



*To secure and promote  
an independent and  
qualified judiciary and  
a fair system of justice*

# JUDICIAL CONDUCT REPORTER

A publication of the American Judicature Society Center for Judicial Ethics  
Volume 30, No. 4 Winter 2009

## State Judicial Discipline in 2008

**I**n 2008, as a result of state judicial discipline proceedings, nine judges were removed, and one judge was permanently disbarred, effectively removing him from office. (Between 1980 and the end of 2007, approximately 357 state judges had been removed from office.) In addition, one former part-time judge was permanently barred from serving in any judicial capacity, one judge was found to be permanently disabled, one judge was permanently retired, and two judges were suspended without pay until the end of their terms. Eleven judges resigned (or retired) in lieu of discipline pursuant to agreements with judicial conduct commissions that were made public. (These figures do not include proceedings pending on appeal.)

115 additional judges (or former judges in approximately 23 cases) received other public sanctions in 2008. In 77 of those cases, the discipline was imposed pursuant to the consent of the judge. There were 12 suspensions without pay, ranging from three days to three years (three suspen-

sions also included censures, and one also included a public reprimand and \$2,000 fine). There were 17 public censures, 41 public reprimands (one also included a \$7,780 fine), 28 public admonishments, four public warnings (one was a dismissal with warning made public with the judge's consent), three cease and desist orders, two public apologies, one public finding that the judge had committed misconduct, which the judge accepted, and one order that the judge take corrective action. Bar discipline authorities sanctioned four former judges for conduct on the bench and two judges for pre-bench conduct.

### Removals

All of the cases in which judges were removed from office involved several types of misconduct, a series of related acts, or a pattern of the same misconduct. For example, the

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## Top Judicial Ethics Stories in 2008

**N**ew codes of conduct. In 2008, four states adopted new codes following a review of the revised 2007 *Model Code of Judicial Conduct*, and three more did so in early 2009. All seven adopted the reorganization of the code, which reduced the number of canons from five to four with numbered rules under each canon. New codes were adopted by the supreme courts in Indiana, Hawaii, and Montana effective January 1, 2009; in Kansas and Ohio effective March 1, 2009; and in Minnesota effective July 1, 2009 (Prior to adoption of its new code, the Montana code was based on the 1924 canons of judicial ethics.) Those new codes included many, but not all of the 2007 model code revisions and adopted some changes unique to each state. The Delaware Supreme Court adopt-

ed a new code effective November 1, 2008, but made only minor revisions to the text and comments of its prior code. In seven additional states, the supreme courts are considering revisions proposed by committees, and in 20 more states, committees are in the process of evaluating what changes to propose to their states' codes. A report by the Committee on Codes of Conduct recommending changes to the code that applies to federal judges is pending before the U.S. Judicial Conference. The ABA Center for Professional Responsibility has more information about the status of code review at [www.abanet.org/cpr/jclr/mcjc.shtml](http://www.abanet.org/cpr/jclr/mcjc.shtml).

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# Advisory Opinions: Fiduciary Responsibilities

 A judge may serve as executrix for her aunt and trustee for her aunt and uncle even if her cousin is contesting her aunt's will, and the judge may interpose a counterclaim or commence an action in her fiduciary capacity. *New York Opinion 08-199*.

 A judge may serve as the executor of a friend's estate if the friend is more than an acquaintance and someone with whom the judge has a close familial relationship, such as sharing religious and secular holidays, serving as a godparent to the friend's children, and being named to make medical decisions if the friend could not do so. *Pennsylvania Informal Opinion 3/27/06*.

 A judge may act as an attorney-in-fact for an aunt in connection with an application for a reverse mortgage if there is no attorney-client relationship. *New York Opinion 09-114*.

 A judge may be a trustee of an irrevocable trust created to hold investments and to facilitate estate planning for the judge's parents even if it incidentally uses the corporate form. *Massachusetts Opinion 2003-2*.

 A new judge may continue to serve as executor of the estate of a decedent who was not a member of the judge's family where only a few steps remain to be taken to wind up the affairs of the estate and those tasks can be accomplished reasonably quickly; the judge may receive reasonable compensation, which must be reported. *Massachusetts Opinion 2005-9*.

 A judge may serve without compensation as executor of an estate of a friend with whom the judge had a "close familial relationship." *Pennsylvania Informal Opinion 11/17a/03*.

 A judge may continue as the executor of an estate and the trustee of a trust for a decedent to whom the judge was not related but with whom the judge had a close familial relationship demonstrated by the decedent's lack of relatives other than nieces, nephews, and their progeny; the longevity of the relationship; the judge's regular interaction with the decedent by telephone and in person while he was alive; the nurture and support the judge gave to the decedent during his illnesses and rehabilitation; the judge's inclusion of the decedent in important family gatherings; and the decedent's sharing of the judge's vacation home. *Massachusetts Opinion 2008-9*.

 Even though the estate will be probated in Canada, a judge may not act as a co-executor of the estate of a woman who was, with her husband, friends

with the judge's parents; whom the judge visited from time to time as a child; for whom the judge's father acted as an attorney in a number of instances; who named the judge's father as co-executor in a prior will, with the judge named as his alternate; who moved to Canada in 1987; and who named the judge as a co-executor after having her niece call the judge to be sure that he was "alive and well." *Massachusetts Opinion 2003-3*.

 A judge may not remain as a trustee for an irrevocable trust set up for the wife of the judge's former father-in-law. *Florida Opinion 03-12*.

