chambers, finding he had misused his judicial office and committed more than an error of judgment).

Similarly, in *In the Matter Concerning Woodward*, Decision and order (California Commission on Judicial Performance September 2, 2014) (<https://tinyurl.com/y873652c>), the gravamen of the finding of misconduct was not that the judge had had an intimate relationship with a courtroom clerk but that he had engaged in sexual intercourse in the courthouse, exchanged communications of a sexual nature with her during court proceedings, and misled court administration about their relationship. Based on a stipulation for discipline by consent, the California Commission on Judicial Performance censured the judge.

During their 10-month relationship, the judge and clerk had twice engaged in sexual activity in his chambers. The judge occasionally passed notes of a sexual nature to the clerk during court proceedings, and once, while in the courtroom and off the bench during a break in proceedings, he made a sexual gesture toward her while a member of the public was present. The judge used the court's computers to regularly exchange e-mails or texts with the clerk that were not overtly sexual, but were personal and unrelated to court business. When the judge accompanied the clerk on her lunch break, he allowed her to return slightly late to work. The judge allowed the clerk to address him in front of other staff in the courthouse by a nickname used only by his friends and colleagues.

The "intimacy of the relationship was sufficiently overt that the court received more than one complaint . . . , and rumors circulated that 'something [was] going on between' the judge and his clerk." In several meetings prompted by these reports, the judge led court administration to believe that his relationship with the clerk was professional and that there was no need to re-assign her. The judge did not disclose that the relationship was sexual to his superior judicial officers until after communications from the clerk's husband about the relationship created security concerns.

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**"[O]ther factors, such as adultery, sexual activity in the courthouse, or disruption to the work of the court, transform an arguably private affair into a violation of the code of judicial conduct."**

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The Commission concluded:

[E]ngaging in sexual intercourse in the courthouse and exchanging communications of a sexual nature during court proceedings is the height of irresponsible and improper behavior by a judge. It reflects an utter disrespect for the dignity and decorum of the court and is seriously at odds with a judge's duty to avoid conduct that tarnishes the esteem of the judicial office in the public's eye. . . .

The Commission also stated that the judge's "sexual activity in the courthouse is aggravated by the fact that the conduct took place with a member of his court staff" and that he "potentially exposed other court staff to a hostile work environment through his intimate communications and sexual activities with the clerk in the courthouse." Further, noting that the judge had placed others "in the uncomfortable position of having to bring these concerns to his attention," the Commission stated that his misleading statements to court administration about the extent of the relationship were "as egregious as his misconduct related to his libidinous activities with his clerk."

A judge's failure to report to his superiors his intimate relationship with a bailiff assigned to his courtroom was grounds for a public reprimand in *In the Matter of Campbell*, 10 A.3d 1201 (New Jersey 2011). The New Jersey judiciary's "Policy on Consensual Dating in the Workplace" (<https://tinyurl.com/y8hg89d4>) states that "[c]onsensual dating relationships between Judiciary employees," which includes judges, "are generally not the Judiciary's business." However, "to eliminate any appearance of, or actual, impropriety in the workplace," the policy provides that, "when the two people currently or previously involved in such relationships work as supervisor and subordinate, the supervisor must promptly inform his or her immediate superior of the personal relationship so that the Judiciary may take action to change the reporting relationship between the individuals." The judge did not report his three-month, apparently consensual relationship with the bailiff to his supervisor. The court did not learn of the relationship until the bailiff took an overdose of prescription medication and was taken to the hospital by ambulance from the courthouse, telling a supervisor that she "was upset because she was having an affair with [the judge] and that now he wants nothing to do with her."

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## Disruption

In addition, judges have been sanctioned for consensual, intimate relationships with court staff because such "relationships between individuals of such unequal power and such proximity are, at best, ill-advised, and by their nature may impair the functioning of any work environment." *In re Fritzler*, Stipulation and order (Washington State Commission on Judicial Conduct August 9, 1996) (<https://tinyurl.com/ybqp899j>). In that case, the Washington State Commission on Judicial Conduct censured a judge for

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his two-month relationship with a judicial secretary that had “impacted the workplace through distractions including social contacts, rumors, and work performance problems.”

Moreover, without disclosing the relationship, the judge had presided over cases in which the employee’s husband was attorney of record. Eventually, the relationship interfered with the court’s business by necessitating the re-assignment of the husband’s cases; for a short time, the entire district court bench recused itself from his cases, and a judge pro tem was assigned to them. The judge also agreed to attend a judicial ethics course at the National Judicial College as part of the discipline.

Approximately seven years later, the same judge resigned after the Commission filed formal charges based on his intimate relationship with a different court employee. *In re Fritzler*, Stipulation and order (Washington State Commission on Judicial Conduct February 6, 2004) (<https://tinyurl.com/ya3srk7c>). Rumors about the relationship and “perceived favoritism based on that relationship” had disrupted the court workplace and “adversely affected morale for court employees, administrators, and fellow judicial officers.” Censuring the now-former judge, the Commission found that the relationship had created a “divisive issue” for the court staff and the bench and heightened “factionalism and antagonisms.”

Censuring a different judge for an affair with a court employee, the Washington Commission again stated that, although the relationship was apparently consensual, “an intimate relationship between a judge and a subordinate court employee is inherently problematic.” *In the Matter of Mamiya*, Stipulation and order (Washington State Commission on Judicial Conduct August 7, 2009) (<https://tinyurl.com/yabmjyln>). Their relationship, which had lasted several months, had not been generally known until the employee resigned and advised the city that she intended to file a claim of sexual harassment. To settle the lawsuit, the city and the judge, without admitting any wrongdoing, agreed to each pay the employee \$67,500. The *Seattle Times* published a story about the settlement.

