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State judicial discipline in 2019

In 2019, as a result of state disciplinary proceedings, two judges were removed from office. (See [Removal cases in 2019](#), *infra*.) In addition, 15 judges or former judges resigned or retired in lieu of discipline pursuant to public agreements with conduct commissions; one of those former judges was also reprimanded. Two judges were retired for disability.

Sixteen judges were suspended without pay as a final sanction. The suspensions ranged from five days to one year, although the one-year suspension was stayed conditioned on the judge engaging in no further misconduct. The other suspensions were for seven days, three weeks, 28 days, 30 days (three judges), 45 days (three judges), 60 days (three judges), 90 days, and 6 months (three judges). Several of the suspensions also included public censures, reprimands, or fines of \$500 to \$5,000.

Eighty-six judges (or former judges in 11 cases) received public censures, reprimands, admonishments, warnings, or letters of counsel.

- There were 16 censures, one of which was severe. In addition to being censured, five former judges were barred from serving in judicial office or public office in the state, had their law licenses annulled, were fined \$1,000 to \$3,000, and/or were ordered to pay restitution.
- There were 36 reprimands. Four reprimands included fines of \$500 to \$5,000; 10 included requirements such as mentoring, training, stress management, probation, compliance with a lawyers assistance program agreement, or a psychological assessment.
- There were 20 admonishments. Several included conditions such as training.
- There were nine warnings. One also ordered additional education.
- One letter of counsel was made public with the judge's consent.
- Three former judges had their law licenses suspended in attorney discipline proceedings for conduct while they were judges.
- One retired judge was suspended from eligibility as a reserve judge for three years

"Judge" refers to any type of judicial officer including justices, magistrates, court commissioners, and hearing officers, whether full-time or part-time. Approximately half of the sanctions were entered pursuant to an agreement with the judge or former judge.

What they said to or about criminal defendants that got them in trouble

- “Crackers” and “homeboys.” Judge to Caucasian and African American defendants. *Burge*, 134 N.E.3d 153 (Ohio 2019) (six-month suspension of former judge’s law license for this and other misconduct).
- “Now, if I were to believe you were that stupid, James, I would just have Deputy Motelewski shoot you right now, because I know you’re not going to make it through life. Just tell me you knew it was stolen, that’s all.” Judge to defendant. *Burge*, 134 N.E.3d 153 (Ohio 2019) (six-month suspension of former judge’s law license for this and other misconduct).
- “In fact, you’ve been such a headache, I was looking forward to putting you in the pen. And I would have paid 50 bucks to give you a beating before you went.” Judge to defendant. *Burge*, 134 N.E.3d 153 (Ohio 2019) (six-month suspension of former judge’s law license for this and other misconduct).
- “I do hope you do fight for your life every minute of every day. And that would be the only reason that I would hope your life is any longer than six weeks.” Judge during sentencing in a murder case. *Lemonidis*, 283 So. 3d 799 (Florida 2019) (reprimand for this and similar comments).
- “[Your] lies are getting [you] in trouble,” and “close [your] mouth.” Judge to a criminal defendant after making an incorrect deduction from independent internet research. *Piontek*, 927 N.W.2d 552 (Wisconsin 2019) (five-day suspension without pay for this and other misconduct).
- “I guess it’s ok to urinate everywhere and on yourselves, be drunk in public in this town just because you don’t have any money.” Judge to police officer who asked for a minimum fine for a woman who had pled guilty to public drunkenness. *Hladio* (Pennsylvania 2019) (reprimand of former judge for this and other misconduct).
- “When God tells me I gotta do something, I gotta do it.” Judge after telling deliberating jurors that a defendant was innocent. *Robison* (Texas Commission 2019) (warning).

Removal cases in 2019

From 1980 through 2018, approximately 448 judges were removed from office as a result of state disciplinary proceedings. In 2019, two judges were removed. False or misleading statements by the judges were part of the misconduct in both cases.