 A judge may not serve as a guardian for a child who is not a member of the judge's family. *Florida Opinion 05-3*.

 A judge may not serve as executor for a person who was not a member of the judge's family and was not a person with whom the judge maintained a close familial relationship but may accept the residuary interest given to the judge by the will. *Pennsylvania Informal Opinion 2/17/09*.

 A judge may not serve as a trustee or executor for a long-term friend even if the friend is an out-of-state resident, the situs of the estate and trust will be out-of-state, and it is highly unlikely that any legal proceedings would occur in Florida. *Florida Opinion 08-5*.

 A new judge who is trustee of a trust that is involved in litigation should take appropriate steps to remove herself as a trustee promptly and instruct whoever is handling the litigation to seek a stay of proceedings to permit her to do so; if the judge is unable to engage a successor promptly, a provision of the trust providing for appointment of a successor trustee when a willing successor cannot be found should be utilized. *Massachusetts Opinion 2008-3*.

 A judge may not continue as the guardian for a ward, even though the judge has served for 30 years, where there is no relationship by blood; the judge and the ward do not share an address; there is no recognition by others that they have a close relationship; the judge does not perceive the relationship as close; the judge does not provide any "direct" assistance with physical, medical, or emotional needs; the judge and the ward do not share meals, holidays, or family events; and they are not in frequent contact. *Massachusetts Opinion 2008-10*.

*The Center for Judicial Ethics has links to the web-sites of judicial ethics advisory committees at <http://www.ajs.org/ethics/>.*

## Top Judicial Ethics Stories in 2008 *(continued from page 1)*

**Discord on appellate courts.** Coincidentally, on the same day in December, two appellate court judges were disciplined for uncollegial conduct toward their colleagues.

Judge Michael Allen of the First District Court of Appeal became the first appellate court judge to be sanctioned for statements in an opinion when the Florida Supreme Court ordered him to appear before it to be publicly reprimanded for a concurring opinion in which he personally attacked a fellow appellate judge, accusing him of judicial corruption, motivated by his dislike of the other judge and based on unverified facts from outside the record. *Inquiry Concerning Allen*, 998 So.2d 557 (Florida 2008). The court cautioned that its opinion “should not be viewed as a license” for the Judicial Qualifications Commission to discipline judges for “intemperate or colorful language in their evaluation of a fellow judge’s opinion or reasoning.” However, the court rejected the judge’s argument “that to question by threat of sanction the reason for, the wisdom of, or the motive behind a decision constitutes a gross intrusion into judicial independence and will have a chilling effect on judges carrying out their duties.” Noting that “while judicial independence is critical to the functioning of the judiciary, it is not unlimited,” the court concluded that “an appellate judge cannot use his opinion-writing power to inappropriately personally attack another appellate judge by accusing him of a crime.”

In contrast, the Texas State Commission on Judicial Conduct dismissed complaints about the “vitriolic language” and “unprofessional personal attacks” against his colleagues in several dissenting opinions by Chief Justice Tom Gray of the 10th Circuit Court of Appeals. *Public Admonition of Gray* (December 18, 2008) ([www.scjc.state.tx.us/pdf/actions/FY09-PUBSANC.pdf](http://www.scjc.state.tx.us/pdf/actions/FY09-PUBSANC.pdf)). The attacks “were the subject of growing criticism and ridicule in editorials, on internet blogs, and at judicial conferences.” Noting that the judge had acknowledged the problems caused by the tone of his opinions and taken appropriate corrective measures, the Commission “determined, in deference to the principle of judicial independence, that Justice Gray should not be disciplined for the content of his dissents.”

However, the Commission did publicly admonish Justice Gray for allowing his acrimonious relationship with his fellow justices to influence his conduct and failing to treat court personnel with patience, dignity, and courtesy. The

Commission found that Justice Gray began a “whisper campaign” against Justice Felipe Reyna, for example, telling Republican party leaders that “somebody needs to talk to Felipe. He’s not being a good Republican.” In addition, a security tape showed Justice Gray unlocking and entering Justice Bill Vance’s private offices without permission and when no one else was present. Justice Gray claimed that he was searching for a file but acknowledged that, after determining that the file was not in the office, he reviewed other papers on Justice Vance’s desk. Justice Gray further testified that he had at other times unlocked and entered the private offices of the other justices to look for files while they were not present and had not given their permission.

Justice Vance and Justice Reyna testified about instances when Justice Gray treated court staff in a sarcastic, intimidating, and demeaning manner, including angry outbursts and personal attacks. The Commission found that “mistreatment was sufficient to reduce some staff members to tears and has contributed to extremely low employee morale at the Court.”

**Federal judicial reprimands.** Public discipline of federal judges is rare, but there were two public reprimands in 2008. The chief judge of the U.S. Court of Appeals for the Ninth Circuit publicly reprimanded Judge Manuel Real for making misleading statements in a 2003 judicial conduct investigation and withdrawing a bankruptcy reference based on ex parte communications. *Public Reprimand of Real* (2008) ([www.ce9.uscourts.gov/misconduct/orders/real\\_reprimand\\_letter.pdf](http://www.ce9.uscourts.gov/misconduct/orders/real_reprimand_letter.pdf)).