The Commission noted that, “once the relationship and resulting claims of impropriety became known, it was highly disruptive to the court and brought Respondent—and by extension, the Seattle Municipal Court—into disrepute.” The judge had been presiding judge at the time of the relationship, and “[c]ourt personnel were understandably dismayed and disappointed in Respondent when they learned of the affair.” The Commission explained:

The essence of this misconduct is a violation of trust: the public and all court employees had a legitimate expectation that Respondent, as presiding judge in particular, would maintain appropriate workplace boundaries, even in the face of stresses or temptations, and be protective of the court’s reputation and his own. The inequitable nature of the relationship demonstrates a lack of judgment and disregard for the norms of the workplace.

The payment of public funds for the judge’s actions, the Commission stated, further eroded confidence in his integrity. In aggravation, the Commission noted that the judge had taken an extended leave of absence, court

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officials' attention and energy had been diverted from court business, and additional staff had to be hired to address issues related to the judge's conduct.

Sexual harassment lawsuits "alone can destroy the public confidence in the judiciary" and "cause public humiliation for the parties involved," the West Virginia Judicial Investigation Commission noted in publicly admonishing a former judge for his sexual relationship with his secretary/clerk, in addition to other misconduct. *In the Matter of Harwood*, Public admonishment (West Virginia Judicial Investigation Commission July 13, 2015). The Commission also explained that such relationships "become grist for the gossip mill and destructive blather in the community," "create an appearance of undue influence by the secretary over the judge," and "cause disharmony within the office if other employees think the secretary is receiving favoritism or if the sexual relationship ends badly and the parties are still expected to work together."

Disruptive conduct during a judge's relationship with his law clerk and hostile, retaliatory, and bizarre conduct after the relationship ended were among the grounds for removal in *In the Matter of Going*, 761 N.E.2d 585 (New York 2001). In its determination (<https://tinyurl.com/ybhsg2z5>), the State Commission on Judicial Conduct had found that, during the relationship, the judge's "physical display of affection for the law clerk in view of court staff and his discussions of the relationship with members of the court staff and with attorneys who appeared before him" were so disruptive that "the chief clerk felt compelled to report his actions to court administrators." That report caused the judge's relationship with the chief clerk to "sour," and "tension and divisiveness pervaded the courthouse work environment." In one incident, for example, 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.

After his relationship with his law clerk ended, the judge argued with her in open court and took "hostile, retaliatory" actions against her in "a flagrant abuse of his judicial position." For example, the judge "implicitly threatened the law clerk's continued employment by stating that she served at his pleasure," disparaged her in conversations with court staff, and told other staff members that he wished that she would leave or that he could fire her. The judge also interfered with her new boyfriend's service as a law guardian. The "atmosphere in the court offices became polarized," and the operation of the court was detrimentally affected. In addition, the judge's "behavior became increasingly erratic," adversely affecting his ability to carry out his judicial duties." For example, he exhibited symptoms of anxiety, depression, and mood swings at work and slept during the work day on a cot in the basement of the court building, in his office, and on the bench, although not while court was in session. *See also In the Matter of Del Vecchio*, Findings of fact, conclusions of law, and imposition of discipline (Nevada Commission on Judicial Discipline November 6, 2008) (<https://tinyurl.com/y9q4noto>) (removal for, in addition to other misconduct, a sexual affair with a court employee, ensuring she was paid when she was

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absent from work for their sexual trysts, allowing her to work “flex” hours contrary to court policy, retaliating after she ended the affair, and related misconduct); *In re Deming*, 736 P.2d 639 (Washington 1987) (removal for, in addition to other misconduct, using his position to enhance the position of a probation department employee with whom he was involved and allowing her to make probation recommendations before him while she used their relationship “as a power play to intimidate, harass and antagonize” other probation department employees).

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## Consent

Although none of the discipline cases included a finding that the relationship was coerced, as noted, several involved sexual harassment lawsuits and allegations that the relationship was nonconsensual, emphasizing the difficulty of ensuring consent in the context of a judge/court employee relationship. For example, in *In the Matter of Bates*, Stipulation and order (Washington Commission on Judicial Conduct February 4, 2000) (<https://tinyurl.com/yd3v3tuu>), the judge had believed his six-year sexual relationship with a court employee was consensual but acknowledged that it gave rise to the appearance of impropriety because it started after she began to work for him, he was her direct supervisor, and her ability to end their relationship could appear to be affected by a power imbalance. Indeed, the employee claimed that the relationship, although consensual at the start, was maintained through the judge’s threats to terminate her employment.

The New York State Commission on Judicial Conduct explained that it was not finding that sexual contact between a judge and an employee per se was harassing solely because of the disparity in power but concluded that, under the circumstances in the case, the judge had taken advantage of his position as a judge and employer. *In the Matter of LoRusso*, Determination (New York State Commission on Judicial Conduct June 8, 1993) (<https://tinyurl.com/yc319vbw>). The judge had subjected his 21-year-old court reporter and secretary to a series of sexual indignities in his locked chambers over an eight-month period, escalating the nature of the activity each time after he learned that she would submit without protest.

Although acknowledging that the court reporter was not a minor, the Commission found that her failure to protest or complain did not mean that she consented. The Commission emphasized that the judge was a judge and her boss and had given her a job that was important to her and her family. The Commission concluded that it was understandable that she only came forward after she no longer worked for the judge and she knew the Commission was investigating allegations by another employee. *See also In the Matter of Cash*, 630 S.E.2d 283 (South Carolina 2006) (removal for engaging in sexual activity with two female court staff, noting one staff member had been surprised by his initiation of sex and, due to her fragile emotional state, believed she could not refuse his advances).

