



Top stories of 2020: Judicial ethics and discipline

CourtClass *Ethics in Brief*

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Introduction

Judicial Conduct Reporter (winter 2021)

State judicial discipline in 2020

Removal cases in 2020

Judicial conduct during a crisis

- [Texas State Commission on Judicial Conduct 2020 Annual Report](#)
- [New York State Commission on Judicial Conduct 2021 Annual Report](#)
- [Georgia Judicial Qualifications Commission Statement on Statewide Judicial and Public Health Emergencies](#)
- [Arkansas Judicial Discipline & Disability Commission Executive Director Statement to the Arkansas Judiciary](#)
- “Judicial ethics and discipline during a pandemic,” [Judicial Conduct Reporter \(winter 2021\)](#)

Based on the judge’s consent, the Tennessee Board of Judicial Conduct publicly reprimanded a judge for stating, in reference to the Tennessee Supreme Court’s requirement that face coverings be worn in court, “the Grand Wizard of our Supreme Court said we have to wear these masks,” or words to that effect to a courtroom audience of criminal defendants, some of whom were African-American. [Re Ledsinger](#) (Tennessee Board of Judicial Conduct September 28, 2020).

With the judge’s acceptance, the Tennessee Board of Judicial Conduct publicly reprimanded a judge for “conducting judicial business outside the parameters of the COVID-19” plan for his judicial district as approved by the Tennessee Supreme Court and making a discourteous remark about the Chief Justice. [Hinson](#) (Tennessee Board of Judicial Conduct December 15, 2020).

May judges march?

- In determining whether to participate in a public demonstration or rally, judges should examine the official title of the event; its sponsors and organizers and their objectives; and the agenda. Judges

should “take reasonable efforts to determine the messages that will be delivered by other participants and the risks that the demonstration or rally might depart from its original mission.” Judges should not attend an event that seems likely to result in a confrontation between participants and others, including law enforcement, and that might lead to unlawful acts. Even if judges may attend an event, “they should consider whether engaging in a symbolic act, carrying a sign, wearing clothing or buttons that might identify them as siding with a particular viewpoint, or making a public statement on even permissible topics would undermine the public’s confidence in the judiciary.” Judges must be prepared to leave an event if remaining “might result in a violation of their ethical duties or interfere with judicial obligations.” Judges should “assume that their identity will likely be known and that their participation will be scrutinized, publicized, and depicted in reports of a demonstration or rally, including in press coverage or on social media.” Judges may write a public statement about matters relating to racial justice and equality. [California Supreme Court Committee on Judicial Ethics Opinions 2020-14.](#)

- In the context of current events, judges “should not participate in political marches or rallies supporting the Black Lives Matter or Blue Lives Matter movements,” “should not make political or divisive statements,” and “must be very cautious in their use of social media, including posts, endorsements, and validations.” [Colorado Advisory Opinion 2020-2.](#)
- A judicial officer may not participate in “A Silent March of Black Female Attorneys of Connecticut” by meeting marchers on the steps of the Supreme Court and reading aloud part of the state constitution even if he is not introduced, does not identify himself by name or title, does not wear a robe, does not permit his name or title to be used in advertising, does not elaborate on the constitutional provision, and does not speak with the media. [Connecticut Informal Opinion 2020-3.](#)
- When deciding whether to participate in a particular march, demonstration, vigil, protest, or other public event about social issues, a judge should consider the title of the event; the purpose of the event; the organizers and sponsors of the event; whether the event is being held in a time, place, or manner where participants likely will violate the law (for example, by violating curfews or by becoming violent); and the potential role of the judge at the event. If the judge goes to the event, the judge should be careful to act temperately and judiciously and be prepared to leave immediately if circumstances cause the judge to believe the judge’s integrity or the impartiality of the judiciary might later be questioned (for example, if the majority of protesters are carrying signs supporting/opposing a political candidate). [Indiana Advisory Opinion 2020-1.](#)
- A judge may not participate in a protest, march, or rally associated with the Black Lives Matter movement. [Maryland Advisory Opinion Request 2020-13.](#)
- Judges may not participate in a “walk for justice” organized by a bar association in which participants would “walk silently on the sidewalk past governmental buildings and ‘take a knee’ in front of a depiction of the U.S. Constitution, ‘as a way to both remember George Floyd’ and to recognize judges and court personnel at every level ‘who strive every day to accomplish Dr. King’s goal of justice for everyone.’” [New York Advisory Opinions 2020-92/93.](#)
- Judicial participation in demonstrations, protests, marches, and rallies, [Judicial Conduct Reporter \(winter 2021\)](#)

Discipline cases

Sexual misconduct

- “What judges said to women that got them in trouble in 2020,” [*Judicial Conduct Reporter*](#) ([winter 2021](#))

Adopting the findings of the Judicial Standards Commission, the North Carolina Supreme Court publicly censured a court of appeals judge for contributing to, enabling, and ignoring the toxic work environment in his chambers created by his executive assistant/law clerk, who was his close friend, and displaying a reckless disregard for the truth to the Commission and the administrative office of the courts. *In re Inquiry Concerning Murphy*, 852 S.E.2d 599 (North Carolina 2020).