The Judicial Council of the Fifth Circuit publicly reprimanded Judge Thomas Porteous for signing false statements under oath in a personal bankruptcy proceeding; making false representations to gain the extension of a bank loan; signing false financial disclosure forms that concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him; and presiding over a case without disclosing that some of the lawyers had provided him with cash and, while a bench verdict was pending, soliciting and receiving illegal gratuities from the lawyers. *In re Porteous*, Order (September 10, 2008) ([www.ca5.uscourts.gov/](http://www.ca5.uscourts.gov/)). The Fifth Circuit also ordered that no new cases be assigned to Judge Porteous for two

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years or until Congress takes final action on the impeachment proceedings begun when the U.S. Judicial Conference had transmitted a certificate to the House of Representatives in December 2007.

**Campaign speech.** Several decisions in 2008 addressed whether judicial candidates may answer questionnaires during an election campaign.

The Kansas Supreme Court held that “judges and candidates for judicial office may choose to answer issue-related questionnaires (though they are not in any way required to do so) to the extent that the questionnaires call for the candidate’s personal views on disputed legal or political issues,” but that they are prohibited “from answering issue-related questions . . . when giving responses would bind the candidate as a judge to a resolution of a particular case, controversy, or issue within a particular controversy.” *Kansas Judicial Review v. Stout*, 196 P.3d 1162 (Kansas 2008). The court noted “questionnaires ask issue-related questions with various degrees of specificity and require various degrees of commitment from those who respond.”

For example, it would seem that a candidate’s decision to respond to a questionnaire asking, “What is your stance on abortion?” is qualitatively different under the code from a candidate’s decision to respond to a question, “Do you vow to overturn *Roe v. Wade*?” While an answer to the first of these questions would likely be a permissible announcement of a personal view on a disputed legal issue, an affirmative response to the second question would impermissibly bind a candidate to a particular legal action.

A second, perhaps less contentious example — though of equal importance when considering a judge’s duties to decide cases fairly and impartially — might involve a survey that asks whether a judicial candidate would ever grant a downward departure sentence in a criminal conviction for abuse of a child. If a candidate chose to respond to this question substantively — and particularly if the candidate answered in the negative — the candidate’s response would violate even our narrow interpretations of the pledges and commits clauses.

The court noted statements regarding judicial philosophy or statements that a particular candidate would be tough on crime, for example, are permissible because such matters

are “of legitimate concern to the electorate who must make the choice.” The court stressed “that in answering any questionnaire, it is advisable — as the code’s comments explain — that a candidate who makes a public statement ‘should emphasize ... the candidate’s duty to uphold the law regardless of his or her personal views’ and to remain ever mindful of the impartiality that is essential to the judicial office.”

In *Carey v. Wolnitzek*, Opinion and Order (October 15, 2008), the U.S. District Court for the Eastern District of Kentucky upheld the Kentucky version of the commits clause, which provides, “A judge or candidate for election to judicial office ... shall not intentionally or recklessly make a statement that a reasonable person would perceive as committing the judge or candidate to rule a certain way on a case, controversy, or issue that is likely to come before the court.” The court concluded that “commitments by judicial candidates to rule in a particular manner on cases or issues harms the compelling state interest in an open-minded and unbiased judiciary and the appearance of the same.”

The court rejected the plaintiff’s argument that the commit clause may actually cause distrust of the judiciary.

While voters may expect that judges have views, they do not expect that judges are committed to ruling in a particular way regardless of the evidence or legal argument yet to be presented to them. Accordingly, prohibiting judicial candidates from committing to rule a particular way on an issue or case will not increase voter distrust of judges. To the contrary, commitments by judicial candidates to rule a particular way will decrease public confidence in the judiciary.

In *Bauer v. Shepard*, Opinion and Order (May 6, 2008), the U.S. District Court for the Northern District of Indiana entered a preliminary injunction enjoining enforcement of the pledges, promises, and commitments clause because, although the Judicial Qualifications Commission had never threatened or instituted disciplinary proceedings against any candidates for answering any special interest group questionnaire, the Commission was “unwilling to commit to the position that answering the [Indiana Right to Life] questionnaires at issue in this case does not violate the ‘pledges and promises clause’ or the ‘commits’ clause.”

**Judicial campaign fund-raising.** Campaign contribution and spending records were set in many state supreme court

### Personal solicitation of campaign contributions led to judicial discipline, with a modern twist to some of the violations.

ances in 2008. In *Caperton v. Massey*, the United States Supreme Court decided to take a case raising the issue whether \$3 million spent by a company's CEO in support of a supreme court justice's campaign presents due process considerations when that company appeals a \$50 million verdict to the court. The case prompted the filing of nine amicus briefs in support of the petitioner, most representing the position of several individuals or organizations, and five in support of the respondent ([www.brennancenter.org/content/resource/caperton\\_v\\_massey/](http://www.brennancenter.org/content/resource/caperton_v_massey/)).

Personal solicitation of campaign contributions led to judicial discipline, with a modern twist to some of the violations. A videotape on YouTube.com showed judicial candidate Willie Singletary telling riders at a motorcycle rally, after offering a blessing for the riders and their bikes, "There's going to be a basket going around because I'm running for Traffic Court Judge, right, and I need some money. I got some stuff that I got to do, but if you all can give me \$20 you're going to need me in Traffic Court, am I right about that?" The judge further stated, "Now you all want me to get there, you're all going to need my hook-up right?" He was elected, and the Pennsylvania Court of Judicial Discipline publicly reprimanded him for personally soliciting and accepting campaign funds, conduct "so extreme as to bring the judicial office into disrepute," and violating the requirement that a judicial candidate maintain the dignity appropriate to judicial office. *In re Singletary*, Opinion (December 1, 2008), Order (January 23, 2009) ([www.cjdpa.org/decisions/jd08-01.html](http://www.cjdpa.org/decisions/jd08-01.html)).