## Pornography at the courthouse

Judges have been sanctioned for viewing pornography at the courthouse on court-owned equipment. *See, e.g., In re Ford*, 674 N.W.2d 147 (Michigan 2004) (censure of former judge for using a court computer to access sexually explicit web-sites during working hours, in addition to other misconduct); *In re Furman*, Stipulation and order (Washington State Commission on Judicial Conduct June 2, 2000) (<https://tinyurl.com/y8u5ty8q>) (censure for using state-provided computer and Internet services to access web-sites for personal benefit, including “adult-only” sites).

The Kansas Supreme Court removed a judge for repeatedly, over an extended period, looking at adult web-sites on his office computer in violation of the judicial district’s administrative order. *In the Matter of Robertson*, 618 S.E.2d 897 (Kansas 2005). The Court held that the judge’s “conduct showed disrespect for a basic principle which underlies the judicial system: respect for judicial orders.”

To function effectively as a judicial officer, the Respondent must expect others to follow judicial orders. Yet, to satisfy his own interests, the Respondent violated his own court’s administrative order, an order with which all employees of the 28th Judicial District were and are expected to comply. Respondent seeks to set himself apart from the others bound by the administrative order and all other court orders.

The Illinois Courts Commission suspended a judge for 60 days without pay for using his county-issued work computer to access pornographic web-sites in his chambers during work hours several times a week. *In re Polito*, Order (Illinois Courts Commission February 1, 2013) (<https://tinyurl.com/y7ybx9js>). The county had a written policy that prohibited employees from using the computers provided to them to access sexually explicit material. The Commission noted that there was no evidence that the judge’s “conduct affected his ability to perform his judicial duties.” However, it concluded that, “in an era of declining judicial resources, many judges carry heavy caseloads, and Judge Polito’s conduct was an inexcusable waste of judicial time that should have been spent on available judicial duties.” The judge had begun treatment for an addiction to pornography.

In addition to violating court policies, viewing explicit web-sites risks exposing the court’s computers and network to viruses and exposing court staff to offensive images. For example, the public reprimand of a Florida judge noted that his pervasive practice of viewing pornography on-line had resulted in his chambers computer being frequently infected with computer viruses and that court personnel saw pornographic images when they were in his office to remove viruses from his computer. *Inquiry Concerning Downey*, 937 So. 2d 643 (Florida 2006).

“In this day of electronic communications,” the Montana Judicial Standards Commission found, there was no distinction between accessing

sexually explicit images on a county computer and monitor and “leaving a magazine with the same photo on the cover exposed to the office staff.” *Harris v. Smartt*, 57 P.3d 58 (Montana 2002) (suspension without pay until the end of term for this and other misconduct). One Friday, after Judge Smartt had left for the day, the court manager and his co-judge had entered his chambers to shut down his computer because the back-up system for the court’s computer network was not working properly. When the court manager touched the mouse to re-activate the screen and clicked on the toolbar, three pornographic pictures, involving two men, came up on the screen. The court manager said, “Oh my God,” and ran from the office.

The co-judge printed the screen to record what he and the court manager had seen and then shut the computer off. Subsequently, the co-judge returned to the judge’s chambers several times to record past and new internet activity, including approximately 105 web-sites that were “quite obviously pornographic.”

Testifying that he had accessed the material for a joke card he was planning for his wife’s 50th birthday, the judge stated that the discipline proceedings were a “degrading and humiliating intrusion into a matter involving his private and intimate relationship with his wife.” The judge argued that he was being persecuted because of society’s sense of “super morality,” compared pornography to homosexuality because neither was accepted by society, and called the discipline proceedings the “Salem Witch Hunt.” The Montana Supreme Court found that argument “patently absurd” and emphasized that, if the judge had restricted his viewing of pornographic images to his bedroom, “we would undoubtedly not be here today.”

## California Commission mentorship program

by Janice M. Brickley

Poor judicial demeanor is the most frequently disciplined conduct in California. Incidents of poor demeanor rarely result in removal, short of a history of prior discipline or egregious incidents. Without intervention, however, judicial demeanor problems often persist with the attendant loss of public confidence in the judicial system.

In furtherance of its mandate to protect the public, uphold public confidence in the judicial system, and maintain high standards of judicial conduct, in 2016, the California Commission on Judicial Performance instituted a pilot mentorship program for judges in northern California who have demonstrated a pattern of poor demeanor, but appear to be amenable to reform. At its discretion, the Commission offers the opportunity to participate to judges who have a pending preliminary investigation involving allegations of demeanor-related misconduct.

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## The mentors

Recognizing that the success of a mentoring program is highly dependent on the effectiveness of the mentors, the Commission put a significant amount of time and resources into the selection and training of mentor judges. Attorneys, judges, and Commission members recommended prospective mentors based on their reputation for outstanding courtroom demeanor, excellent communication skills, and leadership. A committee of Commission members and staff then conducted interviews, and the Commission selected nine judges to serve as mentors. (The Commission has not publicized the names of the mentors to preserve confidentiality.)

The Commission conducted a day-long training for the mentor judges with faculty that included judges, retired judges, and a mental health expert who was the director of the Lawyers Assistance Program of the State Bar Association of California. The faculty had extensive experience in judicial and attorney mentoring. The training was skills-based and focused on the elements necessary for an effective mentoring relationship, including building relationships of trust, communication strategies, and how to overcome defensiveness.

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## Terms and conditions

After Commission staff has investigated a complaint concerning poor demeanor and received a judge's written response to the allegation(s), the Commission may decide that the judge would be an appropriate candidate for mentoring. If the judge agrees to participate in the program, the Commission's proceedings are deferred for the period of mentoring. The mentee judge is given a choice between two mentors, selected from the list in alphabetical order with exceptions based on factors such as availability, geographic location (although the mentor and mentee cannot be from the same court), experience in a particular assignment relevant to the complaints, and diversity.