Personal conduct

Following a hearing on a complaint by the Judicial Inquiry Board, the Illinois Courts Commission removed a judge for failing to disclose information relevant to the investigation of a homicide when questioned by police detectives, providing false statements to the officers, and making false statements to the Board and Commission. [*In re Duebbert, Order*](#) (Illinois Courts Commission January 10, 2020).

Abuse of contempt power

Adopting the findings of the Board of Professional Conduct, which were based on stipulations and evidence presented at a hearing, the Ohio Supreme Court suspended a former magistrate from the practice of law for 6 months for summarily holding a woman who screamed in the hallway outside his courtroom in contempt, and, when she protested, increasing her jail sentence to 10 days. [*Disciplinary Counsel v. Bachman*](#) (Ohio Supreme Court December 18, 2020).

Social media

Accepting an agreed statement of facts, the New York State Commission on Judicial Conduct publicly censured a judge for publicly supporting the teachers at her daughter’s school in connection with pending and impending litigation with the board of education by making repeated public comments about issues and individuals involved in the litigation, in person, by email, and on social media platforms in which she was publicly identified as a judge; providing legal information and advice to parents at the school; signing advocacy letters; speaking about the cases with members of the board of education; joining teacher union counsel outside the courtroom prior to a case conference; and executing an affidavit that was filed in litigation. [*In the Matter of Panepinto, Determination*](#) (New York State Commission on Judicial Conduct December 9, 2020).

Based on an agreed statement of facts and recommendation, the New York State Commission on Judicial Conduct publicly censured a non-lawyer judge for, during her 2018 election campaign, (1) publishing a campaign advertisement and distributing campaign materials that gave the impression that

she would consider revenue generation for the town in her judicial decisions and (2) liking or replying to crude comments on Facebook by her supporters about her election opponent. [In the Matter of VanWoeart, Determination](#) (New York State Commission on Judicial Conduct March 31, 2020).

Accepting an agreed statement of facts and recommendation, the New York State Commission on Judicial Conduct publicly admonished a non-lawyer judge for (1) during his campaign, on his personal Facebook page, posting memes that propounded conspiracy theories, making disrespectful and undignified comments about laws he would be sworn to uphold as a judge, and endorsing a candidate for the town council; and (2) while a judge, on his personal Facebook page, posting comments on the release of a defendant he had arraigned, linking to articles critical of bail decisions in other cases, and commenting on one of those cases. [In the Matter of Schmidt, Determination](#) (New York State Commission on Judicial Conduct November 3, 2020).

A 2-part article analyzing the advisory opinions and discipline decisions on social media and judicial ethics was published in the spring and summer 2017 issues of the *Judicial Conduct Reporter*. [Part 1](#) was a general introduction to the topic and a discussion of issues related to judicial duties: “friending” attorneys, disqualification and disclosure, ex parte communications and independent investigations, and comments on pending cases. [Part 2](#) covered off-bench conduct: conduct that undermines public confidence in the judiciary, commenting on issues, abusing the prestige of office, providing legal advice, disclosing non-public information, charitable activities, political activities, and campaign conduct. [Summaries of advisory opinions and cases up-dating](#) the 2-part article are available on the Center for Judicial Ethics website.

Disclosure

Based on a stipulation and conditioned on the former judge’s agreement not to serve in a judicial capacity in the future, the California Commission on Judicial Performance severely admonished a former judge for his continuing failure to disclose his personal relationship with an attorney even after being publicly admonished in 2019 for failing to do so, his lack of candor in 2 responses to the Commission, and his courtesy to the district attorney in 1 case. [In the Matter Concerning Mason, Decision and order](#) (California Commission on Judicial Performance December 9, 2020).

Federal case

Approving a resolution proposed by a special committee, the Judicial Council of the U.S. Court of Appeals for the 7th Circuit publicly admonished a judge of the U.S. District Court for the Eastern District of Wisconsin for the first 2 sentences of a law review article he wrote entitled, “The Roberts Court’s Assault on Democracy” that was published in the [Harvard Law Review](#) in March 2020. [Resolution of Complaints Against Adelman](#), 965 F.3d 603 (7th Circuit Judicial Council 2020).

Questions?

Contact Tina Vagenas at kvagenas@ncsc.org