Adopting the findings and conclusions of the Judicial Tenure Commission, the Michigan Supreme Court removed a judge from office for (1) failing to disclose the extent of her relationship with a police detective who was a witness in a trial over which she was presiding; (2) failing to disclose her friendship with an attorney when the attorney or her law firm appeared in cases; (3) being persistently impatient, undignified, and discourteous to those appearing before her; (4) requiring her staff to perform personal tasks for her during work hours; (5) allowing her staff to work on her judicial campaign during work hours; (6) failing to immediately disqualify herself from her own divorce proceeding and destroying evidence; (7) interrupting two depositions that she attended during her divorce; and (8) making false statements during court proceedings over which she presided, while testifying at her deposition in her divorce, and to the Commission while under oath. *In re Brennan*, 929 N.W.2d 290 (Michigan 2019). The Court explained:

We are not often confronted with the multifarious acts of misconduct that are present in this case. The individual findings of misconduct range from those warranting the most severe sanction of removal (such as lying under oath) to those that are still unacceptable, but might warrant a lesser sanction (such as respondent's improper demeanor on the bench). But we are not called upon to assess an appropriate sanction for each discrete finding of misconduct. Instead, we must determine the appropriate sanction for all of respondent's misconduct taken as a whole.

For a longer discussion of the findings regarding the judge's failure to disclose relationships, see [Top Judicial Ethics Stories of 2019: Relationships, disqualification, and disclosure](#), *infra*.

* * *

Following a hearing on a complaint filed by the Judicial Inquiry Board, the Illinois Courts Commission removed a judge from office for (1) making false and misleading statements to detectives investigating the discharge of a firearm in his apartment; (2) retaliating against two employees who filed sexual harassment complaints against him; and (3) providing testimony that contained misrepresentations, omissions, and deceptions during the disciplinary proceeding. *In re O'Shea, Order* (Illinois Courts Commission September 27, 2019). For a longer discussion of the retaliation findings, see [Top Judicial Ethics Stories of 2019: Sexual misconduct](#), *infra*.

In 2019, two judges were removed. False or misleading statements by the judges were part of the misconduct in both cases.

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In September 2017, the judge fired a revolver inside his apartment. The bullet went through a mirror and the wall and into the neighboring apartment. The judge told the apartment management staff that he had accidentally pushed a screwdriver through the wall. About nine days later, the judge's neighbors found a bullet inside their apartment and contacted the police.

When detectives went to the judge's apartment, he first told them that the hole in his wall had been caused by a screwdriver. After the detectives said that his neighbors had found a bullet, the judge suggested that his son may have accidentally fired a bullet through the wall. On further questioning, the judge admitted that he had accidentally discharged a firearm and that the bullet went through the wall. At the hearing before the Commission, the detectives testified that the judge did not make that admission until after they had interviewed him for at least 15 minutes.

The judge testified before the Judicial Inquiry Board that he immediately told the detectives that the hole was from a bullet and denied telling them that it was caused by a screwdriver or his son. At the hearing before the Commission, the judge repeated that claim, then testified that, although his first explanation was a screwdriver, he had admitted a few seconds later that he had fired a bullet through the wall.

The Commission found that the detectives were "credible, believable, and . . . had no basis for any bias," and that the judge's "testimony was not credible, not believable, and not truthful." Although it noted that firing the bullet through the wall was extrajudicial conduct, the Commission emphasized that the judge's "response to the incident was unacceptable for an officer of the court."

What they said to litigants in family court cases that got them in trouble

- "Can you point me to one thing you've done in your life as an adult, so we are talking about since you turned 18, that would demonstrate, not just words, but demonstrate that you can stick with something to the end, see it through and successfully complete?" Judge to father in termination of parental rights proceeding. [Bailey](#) (Texas Commission 2019) (admonition).
- "You can't down a couple of 40s before you go pick [your children] up before a visit because that's not good. Do you understand?" Judge to a father in a hearing on a request for a domestic violence restraining order. [Symons](#) (California Commission 2019) (severe censure for this and other misconduct).

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- “My children would never allow me to go to jail for any reason whatsoever . . . I’m appalled because my children respect me so much they would never allow that to happen.” Judge berating 15-year-old twins whose mother was held in contempt because they refused to visit their father. *Foster*, 832 S.E.2d 684 (North Carolina 2019) (censure for this and related misconduct).