Before entering into a mentoring relationship, the mentee judge must sign an agreement to participate and cooperate in the program for up to two years. In the agreement, among other things, the mentee:

- Agrees "to cooperate with the Mentor in setting up a schedule of meetings and contacts, including court observation or video and audio recording of court proceedings to enable the Mentor to fulfill his/her mentoring responsibilities;"
- Waives the right to confidentiality to allow the Commission to provide the mentor with the preliminary investigation letter, the judge's written response, any prior discipline, including private discipline, for similar misconduct, and other relevant materials, which the mentor agrees to keep confidential;

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**“[T]he California Commission on Judicial Performance instituted a pilot mentorship program for judges in northern California who have demonstrated a pattern of poor demeanor, but appear to be amenable to reform.”**

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- Acknowledges that the mentor will report on the judge's participation and progress to the Commission;
- Acknowledges that, if the mentor has reliable information that the mentee judge has committed a violation in addition to the conduct that is the subject of the mentorship, the mentor is obligated "to take appropriate corrective action, which could include reporting the conduct to the commission;" and
- Agrees that, if the mentee is found to have engaged in subsequent misconduct, the Commission may take into consideration his/her previous participation in the mentoring program, whether successfully completed or not, and may refer to and discuss that participation in subsequent discipline, including public discipline.

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## The mentoring plan

The mentor is expected to introduce himself or herself to the mentee, answer questions, and set up the first in-person meeting within two weeks. In that first meeting, the mentor and mentee review program guidelines and requirements, set expectations, and begin identifying goals and courses of conduct to accomplish the goals. The mentor also arranges to observe the mentee judge in the courtroom and/or review audio or video recordings as promptly as possible.

The Commission will provide resources to assist mentors and mentees with the development of an effective mentoring plan. Areas of focus include accountability, bias (including implicit or unconscious bias), cross-cultural awareness, demeanor on the bench, emotional intelligence, empathy, mindfulness, self-represented litigants, and substance abuse. The Commission anticipates that the mentor and mentee will have continued and sustained contact throughout the mentorship in person, by phone, by e-mail, and through other types of electronic communication.

Using a form, the mentor will submit a report for each Commission meeting to allow the Commission to review the mentee's progress. The form asks for an evaluation of the mentee's progress on a numerical/qualitative scale and includes a section for narrative comments. Except as summarized in a report, communications between the mentor and mentee are confidential and need not be disclosed to the Commission.

The Commission may terminate the mentorship if it determines that the mentee judge is not complying with the terms of the mentorship, is not making a good faith effort to change or modify the conduct that is the subject of the mentorship, or is not cooperating with the mentor.

The Commission takes successful completion of a mentorship into consideration in disposing of the matter pending against the mentee judge. Generally, that means the Commission will close the matter or impose a lower level of discipline than might otherwise be imposed.

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The Commission believes that mentoring, supplemented with educational and other resources for skills development, can effectively and efficiently foster changed behavior with judges and, in so doing, protect the public.

*Janice M. Brickley is Legal Advisor to the Commission, assisting the Commission in its deliberations during adjudication of contested matters and coordinates formal hearings. She also assists the Commission in the implementation of rules and policy.*

## Vouching for pardon, parole, or clemency

Rule 3.3 of the 2007 American Bar Association *Model Code of Judicial Conduct* provides: “A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.” Similarly, the 1990 model code version provided in Canon 2B: “A judge shall not testify voluntarily as a character witness.” That rule applies to parole, pardon, and clemency proceedings.

The New York State Commission on Judicial Conduct publicly admonished a judge for sending a letter on judicial stationery to the division of parole on behalf of an inmate at the request of the inmate’s mother, a family acquaintance. *In the Matter of Smith*, Determination (New York State Commission on Judicial Conduct June 19, 2013) (<https://tinyurl.com/q8pmb5f>). The Commission found that the judge’s letter was clearly intended to influence the parole board to give favorable consideration to the inmate’s application, subverting “the fair and proper administration of justice since the inmate is the beneficiary of an influential plea from a sitting judge based on personal connections, a benefit not available to others who have no such connections.”

Similarly, judicial ethics committees have advised that judges should not submit written statements or otherwise weigh in regarding requests for parole, pardon, or clemency, at least absent a formal request.

- A judge may not, as a private citizen, request that the board of pardons and paroles give favorable consideration to an inmate. *Alabama Advisory Opinion 1978-44* (<https://tinyurl.com/ybvhvwer>).
- A judge may not voluntarily write a letter to the parole and probation commission identifying himself as a county judge and recommending parole for an inmate. *Florida Advisory Opinion 1977-17* (<https://tinyurl.com/y6uxwqbq>).