The Kansas Commission on Judicial Qualifications ordered a judicial candidate to cease and desist from publicly soliciting campaign contributions after receiving multiple complaints that he had sent attorneys a cell phone text message that stated: "If you are truly my friend then you would cut a check to the campaign! If you do not then its time I checked you. Either you are with me or against me!" *Inquiry Concerning Davis*, Order (July 18, 2008). The Commission found that the candidate personally solicited campaign contributions and that the intimidating nature of the text message violated Canon 1. The candidate accepted the order.

Later in 2008, however, in a challenge filed by a sitting judge, the U.S. District Court for the District of Kansas held that the clause prohibiting judicial candidates from personally soliciting campaign contributions was unconstitutional. *Yost v. Stout*, Memorandum and Order (November 16, 2008). A federal court in Kentucky also reached that conclusion in 2008. *Carey v. Wolnitzek*, Opinion and Order

(October 15, 2008). The Kansas court found that allowing solicitation "by a campaign committee does not assure that the candidate is unaffected or even unaware of who does and does not contribute to the campaign." The court also stated that the solicitation clause was overinclusive because "garner[ing] public support and campaign contributions does not, in itself, suggest that candidates will be partial to their endorsers or contributors once elected" and "the recusal canon is narrowly tailored to cure any impartiality that may result from a candidate personally soliciting contributions." The Kentucky court concluded that, "while it may be less difficult for a solicitee to decline a request for a contribution when the request is made by a committee, 'the state does not have a compelling interest in simply making it more comfortable for solicitees to decline to contribute to judicial campaigns.'"

There were two additional decisions in early 2009. The U.S. District Court for the District of Minnesota upheld the Minnesota version of the solicitation clause because it allows a judicial candidate to personally solicit campaign contributions when speaking to groups of more than 20 persons or by signing a letter and requires a candidate to "take reasonable measures to ensure that the names and responses, or lack thereof, of those solicited will not be disclosed to the candidate . . ." *Wersal v. Sexton*, Memorandum Opinion and Order (February 4, 2009). The court rejected the plaintiff's argument that recusal is a less restrictive means of preventing bias, noting "the rash of recently filed petitions for Writ of Certiorari indicate that recusal may not be an effective method of preventing bias and ensuring justice."

The U.S. District Court for the Western District of Wisconsin held the personal solicitation restriction unconstitutional in *Siefert v. Alexander*, Opinion and Order (February 17, 2009). The court stated it appeared the restriction "furthers no interest at all, except perhaps one of saving judicial candidates from the unseemly task of asking for money. There is almost a nostalgic quality about it, harkening back to the days of early America when candidates for office thought it was in bad taste to campaign on their own behalf, instead letting their surrogates do all the dirty work." 

A cumulative description of developments following the U.S. Supreme Court decision in *Republican Party of Minnesota v. White* is available on the Center for Judicial Ethics web-site at [www.ajs.org/ethics/pdfs/DevelopmentsafterWhite.pdf](http://www.ajs.org/ethics/pdfs/DevelopmentsafterWhite.pdf).

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California Commission on Judicial Performance removed a judge for failing to dispose of matters promptly, executing false salary affidavits, and becoming embroiled in three criminal cases. *Inquiry Concerning Spitzer*, Decision and Order (October 2, 2007) ([cjp.ca.gov/pubdisc.htm](http://cjp.ca.gov/pubdisc.htm)), *review denied* (2008). The judge had a practice of signing orders and placing them somewhere in his cluttered chambers or courtroom rather than giving them to his clerk to be processed. The judge admitted delays of two to 13 months in giving signed orders to his clerk in four cases. The Commission noted the judge's "dysfunctional practices" and the "chronic state of disorganization and gross neglect of court records."

During one criminal trial, based on information from a call he made to the watch commander, the judge dismissed a case when the arresting officer did not appear. In an attempted murder trial, the judge located a defense witness

and made arrangements for her testimony. In a case in which the defendant was charged with the murder of a child in a driving under the influence accident, the judge tried to persuade the victim's mother that the case should be settled with a plea to vehicular manslaughter.

The Nevada Commission on Judicial Discipline removed a judge for (1) a sexual relationship with his former step-daughter while she was employed as his judicial executive assistant; ensuring she was paid when she was absent from work attending their sexual trysts, and allowing her to work "flex" hours even though the chief district judge had prohibited such an arrangement; retaliating when she chose not to continue the affair; and attempting to entice her to return to work for him in exchange for not pursuing her County Office of Diversity complaint; (2) sexual comments about or to court employees, his ex-wife, a fellow judge, and a female attorney; (3) inappropriate references to the race and ethnicity of employees; and (4) insulting his former law clerk. *In the Matter of Del Vecchio*, Findings of Fact, Conclusions of Law, and Imposition of Discipline (November 6, 2008) ([www.judicial.state.nv.us/Del%20Vecchio%20Findings.pdf](http://www.judicial.state.nv.us/Del%20Vecchio%20Findings.pdf)).