What they said to self-represented litigants that got them in trouble

- “I cannot avoid the observation that the party who represents himself has a fool for a client. That is a well-known quote. It’s too bad that someone did not perform the older and more gracious function, not simply of attorney, but counselor at law. Counselors at law used to advise people not to go to court, to let the matter go and resolve it outside of court. And that might have been a kindness in this situation.” Judge to attorney who was representing herself. *Symons* (California Commission 2019) (severe censure for this and other misconduct).
- “But I’ll tell you the only time I’ve seen someone in your position take a case to a jury trial, it was an unmitigated disaster. And I warned the plaintiff. But yeah, you have the right to do it, but you have the same right to perform brain surgery on yourself. And I think they’re both equally imprudent.” Judge attempting to dissuade the pro se plaintiff in a civil case from having a jury trial. *McMurry* (Arizona Commission 2019) (reprimand).

Relationships, disqualification, and disclosure

Top Judicial Ethics Stories of 2019

Although judges are not automatically disqualified from cases involving someone they know, a judge’s duty to at least disclose a relationship is triggered by ties far short of blood or marriage and far more often than judges may think, as several judicial discipline cases from 2019 illustrate.

In *In re Brennan*, 929 N.W.2d 290 (Michigan 2019), the Michigan Supreme Court removed a judge for failing to disclose her close, personal relationships with a police detective who was a witness in a murder case

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over which she was presiding and with her best friend when she or her law firm appeared in a case, in addition to other misconduct. For a summary of the other misconduct, see [Removal cases in 2019](#), *supra*.

In the disciplinary proceeding, the master had concluded that the judge had a romantic relationship with a detective before and during a murder trial in which he was a witness. However, the Court adopted the Judicial Tenure Commission's conclusion that, regardless whether the relationship was romantic, it was "a very close, personal relationship" that required the judge "at a minimum" to disclose the facts so that the parties could determine whether to move for disqualification. The judge had failed to disclose that:

- She had socialized with the detective, allowed him to use her cottage, and had him as a guest at her home for dinner;
- Her husband sometimes gave the detective his University of Michigan football season tickets at her request;
- She had told a member of her staff that the detective had persuaded her of the defendant's guilt before the case was assigned to her in March 2009;
- She and the detective had had more than 1,500 social telephone calls between July 2008 and the start of the trial in January 2013;
- She and the detective had talked on the phone for one to two hours every month in the year or so before the trial; and
- She and the detective had exchanged approximately 400 texts from 2010 until the start of the trial.

In addition, the judge failed to disclose her close, personal relationship with Shari Pollesch in five cases in which Pollesch appeared as counsel and five cases in which attorneys from Pollesch's firm appeared. The judge had failed to disclose that:

- She considered Pollesch one of her best friends, and they had known each other for about 25 years;
- She and Pollesch took ski trips together, participated in a book club, took walks during lunch, and were guests at each other's cottages;
- Pollesch got married at the judge's home;
- Pollesch provided legal services to the judge's husband, to his business, and to the judge's sister; and
- Pollesch had submitted statements to the Commission on the judge's behalf in 2009.

Small legal community

In [Public Admonishment of Mason](#) (California Commission on Judicial Performance December 3, 2019), the California Commission on Judicial Performance concluded that a judge should have disclosed his "personal and

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sustained” relationship with an attorney every time the attorney appeared before him. The judge’s relationship with attorney Tom Gifford included:

- A professional relationship before he became a judge;
- “Ongoing social interactions in the community” that continued after he took the bench;
- A two-week trip to Italy with their spouses to celebrate the Giffords’ wedding anniversary, which “marked an escalation of the friendship;”
- A social relationship that continued even after Gifford moved to Texas, including two week-long trips to Gifford’s home, once over a Thanksgiving holiday; and
- “Some form of friendship” that continued after Gifford returned to California.

Gifford regularly appeared before the judge before he moved to Texas and after he returned.