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- A judge may not write a letter to the clemency board on behalf of an individual seeking a pardon but may furnish information in response to an official inquiry. *Florida Advisory Opinion 1982-15* (<https://tinyurl.com/y8tjpwv>).
- A judge may not write to the governor recommending a pardon for a former court staff member. *Florida Advisory Opinion 2010-29* (<https://tinyurl.com/yaau2ezf>).
- Absent a formal request, a judge should not communicate with the governor's office regarding a pardon or with the parole board regarding a parole. *Kentucky Advisory Opinion JE-104* (2004) (<https://tinyurl.com/y6ws5eqk>).
- A judge may not write a letter on behalf of a felon applying for a pardon even if the recommendation is based on personal information. *New Mexico Advisory Opinion 2002-3* (<https://tinyurl.com/ydyjpoxx>).
- A judge may not, in response to a request from a corrections counselor, write a letter in support of the parole application of an inmate she knew many years ago. *New York Advisory Opinion 1999-7* (<https://tinyurl.com/yaawkarm>).
- A judge should not discuss with the office of the borough president the clemency petition of a prisoner whose trial he had presided over. *New York Advisory Opinion 2002-47* (<https://tinyurl.com/y9bv9wlz>).
- A judge may not endorse a former litigant's petition for clemency. *New York Advisory Opinion 2008-143* (<https://tinyurl.com/ydehd6fl>).
- A judicial hearing officer may not write a letter supporting an inmate's efforts to gain parole and/or clemency. *New York Advisory Opinion 2016-27* (<https://tinyurl.com/yc2kgj2s>).
- A judge may not sign a petition in favor of granting executive clemency to a prisoner convicted of espionage against the United States. *New York Advisory Opinion 1996-127* (<https://tinyurl.com/ydzcfxlk>).
- A judge may not sua sponte submit a letter supporting a pardon, attesting to the good character of the person seeking the pardon, and analyzing the adequacy of the person's legal representation and conviction but may respond to questions from the pardon board. *Pennsylvania Informal Advisory Opinion 7/8/04* (<https://tinyurl.com/jgqecme>).
- A judge may not write a letter in support of a presidential pardon for someone she knows, but, if the pardoning authority solicits her opinion, the judge may respond with factual information, not character testimony. *Pennsylvania Informal Advisory Opinion 3/22/04* (<https://tinyurl.com/jgqecme>).
- A judge may not write a letter recommending a pardon for a former county deputy even if he did not preside over the case but may comment if the investigating entity contacts him. *Pennsylvania Informal Advisory Opinion 11/26/08* (<https://tinyurl.com/jgqecme>).

- A magistrate may not write a letter to the board of pardon and parole at the request of a college classmate who has applied for a pardon. *South Carolina Advisory Opinion 6-1994* (<https://tinyurl.com/ya9xdef6>).
- A judge who has no professional connection with a case may not make a recommendation to the board of pardons and paroles even if she has a personal basis for the recommendation. *Texas Advisory Opinion 146* (1992) (<https://tinyurl.com/o3ftxos>).
- A judge may not file a character affidavit on behalf of a person seeking a pardon from the President. *Texas Advisory Opinion 207* (1997) (<https://tinyurl.com/o3ftxos>).
- A judge should not, at the request of a prisoner, make a personal recommendation for a pardon, parole, or the commutation of a sentence. *U.S. Advisory Opinion 65* (2009) (<https://tinyurl.com/y7bmcsxv>).

See also *California Code of Judicial Ethics, Canon 2B(3)(b)* (<https://tinyurl.com/c3lrplt>) (“A judge, other than the judge who presided over the trial of or sentenced the person seeking parole, pardon, or commutation of sentence, shall not initiate communications with the Board of Parole Hearings regarding parole or the Office of the Governor regarding parole, pardon, or commutation of sentence, but may provide these entities with information for the record in response to an official request”). But see *Pennsylvania Informal Advisory Opinion 2/18/11* (<https://tinyurl.com/jgqecme>) (a judge may, at an inmate’s request, write a letter on personal stationery in support of the release of an inmate who appeared before him more than 15 years ago in juvenile court).

Some states have a limited exception to the rule for family members. The Alaska committee advised that judges may write letters to the pardon or parole board “in their personal capacity when a member of their immediate family is either the victim of the crime or the convicted person.” *Alaska Advisory Opinion 2003-1* (<https://tinyurl.com/y7kw2aza>). Canon 2B(3) (c) of the California code (<https://tinyurl.com/c3lrplt>) provides: “A judge may initiate communications concerning a member of the judge’s family with a representative of a probation department regarding sentencing, the Board of Parole Hearings regarding parole, or the Office of the Governor regarding parole, pardon, or commutation of sentence, provided the judge is not identified as a judge in the communication.” (“Member of the judge’s family” is defined as “a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.”) But see *Pennsylvania Informal Advisory Opinion 8/23/2013* (<https://tinyurl.com/jgqecme>) (a judge may not write to the pardons board in support of a distant relative).

In addition, a judge who is the victim of the crime for which the potential parolee’s was convicted may offer testimony to the parole board. *Nevada Advisory Opinion JE11-008* (<https://tinyurl.com/ycucu744>)(e). Similarly, the New York committee stated that at the request of the district attorney

as agent for a parole board, a judge may, in her capacity as the victim of the crime, express in writing her views on whether the defendant should be released on parole; when the crime was committed in her chambers, the judge may use judicial stationery. *New York Advisory Opinion 2007-104* (<https://tinyurl.com/ydzcfxlk>).

## Sentencing judge

Parole boards and similar agencies often ask the judge who sentenced an inmate for input, and a judge may respond to a formal, official request from the agency.

For example, the Illinois committee advised that only a direct, specific, written notification from the review board would authorize a sentencing judge to provide a character reference or opinion letter for use at a clemency hearing. *Illinois Advisory Opinion 2005-6* (<https://tinyurl.com/ybbs4cyw>). Thus, the committee advised, a judge could not respond to a general invitation for comments published in a newspaper, to a request by the inmate's attorney, or to notification of the clemency hearing from the inmate. *But see Alabama Advisory Opinion 1983-177* (<https://tinyurl.com/yc6tag2o>) (a judge who presided over a trial may respond, positively or negatively, to the proposed parole of an inmate when a statute requires that the trial judge be given notice of the impending parole).

The Illinois committee further noted that there may be other reasons why, even if formally requested, a judge should not make a "comment (favorable or unfavorable) in a Prisoner Review Board proceeding." For example, the opinion suggested, a judge who participated in a clemency proceeding might be required to recuse if a habeas corpus or post-conviction proceeding was subsequently initiated. The committee also recognized "merit to the argument and philosophy that any public comment or pronouncement about a proceeding over which a judge presided or about the parties or litigants should be left to the public record made by the court and should not be subject to later revision, embellishment or the perspective of hindsight."