The Ohio Supreme Court permanently disbarred a judge for (1) attempting to conceal a possible conflict of interest caused by his ownership of a building and to benefit from illegally acquired funds by selling the building to a felon; (2) commenting on the results of a polygraph examination

administered to an indicted court employee; (3) failing to disqualify himself from a criminal case against his office administrator's son and a foreclosure action against the office administrator and her husband; (4) mishandling the estates of his uncle and cousin; and (5) suspending the balance of a defendant's sentence at the request of a friend. *Disciplinary Counsel v. Hoskins*, 891 N.E.2d 324 (Ohio 2008). With respect to the first charge, the judge argued that, despite two trials on charges of unlawful interest in a public contract, he had not been convicted. Stating that "the lack of a conviction requiring proof beyond a reasonable

doubt hardly precludes us from finding the same conduct to be unethical," the court concluded, "judges are accountable for much more than merely conducting themselves within the bounds of the criminal law."

The New York Court of Appeals removed a judge for presiding over cases in which his step-grandchildren

were the defendants, initiating an ex parte communication with the judge handling his step-grandson's case, arraigining a former co-worker's son and changing a bail decision after an ex parte call from the defendant's mother, and asserting his judicial office after a car accident. *In the Matter of LaBombard*, 898 N.E.2d 14 (New York 2008). The court concluded that, "given the seriousness of petitioner's transgressions, removal is the appropriate sanction in this case."

### **Egregious conduct**

The New York Court of Appeals removed a judge for revoking the recognizance release of 46 defendants when no one took responsibility for a ringing cell phone, which the State Commission on Judicial Conduct had found was a "painfully prolonged series of acts over several hours that transcended poor judgment." *In the Matter of Restaino*, 890 N.E.2d 224 (New York 2008).

On March 11, 2005, the judge presided over the first of about 70 cases scheduled for weekly hearings in the domestic violence part. The courtroom was full; in addition to defendants, there were defense attorneys, prosecutors, court personnel, security officers, and representatives from counseling programs. The courtroom was open for those entering and leaving, including members of the public, relatives, and other interested persons. During the first hour of scheduled appearances, the judge handled the cases of over 30 defen-

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dants in routine fashion and released 11 defendants on their own recognizance and directed that they remain in court until all proceedings were concluded.

At approximately 10:00 a.m., a cell phone rang in the back of the courtroom. Addressing all defendants present, the judge stated: “Now, whoever owns the instrument that is ringing, bring it to me now or everybody could take a week in jail and please don’t tell me I’m the only one that heard that.” After a fruitless inquiry of two defendants about the device, the judge issued a second warning: “Everyone is going to jail; every single person is going to jail in this courtroom unless I get that instrument now. If anybody believes I’m kidding, ask some of the folks that have been here for a while. You are all going.” Following these warnings, the judge recessed for five minutes, directed court officers to locate the ringing device, and instructed them that no one was permitted to leave the courtroom.

Upon returning, the judge learned from a court officer that the device had not been discovered. The judge asked the defendant who had been standing before the judge when the cell phone rang if he knew who owned the device. The defendant responded, “No. I was up here.” The judge revoked that defendant’s recognizance release and set bail at \$1,500 “without consideration of the proper legal bases for doing so and notwithstanding his knowledge that defendant, who was standing before him, did not own or otherwise possess the device.” The judge proceeded to summon the 36 defendants remaining on the calendar and questioned each about their knowledge and/or ownership of the device. Dissatisfied with their responses, he revoked or denied recognizance release and set bail. After summarily disposing of the remaining calendared cases, the judge recalled 11 defendants whom he had previously released before the device rang and, after questioning them about the device, revoked their recognizance release and imposed bail. Several defendants tried to appeal to the judge’s better reason and pleaded with him for mercy. In total, the judge committed 46 defendants into custody.

The court included examples of the judge’s “unsettling comments:”

[W]hat I am really, really having a hard time with [is] that someone in this courtroom [ ] is so self-absorbed, they kind of figure they’re going to be able to establish the bail and it won’t matter so screw all of the rest of you people. Some of you people may not be in the [same] economic situation [as] this selfish person ... [is who] put[s] their interests [ sic ] above everybody else’s. They don’t [ sic ] care what happens to anybody.

At one point, the judge commented that that defendants’ collective conduct resembled “a mob movie,” stating:

I got to tell you something, you’re all pretty good when you come up to this microphone, and if you saw somebody got [sic] shot or killed, you would say, “I didn’t see nothing [sic]. I heard shots.” And if a body dropped right in front of you, you would say [ ] “I didn’t see a thing.”

The 46 defendants were transported to the city jail, booked, searched and their property confiscated, and placed into overcrowded holding cells. Following several hours of detention, 32 defendants posted bail; the remaining 14 could not post bail and — shackled, with their wrists handcuffed to a lock box attached to a waist chain — were subsequently transferred to the county sheriff’s custody and transported by bus to the county jail 30 minutes away, arriving at approximately 3:15.

The judge left the bench and attended a scheduled tour of a juvenile detention facility. During the tour, the judge received a page from his clerk who informed him that the press had inquired about his actions. The judge instructed his clerk to have all necessary paperwork ready upon his return. The judge returned to the courthouse around 3:00 p.m. Approximately one hour later, he ordered the 14 defendants released. However, they were not provided transportation.