The Commission stated that, even if the judge was not disqualified from Gifford’s cases, he was required to disclose all facts about their relationship that were reasonably relevant to disqualification, on the record, in every case in which Gifford appeared. The judge conceded that he needed to disclose the relationship but did not provide any evidence that he had done so in any case and acknowledged “lapses in diligence and formal statements on the record.” The judge noted that the few attorneys in the county all knew about the relationship and did not object to his presiding in Gifford’s cases. The Commission responded that “the judge’s ethical duties are the same irrespective of population statistics,” noting that a standard based on what local attorneys know leaves out “attorneys who are not local, and the parties, including self-represented parties.”

The Commission also emphasized “uniform statewide standards” when it disciplined a second judge for appointing an attorney as a special master without disclosing that he was a personal friend and ordering defendants to use an alcohol monitoring service without disclosing that his son worked for the company and that a friend owned it. [*Inquiry Concerning Bailey, Decision and order*](#) (California Commission on Judicial Performance February 27, 2019) (public censure and bar from holding judicial office for this and other misconduct)

The judge sat in a “small legal community,” where most of its members, “are likely to have known” about his social relationship with the attorney he had appointed as a special master, and none of the parties had objected to the appointment. The Commission concluded, however, that “in determining the need to disclose, the same standard applies regardless of the size of the community.” It explained:

The risk of applying a different disclosure standard in a small community based on the assumption that the parties and the attorneys know the judge’s relationships “is that there may be someone involved in the proceeding who, in fact, does not know about the relationships.” . . . Moreover, the purpose of

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disclosure is not only to inform the attorneys and parties of information that may be relevant to disqualification but to uphold the integrity and impartiality of the judiciary.

The judge had appointed Bradley Clark as a special master in a matter without disclosing that:

- He and “Clark were friends who socialized together, at times with their spouses,”
- He had received gifts from Clark,
- His nephew was employed by Clark, and
- He had officiated over Clark’s wedding.

The Commission concluded that “knowing these facts, a party might have thought the judge would be more inclined to approve Clark’s findings and recommendations,” and, therefore, the judge had, at a minimum, a duty to disclose the relationship before appointing Clark. *See also [In the Matter of Kaminski, Final judgment](#)* (Alabama Court of the Judiciary August 6, 2019) (judge appointed an attorney with whom he had a romantic relationship, took action in cases in which she was attorney of record, and entered attorney’s fees orders for her benefit); *Paus, Order* (Arizona Commission on Judicial Conduct November 8, 2019) (judge proposed her domestic partner as a third party neutral without disclosing the relationship); *In the Matter of Freese*, 123 N.E.3d 683 (Indiana 2019) (judge appointed an unqualified friend as trustee of a trust, failed to disclose the relationship, and failed to act when faced with evidence that his friend was embezzling trust funds).

In addition, in *Bailey*, the California Commission concluded that, when the judge required five defendants charged with alcohol-related crimes to participate in a monitoring program as a condition of their release, he should have disclosed that his son worked for CHI Monitoring, LLC, the only local provider of the service, and that the company was owned by his friend, Charles Holland. The Commission accepted the judge’s characterization of his relationship with Holland as “more professional than social,” but concluded that the relationship “went further than being members of the same professional organization or having contacts at professional events.” The judge had failed to disclose that:

- Before he became a judge, the judge had represented Holland, and Holland had referred clients to him,
- Holland had been to his home and attended strategy meetings for his judicial campaign, and
- The judge was one of Holland’s Facebook friends.

Disclosure was required by “the totality of these circumstances,” the Commission concluded, even if each fact taken alone did not require disqualification.

A judge’s duty to at least disclose a relationship is triggered by ties far short of blood or marriage and far more often than judges may think, as several judicial discipline cases from 2019 illustrate.

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Relationship advice

In a formal advisory opinion in 2019, the American Bar Association Standing Committee on Ethics and Professional Responsibility addressed judges' obligations when they have social, non-familial relationships with a lawyer or a party in a proceeding. *ABA Formal Opinion 488* (2019). The opinion discussed three categories of relationships: acquaintanceships; friendships; and close personal relationships.