Further, some advisory committees have stated that, even in response to an official request, the sentencing judge may provide only information, not character testimony, a recommendation, or an opinion. For example, the Alaska committee advised that, although "[t]rial or sentencing judges should not initiate letters to pardon or parole boards," they "may respond to an official request by the pardon or parole board" but only to convey "objective information that would assist in the determination." *Alaska Advisory Opinion 2003-1* (<https://tinyurl.com/y7kw2aza>). The committee emphasized that, when responding, judges should not express personal opinions or conjecture about the person's character and should only narrowly "address the criteria used by the pardon or parole board." The committee noted that judges could use official court stationery under those circumstances "[b]ecause the only permissible communications are 'official' communications." *See also Kansas Advisory Opinion JE-79* (1998) (<https://tinyurl.com/>).

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[com/y7fczfww](https://tinyurl.com/y7fczfww)) (the judge who sentenced an inmate may respond to a notice from the department of corrections prior to a parole board hearing asking for additional information from the judge's files and records, not opinion as to character); *U.S. Advisory Opinion 65* (2009) (<https://tinyurl.com/y7bmcsxv>) (a sentencing judge could transmit objective information that she might have that the Justice Department may not have but that would assist it in making its determination, but may not make a recommendation).

## Former client

There is no exception to the general rule that allows a judge to submit a parole, pardon, or clemency recommendation on behalf of a former client. For example, the New York committee advised that a judge who had represented a criminal defendant scheduled to appear before the board of parole should not send a letter at the defendant's request. *New York Advisory Opinion 1997-92* (<https://tinyurl.com/y9jih7q2>). The committee did state that a judge could respond to an official request for a statement or a recommendation based on the judge's knowledge of the defendant if he designates the response "personal and unofficial."

However, the Florida advisory committee stated that, even in response to a request from the parole and probation commission, a judge should not provide a recommendation regarding a former client who was seeking commutation of his sentence. *Florida Advisory Opinion 1984-14* (<https://tinyurl.com/yaqpk3j>). The committee expressed concern that a recommendation would inject the prestige of the judicial office into the proceeding and be misunderstood as an official testimonial. The committee also noted that the judge's "duty as an attorney not to reveal matters unfavorable" to a former client might conflict with her "duty as a judge to be completely candid and truthful." The committee did distinguish between making a recommendation, which it prohibited, and supplying information that "the judge alone may have by virtue of personal contacts" with the former client, which it suggested may be permissible. See also *Florida Advisory Opinion 1997-7* (<https://tinyurl.com/yatmx5bm>) (a judge may not, at the request of a former client's lawyer, submit a letter of "reference" and "support" for an application for clemency).

Similarly, the Massachusetts committee advised that, although a judge may not give character testimony on behalf of a former client before the parole board, the judge could, pursuant to a subpoena on the former client's behalf, provide factual testimony about a plea offer that had been an issue in a previous parole hearing. *Massachusetts Advisory Opinion 2006-2* (<https://tinyurl.com/yd2mwga4>). The committee did impose several caveats. The committee emphasized that a judge should determine "whether the judge's testimony is truly necessary," to prevent counsel from capitalizing on the prestige of the judicial office rather than subpoenaing another suitable witness with the same information. Further, the committee cautioned, the judge's testimony should be "scrupulously true, accurate, and complete"

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October 23 through  
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Suites Downtown  
Lakefront

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and the judge should not “strategize with the client’s current counsel or take any other steps as an advocate.”

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## Former prosecutor

The Alabama advisory committee stated that a judge may write a letter opposing the parole of a prisoner in a case he had prosecuted as an assistant district attorney when a statute contemplates that officers of the court who participated in the trial can provide input into the parole decision. *Alabama Advisory Opinion 2006-866*. However, the committee cautioned the judge not to use judicial letterhead or identify himself as a judge and to provide only facts consistent with his capacity as the trial attorney. See also *Washington Advisory Opinion 1997-14* (<https://tinyurl.com/y738s46b>) (when no one else can convey the victims’ perspective, a judge may, based on information learned while prosecuting a statutory rape case, contact the sentence review board and provide information about the nature of the defendant’s criminal activity and its impact on the victims).

In contrast, the Nevada committee advised that parole board guidelines stating that the views of district attorneys “are welcomed” do not permit a judge to comment about a prisoner he prosecuted prior to taking the bench. *Nevada Advisory Opinion JE2011-008* (<https://tinyurl.com/ycucu744>). The committee noted that, if the board believes the judge’s testimony in his capacity as a “former district attorney is critical to its evaluation of a prisoner,” it can make a formal request, and the judge may offer factual testimony in response.

## Recent cases

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### Neighbor dispute

The Wisconsin Supreme Court suspended a circuit court commissioner for 15 days without pay for independently investigating the conflict between neighbors underlying a pending case and then telling them that any further incidents would result in disorderly conduct tickets for all involved that would be upheld regardless of the circumstances. *In the Matter of Calvert*, 914 N.W.2d 765 (Wisconsin 2018).

As part of an ongoing dispute between next-door neighbors, a petition for a harassment injunction and a request for a temporary restraining order was filed alleging that the respondents had repeatedly harassed the petitioners, including pointing surveillance cameras at their house. Before holding a hearing, the commissioner, on his own initiative, went to the police station where he asked the police chief if there was any basis for a

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citation, and the police chief described the parties' contacts with the police department and told the commissioner that he had visited the respondents' residence and that there were no cameras pointed at the petitioners' property. The commissioner also reviewed the police department's "contact file" for the dispute, which included police statements.

The commissioner denied the petitioners' request for a temporary restraining order based on the information provided by the police chief and in the police file.