Concluding that the judge’s conduct qualifies as “truly egregious,” the court stated:

Here, the public which petitioner serves has, we think, irretrievably lost “confidence in his ability to properly carry out his” constitutionally-mandated responsibilities in a fair and just manner. By indiscriminately committing into custody 46 defendants, petitioner deprived them of their liberty without due process, exhibited insensitivity, indifference and a callousness so reproachable that his continued presence on the Bench cannot be tolerated. . . . As the Commission opined, it is ironic that petitioner displayed the very attributes by which he accused and summarily punished each defendant. Significantly, petitioner had more than 46 chances to correct himself and failed to do so.

### Pattern of misconduct

The New York Court of Appeals removed a judge for violating the fundamental due process rights of litigants in five family offense or child custody and support cases. *In the Matter of Jung*, 899 N.E.2d 925 (New York 2008). (1) The

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judge summarily held a defendant in default on two family offense petitions and sentenced him in absentia even though he was being held in a courthouse holding cell throughout the proceeding. (2) On a custody petition and an allegation that a mother had violated an order of protection, the judge failed to order the respondent produced in court, although he knew she was incarcerated in a correctional facility outside the county; he summarily found her in default, sentenced her in absentia, and revoked her custodial rights. (3) In a custody petition, the judge found the respondent in default even though the judge knew that he was incarcerated and unable to appear and sentenced him to nine months in jail. (4) In a custody petition, the judge denied as late the respondent's request for assigned counsel, summarily affirmed a magistrate's order that found her in default when she failed to appear for a hearing on a child support matter, and sentenced her to 90 days in jail. (5) On charges of contempt for violation of an order of support, the judge, despite evidence that the respondent was learning-disabled and unable to read, denied her the right to counsel, summarily affirmed the magistrate's finding of default, and sentenced her to 180 days in jail. In three of the cases, the respondents

were released by writs of habeas corpus that were affirmed by the appellate division.

The court concluded that the appellate decisions reversing the judge's orders clearly failed to impress upon him the importance of due process and that he "fails to grasp" that the wide discretion given family court judges comes with "grave responsibilities to the litigants before him as well as to their children." The court stated "part and parcel of effecting the 'best interests' of a child is affording that child's parent the rights inherent in the parental bond."

The New Mexico Supreme Court removed a judge for adjudicating 24 traffic cases involving family members, friends, and family members of friends and staff, *ex parte* and without a hearing or taking evidence. *Inquiry Concerning Griego*, 181 P.3d 690 (New Mexico 2008). The judge was not the scheduled judge for traffic arraignments when he adjudicated the cases. He usually adjudicated the cases before their scheduled arraignment dates, either deferring or continuing them for 90 days with the requirement that the defendant commit no further traffic violations. In some cases, he cancelled bench warrants and dismissed charges for failure to appear. In February 2007, the court

## Bar discipline

**Pre-bench.** Pursuant to stipulations and agreements, the Presiding Disciplinary Judge for the Colorado Supreme Court publicly censured two judges for failing, while they were assistant district attorneys in the late 1990's, to ensure disclosure of all information to which a defendant in a murder trial was entitled. *People v. Blair*, Order (September 9, 2008); *People v. Gilmore*, Order (September 9, 2008) ([www.coloradosupremecourt.us/PDJ/pdj.htm](http://www.coloradosupremecourt.us/PDJ/pdj.htm)).

In 1999, Timothy Masters was convicted in the 1987 slaying of Peggy Hettrick. He was released in January 2008 after tests found that the DNA on her clothing was not his. During the original proceedings, the police did not disclose to the defendant the results of an enhanced surveillance, an FBI profiler's report, the opinion of a forensic psychologist, and the conclusion of a plastic surgeon about the wounds.

Although finding "there was not a knowing or intentional effort [by the district attorneys] to hide or withhold evidence from the defense," the stipulations stated, "information known to the prosecution should have caused them" to ask the police lieutenant if some of the

undisclosed material existed, but "they took no affirmative steps to inquire if there was more."

**On-the-bench.** Based on joint stipulations of fact, the Oklahoma Supreme Court disbarred a former Court of Criminal Appeals judge for submitting false claims for reimbursement and trying to influence the outcome of cases against his son and a woman with whom he had a relationship. *State ex rel. Oklahoma Bar Association v. Lile*, 194 P.3d 1275 (Oklahoma 2008). While experiencing marital problems, the judge renewed his relationship with Dawn Lukasic. She told him they had a son named Loren W., about whom the judge had no previous knowledge. The young man had 14 felony charges pending involving drugs, burglary, and concealing stolen property. The judge then began to travel to the facilities where his son was incarcerated almost weekly. He filed travel claims seeking reimbursement from the court for these trips, claiming he attended meetings for a Department of Corrections programs.

The judge contacted one of the judges who would be sentencing his son, caused pressure to be applied to

had publicly reprimanded Griego and fined him \$500 for improperly delegating his judicial duties to his secretary.

The North Carolina Supreme Court also removed a repeat offender, censuring and suspending a judge in March for a business relationship with an attorney who appeared before him and attempting to coerce the district attorney into signing a remittal of disqualification, and then removing him in October for his conduct during a hearing in a domestic violence protective order case, making untruthful statements to a State Bureau of Investigation agent, and attempting to influence the recollections of witnesses. *In re Badgett*, 666 S.E.2d 743 (North Carolina 2008). *See also In re Badgett*, 657 S.E.2d 346 (North Carolina 2008).