If a lawyer or party is an acquaintance of a judge, the opinion advised, the judge has no obligation to disclose the relationship in a proceeding. The committee defined an acquaintance as someone with whom a judge has "coincidental or relatively superficial" interactions outside of court, "such as being members of the same place of worship, professional or civic organization, or the like. . . . Generally, neither the judge nor the lawyer seeks contact with the other, but they greet each other amicably and are cordial when their lives intersect."

Friendship, the committee explained, "implies a degree of affinity greater than being acquainted with a person; indeed, the term connotes some degree of mutual affection" although "not all friendships are the same; some may be professional, while others may be social. Some friends are closer than others." The committee advised that "judges need not disqualify themselves in many cases in which a party or lawyer is a friend" unless the friendship is "so tight that the judge's impartiality might reasonably be questioned," "essentially a question of degree." The committee also noted that a judge should disclose "information about a friendship with a lawyer or party 'that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.'"

Finally, the committee stated that "a judge may have a personal relationship with a lawyer or party that goes beyond or is different from common concepts of friendship," although it advised that even such a close relationship does not always require disqualification or disclosure. The only specific example it gave is that "a judge must disqualify himself or herself when the judge has a romantic relationship with a lawyer or party in the proceeding, or desires or is pursuing such a relationship."

Although the opinion advised that some friendships and close personal relationships may require disqualification or at least disclosure, the opinion did not discuss when that point is reached or identify the factors that a judge should consider. As the discipline cases described above illustrate, the committee's confidence that "judges are ordinarily in the best position to assess whether their impartiality might reasonably be questioned" may be misplaced, at least absent clearer guidelines and direction.

For example, in a comprehensive opinion, the New York Advisory Committee on Judicial Ethics listed factors such as the nature of the judge's relationship with the attorney, "the inter-relationships among their respective immediate family members, the frequency and context of their contacts, and whether they or their respective family members share confidences" as relevant to a judge's ethical obligation in cases

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involving people with whom the judge interacts socially. *New York Advisory Opinion 2011-125*. The New York committee identified three categories of relationship—acquaintance, close *social* relationship, and close *personal* relationship—and imposed a different ethical obligation for each category. According to the committee:

- If a judge is acquainted with an attorney, “neither disqualification nor disclosure is required as long as the judge believes he/she can be fair and impartial.” The New York committee’s definition of “acquaintance” is similar to the ABA committee’s: when “interactions outside court result from happenstance or some coincidental circumstance such as being members of the same profession, religion, civic or professional organization, etc.”
- If a judge and an attorney have a close *social* relationship, “the judge must, at the very least, disclose the relationship either in writing or on the record” Then, if a party objects, the judge must also consider “whether, given the circumstances and the rationale for any objection to his/her continued participation in the case, his/her impartiality can reasonably be questioned. If so, the judge must disqualify him/herself” The opinion gives specific examples of when a judge and an attorney have a close social relationship, rather than just an acquaintance.
- If a judge and an attorney have a close *personal* relationship, the judge is required to disqualify when the attorney appears in the judge’s court. According to the New York committee, a relationship is close and personal when “the judge and the attorney share intimate aspects of their personal lives. For example, where the judge, the attorney, and/or members of their immediate families share confidences, socialize regularly, vacation together, celebrate significant events in each other’s lives and/or share interests that are important to them personally”

What they said *ex parte* that got them in trouble

- “Take a read of *People v Solmonson*, 261 MA 657 (2004), cited in *People Rassoull Omari Janes*, COA Unpublished June 15, 2017 (I have a copy).” Judge providing caselaw to assistant prosecutor in an *ex parte* email. *Filip*, 923 N.W.2d 282 (Michigan 2019) (censure for this and related misconduct).
- “Entirely inexperienced,” “repeating the bull***t” to which the defendant testified, and turning a “slam-dunk” case into a “60-40” one for

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the defendant. Judge in email to a paralegal in the U.S. Attorney's Office about the performance an Assistant U.S. Attorney in a case. *Bruce* (7th Circuit Judicial Council 2019) (admonishment for practice of ex parte communications with the U.S. Attorney's Office).