At a subsequent hearing regarding the preliminary injunction, after the testimony of witnesses and arguments from both sides, the commissioner denied the request without disclosing his contact with the police. The commissioner then stated:

What is going to happen, though, is that anything between these two neighbors is going to stop as of today. Period. End of story. And how it's going to stop is this: I've already talked to [the police] chief [ . . . ] as of yesterday. What's going to happen is, if you call the Oconto Police Department, or the Sheriffs Department, or, you call them, they are going to come out, they are not going to have to listen as to what took place because if they get called out to either of your places, complaining about each other, what's going to happen—they're going to issue mutual disorderly conduct tickets. So, I don't care who calls. You call, either of you call, they are going to come out, they are going to issue a disorderly conduct to you and they are going to issue a disorderly conduct to you. Alright?

The commissioner further explained that he had told the municipal judge "enough is enough, it's been going on for twelve/thirteen years, I'm putting an end to it, and I told him, 'I don't care what either one of you say.' He's going to find you guilty and issue you a fine." Then, the commissioner told the neighbors, if they asked for review of the municipal court's verdict, "that's fine because . . . it'll get de novo'd up here to me and guess what's going to happen? I'm going to uphold it and you're both going to pay a fine." Finally, the commissioner told them, if they want his decision reviewed, "Go ahead because I'm gonna tell either one of these circuit court judges, 'Enough is enough. This is how we're going to handle it.' I want nothing further going on." In fact, the commissioner had not directed the police chief to issue mutual disorderly conduct citations to the neighbors regardless of fault and the municipal judge had not agreed to find the neighbors guilty regardless of fault.

Emphasizing that the misconduct was "undeniably serious," the Court concluded that "[w]e cannot abide such assurances by a judge to rig the judicial and criminal justice systems against its participants." The Court stated:

[The commissioner's] behavior was far from objective and impartial. He independently investigated the facts of a case pending before him—an effort that included engaging in an ex parte communication with the police chief. He then lied to the parties in a particularly manipulative manner, falsely claiming that he had communicated with individuals in the judicial and law

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**"We cannot abide such assurances by a judge to rig the judicial and criminal justice systems against its participants."**

enforcement systems in such a way that the parties were doomed to failure and future legal troubles should they ever seek additional recourse.

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## Soliciting speaking engagements

The Illinois Courts Commission reprimanded an appellate judge for soliciting paid speaking engagements using his judicial position. *In re Steigman* (Illinois Courts Commission August 13, 2018) (<https://tinyurl.com/y9u3gkxt>).

The judge testified that he had been writing and speaking on legal topics for decades to share his love of the law and educate the public. He began soliciting paid speaking opportunities after an organizer of continuing legal education seminars for prosecutors offered to pay him \$1,250 for a two-day presentation.

He made over 120 solicitations. The judge used judicial letterhead for most of his solicitations to law enforcement groups. The judge initially sent solicitations to medical societies and hospitals by his work e-mail but switched to judicial letterhead because the response to the e-mail solicitation was “tepid.” If he did not receive a response with either method, he sometimes followed up by telephone. He dictated the letters and e-mail solicitations for his secretary to transcribe as he would any other correspondence. He paid the postage for the letters himself. The judge’s income for over 24 presentations in two years was \$32,000 to \$34,000.

Noting that the code prohibits judges from soliciting donations for charitable organizations, the Commission stated that the “same principles apply with even greater force when the ‘cause’ for which the judge is soliciting is a business or commercial activity that serves the judge’s own financial benefit.” The Commission found that the judge’s use of stationery and other judicial resources to advance his “burgeoning speaking business was an exploitation of his judicial office . . . .” It explained that, although the judge’s “zeal in this pursuit arose primarily from his genuine belief that he was providing a public benefit by explaining legal concepts to non-lawyers. . . . , the fact that the ‘public service’ he was providing also enriched him financially created the danger that recipients of his solicitation might feel coerced to hire him, or might think that hiring him to give a presentation would cause him to favor their interests in cases that came before him.”

The Commission agreed that merely being paid to speak or teach may not constitute actively managing a business and emphasized that it was not criticizing or trying to inhibit the practice of judges educating the public regarding the law. However, it concluded that the judge had gone “beyond simply earning a fee for permitted activity, and instead actively sought to increase his extrajudicial sources of revenues.”

## Project promotion

A Special Court of Review Appointed by the Texas Supreme Court publicly admonished a judge for referring to his judicial title and position to promote a project with his wife that included a book, a web-site, and an on-line referral service. *In re Roach*, Judgment and public admonition (Texas Special Court of Review July 24, 2018) (<https://tinyurl.com/yc4j7gpo>).

The judge and his wife, an attorney who conducts mediations in family law cases, co-authored the book *Divorce in Peace: Alternatives to War from a Judge and Lawyer*. The book's front cover lists "John and Laura Roach" as the authors. The back cover has a photo of the judge and his wife together, next to the statement: "John and Laura have spent their careers, as lawyers and a judge, trying to help couples avoid the pitfalls of high conflict divorces." An "about the authors" section describes John Roach as "a Texas district court judge with a true passion for the law" and states that, "[a]s a judge, he has had a front row seat to over 10,000 family law cases." The book has sections entitled "Judge's Perspective" and "Mediator's Perspective" that offer additional comment on particular topics.

The book's introduction refers to "attorneys, financial planners, mental health professionals and others — who are committed to the same principles of peaceful resolution" and "are listed at our website, [www.divorceinpeace.com](http://www.divorceinpeace.com)." Professionals can be listed on the web-site without charge with a photo, resumé, practice-area description, and e-mail address. Professionals can also pay \$59.99 to \$199 a month to post additional information such as client reviews, blog posts, articles, and videos.

When the book was published, a brochure was mailed to approximately 18,000 recipients, including about 12,000 Texas attorneys who were family law practitioners. The brochure repeated the web-site address several times and described the benefits for attorneys who paid to subscribe to the network.