In a hearing on Kathy Carreon's complaint seeking a domestic violence protective order against Floyd Carreon, the judge denied Mr. Carreon's request for a continuance to retain counsel, requiring Mr. Carreon to proceed pro se. After hearing testimony by both Carreons, the judge indicated that he would grant the order of protection. Mrs. Carreon then stated that she had no money and needed transportation. The complaint had not sought spousal sup-

port, but the judge asked plaintiff's counsel what amount of support she thought appropriate. Counsel stated that she believed \$500 to \$600 a month would be appropriate. The judge ordered Mr. Carreon to pay \$150 a week as spousal support and to deliver his truck and keys to the sheriff's department. The judge made no findings to support the award.

When Mr. Carreon attempted to object, the judge replied, "you people always find a way," and "I don't know how you treat women in Mexico, but here you don't treat them that way," or words to that effect. The judge inquired as to how much money he had on his person. Mr. Carreon replied that he had \$140. The judge then ordered the deputy sheriff to search Carreon's wallet. The deputy took Mr. Carreon's wallet, counted his money, and reported that it contained \$140, a driver's license, and a Social Security card. The judge allowed plaintiff's counsel to obtain Mr. Carreon's Social Security number and directed the sheriff's deputy to turn over the cash to Mrs. Carreon.

(continued on page 10)

another sentencing judge, and requested that Department of Corrections employees testify on his son's behalf. After his son's sentencing, the judge wrote a letter on court letterhead to a member of the Board of Corrections that criticized a probation officer who wrote an unfavorable report in his son's case.

The judge hired Lukasic as his administrative assistant, and she assisted him in remodeling his office. He began submitting expense reimbursement requests for purchases made by Lukasic and her daughter, some of which were for personal items unrelated to the remodeling.

The police arrested Lukasic after stopping and searching her car and finding a pill bottle containing amphetamine. Lukasic advised the arresting officers that she was employed by the judge and furnished them with his personal cell phone number and his home phone number. The police reached him immediately and informed him of the situation. When the police contacted the district attorney, he advised them that the judge had already contacted him, and the district attorney instructed the police to release Lukasic, but they declined.

The Oklahoma Supreme Court disbarred a former

judge based on his conviction on four felony counts of indecent exposure in the courthouse while he was a district judge. *State of Oklahoma ex rel. Oklahoma Bar Association v. Thompson*, 194 P.3d 1281 (Oklahoma 2008). The order did not describe the crimes, but the court found that they were not isolated, having occurred over a fairly lengthy period and on four separate occasions, and held that his conduct displayed a complete abdication of judgment.

The Florida Supreme Court suspended a former judge from the practice of law for 30 days for misrepresentations and financial misconduct during his judicial campaign, the same conduct for which he was removed in 2006. *The Florida Bar v. Renke*, 977 So.2d 579 (Florida 2008); *See also Inquiry Concerning Renke*, 933 So. 2d 482 (Florida 2006).

The Ohio Supreme Court publicly reprimanded a former judge for denying due process to defendants in three criminal cases in flagrant disregard of the law. *Ohio State Bar Association v. Goldie*, 894 N.E.2d 1226 (Ohio 2008) 

## State Judicial Discipline in 2008 *(continued from page 9)*

After the judge had received notice that the Commission on Judicial Standards had ordered an investigation, he suggested to the deputy clerk who had been in the courtroom that Mr. Carreon had appeared violent and requested that she prepare a written statement. The judge also initiated a conversation with Mrs. Carreon's counsel, telling her that he did not recall instructing the sheriff's deputy to take Mr. Carreon's wallet and money.

When an agent from the State Bureau of Investigation interviewed him, the judge denied that he had instructed the sheriff's deputy to search Mr. Carreon's wallet or take his money and told the agent that Mr. Carreon was known to carry a gun, that he suspected Mr. Carreon was a gang member, and that the sheriff's deputy had been concerned for the security of those in the courtroom. The Commission found that these statements were untrue and made with the intent to deceive.

### Lack of credibility

Finding that "a judge who does not honor the oath to tell the truth cannot be entrusted with judging the credibility of others," the California Commission on Judicial Performance removed a judge for deliberately making false and misleading representations concerning her attendance at a judicial education seminar to obtain reimbursement to which she was not entitled and making false statements during the Commission hearing. *Inquiry Concerning MacEachern*, Decision and Order (June 26, 2008) (<http://cjp.ca.gov/pub-disc.htm>).

During the week of July 31-August 4, 2006, the Administrative Office of the Courts sponsored a continuing judicial studies program in San Diego. On Sunday, July 30, the judge went to San Diego with her husband and his twin seven-year-old daughters. The judge's attempts to enroll in the Excellence in Judging and Evidence classes had not been accepted prior to her trip, and, when she went to the registration table on Monday, she was told she could not sit in on the Excellence in Judging class and that there were no openings in the Evidence class. On Tuesday morning, she attended a computer class before joining her husband and his daughters for kayaking and paddle boating. On Wednesday, the judge attended the half-day Statement of Decision class. The judge did not go to the program at all on Thursday or Friday.

The judge submitted a travel claim to the court asking to be reimbursed for three nights of hotel expenses and meals from dinner on Sunday through lunch on Friday. In an e-mail, the judge said: "When I got to the [program] it turned out there was a mix up with my registration. So I just sat in

on the judicial excellence class on Monday, they allowed me to attend a Tuesday a.m. computer class, and the Wednesday afternoon S.O.D. class., [sic] and I sat in on the Thursday a.m. D.V. class. I attended no classes on Friday. I know they won't cover any other nights, however I was hoping the [cou]nty would."