- “Not a game. Trial is 2/22/17. You agreed to send subpoenaed trial date. Not a game. Not a game. That is the trial date. Not a game. This is the trial date. No more repeats of what happened this past Friday. Not a game. That is the date. You agreed to send revised dates. That is the scheduled trial date. Sick of this. Respect for the city if [sic] Camden. Respect for our court.” Judge in one of a series of aggressive, ex parte emails on New Year's Eve to a prosecutor about scheduling a trial. *Jones-Tucker* (New Jersey 2019) (reprimand for this and related misconduct).
- The mother was “just calling me giving me a different side.” Judge in ex parte call with a father about pending child custody and visitation issues. *Wiggins* (Alabama Court 2019) (reprimand).
- “Without lawful authority . . . with perhaps nefarious motivations . . .” Judge suggesting attorneys had filed documents under seal to prevent the estranged spouse of one of them from learning about a large fee, without evidentiary basis in a case to which he was not assigned. *Spanner* (Washington Commission 2019) (reprimand).

What they said to attorneys that got them in trouble

- “You have a hard time understanding me? Two lawyers can't argue one argument.” Judge, in front of the jury during a felony trial, just before ordering his courtroom deputy to remove one of the defendant's attorneys from a sidebar conference. *Bailey*, 267 So. 3d 992 (Florida 2019) (reprimand).
- “ENOUGH.” Hearing master shouting at attorney who repeatedly objected to her questions to his client, a juvenile charged with a crime. *Henry* (Nevada Commission 2019) (admonishment).
- “What's going to happen now is your client is going to pay \$25,000 to settle this case right now or I am going to report you to the Appellate Division Second Department. That's your license counselor.” Judge in an off-the-record conference in chambers. *Edwards* (New York Commission 2019) (admonition).
- Prosecutor “handled himself in in [sic] a completely unprofessional manner, never notified me of his concerns,” and “is a fool that I suffered” and a “cancer” in the prosecuting attorney's office. Judge in

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disqualification hearing, referring to prosecutors who had told the defense attorney about his ex parte emails. *Filip*, 923 N.W.2d 282 (Michigan 2019) (censure for this and related misconduct).

Political comments

Top Judicial Ethics Stories of 2019

Several judicial disciplinary proceedings in 2019 involved statements by judges about controversial social or political issues or figures, made in public meetings, to reporters, in letters to the editor, on Facebook, and in the courthouse.

For example, at a public meeting of the village board, a village justice “conveyed disdain for certain laws and aspects of legal process, a predisposition to presume defendants guilty, and personal annoyance with lawyers who represent criminal defendants,” according to a formal complaint filed by the New York State Commission on Judicial Conduct. The meeting had been called to address public concerns about recent criminal activity. After being introduced as “Judge Stone,” the judge had said:

- “To start with, the whole system, quite frankly, sucks.”
- “If they are a minor, I’m never going to see them because they are going to family court.”
- “After five days, if the county decides not to do [a] preliminary hearing, I have to release them. It doesn’t matter, it’s not my choice. It’s a lawyers’ world.”
- “Most of these individuals, if I had my way, you’d see them probably swinging outside the door, okay? That’s the way I was brought up.”
- “But thanks to lawyers, everybody has rights.”

A local newspaper quoted the judge’s statements. The Commission concluded its proceeding based on his resignation and agreement not to seek or accept judicial office. [*In the Matter of Stone, Decision and order*](#) (New York State Commission on Judicial Conduct May 30, 2019).

The Texas State Commission on Judicial Conduct publicly warned a judge for his comments about young black defendants to a newspaper reporter and in a letter to the editor. [*Public Warning of McSpadden*](#) (Texas State Commission on Judicial Conduct November 12, 2019). The Commission found that the judge’s comments cast public discredit on the judiciary and the administration of justice and raised reasonable doubt about his capacity to act impartially.

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In an interview about no-cost bail being routinely denied in criminal cases, the judge told a reporter that, “the young black men—and it’s primarily young black men rather than young black women—charged with felony offenses, they’re not getting good advice from their parents.” He added: “Who do they get advice from? Rag-tag organizations like Black Lives Matters, which tell you, ‘Resist police,’ which is the worst thing in the world you could tell a young black man . . . they teach contempt for the police, for the whole justice system.” The judge’s comments appeared in an article in the *Houston Chronicle*.