A series of promotional videos were made for the project. For example, in one video, entitled "About Us," the judge and his wife were featured with a picture of a gavel; the judge discussed his expertise as an elected state district court judge who has presided over 10,000 family law cases. The judge decided not to use the videos after viewing them because he was concerned that they might violate the canons. However, the videos were available on the web-site for approximately 30 days and were still accessible on YouTube as of May 2018.

The court stated that many discipline cases in which judges were found to have impermissibly lent the prestige of office to advance private interests involved "judicial intervention in a discrete court matter or a particular event such as an arrest." The court noted that the "guidance regarding ongoing business dealings involving a judge or a judge's family member is more limited and highly context-sensitive."

Describing a spectrum, the court explained that, at one end, "are plainly impermissible situations involving a judge who directly uses his or her authority over litigants to coerce actions that will benefit the judge

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financially.” At the other end, the court stated, “judges are permitted to write and publish books on legal and non-legal topics; identify themselves as judges in biographical descriptions; and sell books they have written so long as they do not exploit the judicial title in doing so.”

The court concluded that, “[t]his case falls in the middle of the spectrum” because the judge did not compel litigants or attorneys appearing in his court to take actions that benefited him financially but did more than simply write and sell a law-related book. The court acknowledged that there was no reference to the judge as “Judge John Roach” or “Judge Roach” in the book or the brochure and that the judge had not been photographed in his robe for the book or web-site. However, it stated, his “judicial role is readily apparent based on the first eight words of the book’s ‘About the Authors’ section” and “[l]ittle effort is required for readers to discern that the ‘Judge’ referenced on the front and back covers is John Roach, and that the ‘Judge’s Perspective’ highlighted throughout the book comes from him.” Emphasizing that the project was “structured to create a financial gain,” the court concluded that the judge’s “participation in aspects of this interconnected project” improperly exploited his judicial position in business activities.

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## Friendship and favors

Based on a statement of circumstances and conditional agreement for discipline, the Indiana Supreme Court publicly reprimanded a judge for failing to recuse from a case in which his friend had received a ticket and securing favorable treatment for his friend. *In the Matter of Johanningsmeier*, 103 N.E.3d 633 (Indiana 2018).

The judge is close friends with B.K., who received a speeding ticket in April 2015. In early June 2015, the judge and B.K. vacationed together. On June 18, B.K. failed to appear in court on the ticket; a default judgment was entered, and his license was suspended for failure to appear.

On June 30, B.K. filed a petition for a trial de novo in the judge’s court. The judge granted the motion the same day and reinstated B.K.’s license, without disclosing the conflict or giving the prosecutor an opportunity to respond, contrary to the trial de novo rule.

In March 2016, the Commission issued a private caution letter advising the judge that his close friendship with B.K. would cause a reasonable person to question his impartiality. Despite the letter, the judge did not recuse and did not set the matter for hearing. The case remained in limbo until early 2017.

Shortly before Christmas 2016 and while the case was still pending, the judge posted on Facebook a photo of himself, his sister, and B.K. at a party in the judge’s home. B.K. “liked” the photo. The photo was visible to the public and showed that the judge and B.K. were close friends.

On March 6, 2017, the prosecutor moved for a bench trial in B.K.’s case. Instead of recusing, the judge set the motion for hearing. At the hearing,

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he stated on the record that the case involved “a friend of mine” and “I was hoping we could just get the State to dismiss it.” The prosecutor immediately orally moved to dismiss the case, and the judge granted the motion.

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## Another Facebook fail

Based on a stipulation, the California Commission on Judicial Performance publicly censured a former commissioner and barred him from receiving an assignment, appointment, or reference of work from any California state court for (1) “egregious” posts and re-posts on his public Facebook page and (2) representing to his presiding judge and the Commission that he had taken the posts down when that was not true, although he believed the posts were no longer publicly viewable. *In the Matter Concerning Gianquinto*, Decision and order (California Commission on Judicial Performance August 22, 2018). The Commission noted that, because the commissioner had retired, a censure and bar were the strongest discipline it could impose.

In 2016 and 2017, the commissioner maintained a public Facebook page that identified him as “Jj Gianquinto,” stated that he “works at Kern County,” and included photos of himself, but that did not identify him as a commissioner.

In May 2017, the presiding judge wrote the commissioner that there was a “significant concern” about the “content” of a number of his posts and the “impression” a member of the public might have on viewing them. In a written response, the commissioner stated that he had deleted the posts, had refrained from sharing similar posts, and had “designated my Facebook account as ‘private’ which means only my friends can view any future posts.” On June 28, the presiding judge privately reprimanded the commissioner in writing.

The commissioner self-reported to the Commission, repeating that he had deleted the posts, “refrained from sharing additional posts of a political nature,” and “designated my Facebook account as private.”

However, until at least August 2, 2017, the commissioner’s Facebook page remained public, and six of the posts were still on the page. Although the commissioner had tried to make the changes, his “unfamiliarity with the technology resulted in the changes not taking effect as intended. When alerted to the fact that the posts were still visible to the public, the commissioner immediately sought further assistance, deleted the offending posts, and increased the privacy settings on his Facebook profile.”

Reproducing screenshots of many of the posts, the Commission decision describes at least 45 posts or reposts that it found were “egregious” and “the type of conduct that inherently undermines public confidence in the judiciary and that brings the judicial office into disrepute.” The commissioner’s page reflected, among other things, anti-immigration sentiment, anti-Muslim sentiment, anti-Native American sentiment, anti-gay

marriage and transgender sentiment, anti-liberal and anti-Democrat sentiment, anti-California sentiment, opposition to then-presidential candidate Hillary Clinton, accusations against President Barack Obama, a lack of respect for the federal justice system, and contempt for the poor.

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