The Commission found that the judge's explanations that she used the phrase "sat in" to signify that she briefly observed the classes or had made "sincere but failed efforts" to get into the classes were "patently misleading statements" that lacked credibility and "border[ed] on ludicrous." Further, the Commission found that the judge lied when, in her testimony at the hearing, she claimed that she had sat for 15-20 minutes in the Excellence in Judging, Evidence, and Domestic Violence classes. The Commission concluded that "a judge who engages in "materially deceitful and fraudulent conduct in her judicial capacity and subsequently responds to the commission's investigation by parsing words, offering disingenuous defenses and false testimony" should not remain in judicial office.

Similarly, the New Mexico Supreme Court held that it could not allow a judge who lacks credibility "to preside over cases in which he is charged with weighing evidence and determining the credibility of others" and removed a judge for an ex parte conversation with the state's complaining witness in a domestic violence case and altering a court document and promising a couple he would help them in court. *Inquiry Concerning Rodella*, 190 P.3d 338 (New Mexico 2008). In both incidents, the judge's testimony conflicted with the testimony of all the other witnesses.

Meeting ex parte with the complaining witness in a domestic violence case, the judge told her that, if she did not want to testify, there would be no adverse legal consequences despite a subpoena. On the day of the trial, the complaining witness failed to appear, and the assistant district attorney informed the judge that the prosecutor's office had been informed that the judge had told the complaining witness that she did not have to appear. The judge drafted a document recusing himself, which he signed and showed to the assistant district attorney. The state's other witnesses then left. Later, when the complaining witness appeared, the judge recalled the case and dismissed it without prejudice. When the judge subsequently produced the recusal document for the Commission, it stated the assistant district attorney had moved for a continuance, that the defense attorney had moved to dismiss, and that the judge had considered recusing but changed his mind. The assistant district attorney testified that it was a different document than the judge had shown in court.

While the judge was campaigning, he visited the home of a married couple to ask for their help in the election and said that he would help them if they ever had a problem in the court. When he later learned that they had a problem with a tenant, he met with the couple, reviewed their rental agreement, recommended that they wait to file suit until he was elected, and explained how they could make sure he heard their case. After the judge was elected, the couple filed their lawsuit and excused the other judge. At the hearing on their case, the judge appeared impatient with the couple, particularly the wife, and recused himself. The couple then filed a complaint with the Commission.

The Michigan Supreme Court removed a judge for (1) making false statements about her husband's residency under oath in her complaint for divorce; (2) making and soliciting other false statements, not under oath, including submitting fabricated evidence to the Judicial Tenure Commission; (3) improperly listing cases on the no-progress docket; (4) excessive absences, commencing proceedings late, untimely adjournments, and improper docket management; (5) allowing a social relationship to influence the release of a defendant from probation; and (6) flaunting her office in an incident at a gas station. *In re Nettles-Nickerson*, 750 N.W.2d 560 (Michigan 2008).

## Impairments

The Louisiana Supreme Court removed a judge for (1) dependence on prescription medications that seriously impaired her judgment and mental faculties while performing judicial duties; (2) a pattern of absenteeism and appearing late for court; (3) detaining a juvenile in a holding cell at the court facility; (4) use of court staff for personal mat-

ters; and (5) ex parte communications with an attorney who was seeking a peace bond for his nephew. *In re Alford*, 977 So.2d 811 (Louisiana 2008).

The judge did not dispute the types, amounts, and frequency with which she took prescription painkillers but argued that she was not impaired. Numerous lay witnesses, including court employees, testified that the judge took medications throughout the day and while she was on the bench and that she seemed confused, disoriented, and drowsy on these occasions. The judge sentenced traffic offenders to attend family violence counseling and sentenced defendants charged with battery to attend driving school. After sentencing one defendant to do a report on why guns are so dangerous in America, the judge stated, "And the possession of dry or dealing in what friends firearms I'm sorry quite obsolete. So I'm not sure what that one is about position of dealing okay this is some kind of possession case which should have gone to the district so disregard the possession case it is at a district okay. You free to go." Based on the judge's medical and pharmaceutical records, an expert in psychopharmacology described the physiological problems and effect on cognitive ability of long-term poly-substance abuse and testified that the volume of the judge's prescription narcotics use, her doctor shopping, and her use of multiple pharmacies was the most severe he had seen.

The Alabama Court of the Judiciary removed a judge from office for gross misconduct. *In the Matter of Dubose* (June 5, 2008) ([www.judicial.state.al.us/documents/final%20orderPri.pdf](http://www.judicial.state.al.us/documents/final%20orderPri.pdf)). The court noted the testimony of a doctor that the judge had "a significant substance abuse history primarily associated with prescription drugs" that contributed to his "psychotic, inappropriate, and aberrant thinking and behavior." The doctor thought these difficulties were treatable, but that the judge's long-standing, significant narcissistic personality disorder were "not likely to respond to treatment and intervention and would be considered to be a significant impediment in his ability to maintain objectivity, judgment, and appropriate decision making skills." The court stated that "personal mitigating circumstances may and should be considered in determining the scope of the discipline to be imposed . . . when, and only when, it does not compromise the primary goal of protecting the integrity of the office and the judicial process" and concluded "that any sanction short of removal would be wholly inadequate in the face of the aggregation of serious misconduct." 

## Judicial Conduct Reporter

Winter 2009

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Executive Director

Published quarterly,  
\$40 per year, single copy \$11

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© 2009  
American Judicature Society  
ISSN: 0193-7367

**American Judicature Society**  
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