In a subsequent letter to the editor, the judge wrote that the attitude of defendants of all races had changed during his 36 years on the bench and “most no longer have any respect for the rule of law.” The judge repeated his claim about Black Lives Matter and added, “I think ‘ragtag’ was too nice a term to describe a group which was built on the Ferguson, Mo, lie of ‘Hands up. Don’t shoot.’ Also encouraging everyone to ‘resist police, and insulting them with remarks like ‘pigs in a blanket’ among others.”

Criticizing public officials

Other sanctioned comments were critical of specific politicians.

For example, in a letter on official court stationery to several state representatives, a judge “hurled” insults at the sponsor of proposed legislation to require a prosecutor’s consent to a defendant’s request for a bench trial. The judge called the legislation “nothing more than the hobgoblin of a small-minded, mouthbreathing, Tea Party type whose political style and abilities uniquely qualify him to do nothing.” In addition, the judge claimed that the sponsor, a former judge of the Ninth District Court of Appeal, got elected because “until recently, the Ninth District Court of Appeals * * * was nothing more than an affirmative action program for intellectually challenged, Summit County Republican lawyers.” For this and other misconduct, the Ohio Supreme Court suspended the now former judge’s license to practice law for one year, with six months stayed with conditions. *Disciplinary Counsel v. Burge*, 134 N.E.3d 153 (Ohio 2019).

The New York Commission investigated a judge who, in a letter to the editor of a local paper, made political and partisan statements, criticized public officials and town residents about a local controversy, and criticized decisions and policies of Governor Andrew Cuomo, calling the governor “corrupt” during the governor’s re-election campaign. The Commission was also investigating other allegations about the judge but closed the proceeding when he resigned and agreed not to serve in judicial office again. [*In the Matter of Chamberlain, Decision and order*](#) (New York State Commission on Judicial Conduct December 5, 2019).

In five cases, the judges’ statements were about President Trump or issues associated with him.

Based on an agreement, the Tennessee Board of Judicial Conduct publicly reprimanded a judge for sharing posts on Facebook about issues such as the credibility of federal agencies, professional athletes kneeling during the national anthem, the effect of undocumented immigrants on the

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economy, opposition to positions in the Democratic party platform, support of then-presidential candidate Donald Trump, opposition to then-presidential candidate Hillary Clinton, the Black Lives Matter movement, media bias, fatal shootings by police officers, anti-Jihadist sentiment, transgender bathrooms and boys in girls' locker rooms, and undocumented immigrants voting in Virginia. In the disciplinary proceeding, the judge acknowledged that reasonable minds could easily perceive prejudice or bias in his "dissemination of these types of articles and images on [his] social media platform." *Lamme* (Tennessee Board of Judicial Conduct November 15, 2019).

Based on a judge's resignation and agreement not to seek or accept judicial office, the New York Commission concluded a proceeding against a former judge who had posted a picture of a noose on his Facebook account with "the annotation, 'IF WE WANT TO MAKE AMERICA GREAT AGAIN WE WILL HAVE TO MAKE EVIL PEOPLE FEAR PUNISHMENT AGAIN.'" *In the Matter of Canning, Decision and order* (New York State Commission on Judicial Conduct September 12, 2019). The stipulation stated that the image and statement "conveyed and/or appeared to convey racial and/or political bias" and that the judge had "failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Based on a stipulation, the Montana Judicial Standards Commission reprimanded a judge for using his public email account during work hours "to express political views that are not allowed by members of the judiciary." *In re Swingley, Stipulation for public reprimand* (Montana Judicial Standards Commission November 12, 2019). The judge also agreed not to "express his political feelings publicly while serving as a judicial officer" and not to use public email or his office "to engage in any political discourse."

The reprimand does not describe what political views the judge had expressed. According to *KXLH.com*, in January 2019, the judge had sent an email about the "QAnon" conspiracy theory to *Washington Post* reporter Avi Selk from his county email address. Selk posted the email on Twitter. The judge had stated:

Whether Q is real or otherwise, there is a movement started by the hypothesis of a Q and somebody behind the scenes standing up for the average American citizen. Patriots are uniting against people just like you. Your world of fake news and liberal agendas that give away our country to foreigners and protect the Clintons and Obamas is coming to an end. Wait for it..... you pathetic, snobby a**.

See, e.g., Avi Selk, "[How QAnon, the conspiracy theory spawned by a Trump quip, got so big and scary](#)," *Washington Post* (August 1, 2018).

Sanctions have also been imposed for anti-Trump statements.

The Utah Supreme Court suspended a judge for six months without pay for, in addition to other misconduct, Facebook posts that were critical of Trump before and after the presidential election and posts on topics such as immigration, gun violence, and voter participation. *In re Kwan*, 443 P.3d 1228 (Utah 2019). The Court stated that the code applied even though the judge's account was private and could only be viewed by his Facebook

Several judicial discipline proceedings in 2019 involved statements by judges about controversial social or political issues or figures.

(continued)

friends because, as he acknowledged, his friends could repost and share his posts more widely.

The judge's posts regarding Trump contained "blunt, and sometimes indelicate, criticism." For example, on the night of the first presidential debate between Trump and Clinton, the judge wrote:

Contradictory: person who got rich by not paying people for their work but complains about NATO not paying their fair share.

Food for thought: If a person tries to show their ties to a community by talking about their investments and properties and not about the people of the community, it speaks to that person's priorities.

Quick question: Is the fact that the IRS has audited you almost every year when your peers hardly ever or never have been, something to be proud of? What does that say . . . about your business practices?

Wish she said: "Donald, I'm used to having a man interrupt and dismiss me when I speak because egotistical men hav[e] been trying to do that to me for my entire career."

Three days after the presidential election, the judge posted: "Think I'll go to the shelter to adopt a cat before the President-Elect grabs them all . . ." The day President Trump was inaugurated, the judge commented: "Welcome to governing. Will you dig your heels in and spend the next four years undermining our country's reputation and standing in the world? . . . Will you continue to demonstrate your inability to govern and political incompetence?" Subsequently, the judge posted:

Welcome to the beginning of the fascist takeover. We need to . . . be diligent in questioning Congressional Republicans if they are going to be the American Reichstag and refuse to stand up for the Constitution, refuse to uphold their oath of office and enable the tyrants to consolidate their power.

The Court noted that "these are illustrative examples—not a comprehensive recitation—of the comments and articles" the judge shared about Trump and other topics.

The judge conceded that his post referring to IRS audits of Trump was an inappropriate comment on a political candidate that could be constitutionally restricted. However, the judge contended that his post-election statements were protected by the First Amendment because they were not about a candidate and reflected his "views on issues such as racism, civil rights, the plight of refugees, and constitutional limits on the executive branch."

The Court held that it could not resolve these "interesting and important constitutional issues" because, under Utah caselaw, a judge must raise a constitutional challenge before engaging in arguably prohibited but also arguably protected conduct. The Court noted that its rule was "unconventional" and that other states consider constitutional challenges in judicial disciplinary proceedings. The Court also concluded that accepting the judge's constitutional challenge would not change the outcome of the case.

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The Court explained that, although the judge's posts were about "national-scale issues" that he would not decide as a justice court judge, "those issues may still bear, or appear to bear, in some respects on questions that arise in his courtroom" and his comments could "cause those who disagree with Judge Kwan's politics to believe that they will not receive a fair shake when they appear before him." The Court explained that its primary concern was not that the judge "voiced his views on a range of political issues via his criticisms of Donald Trump" but that he "implicitly used the esteem associated with his judicial office as a platform from which to criticize a candidate for elected office." The Court stated:

[A]s a person the public entrusts to decide issues with utmost fairness, independence, and impartiality, a judge must at times set aside the power of his or her voice—which becomes inextricably tied to his or her position—as a tool to publicly influence the results of a local, regional, or national election.

Courtroom "humor" and protest

In *Kwan*, the judge's discipline was also based on "seemingly shirty and politically charged comments" he made in the courtroom that demeaned a defendant. In January 2017, the judge had the following exchange with a defendant who told the judge he planned on paying his fines "when I get my taxes:"

Judge: You do realize that we have a new president, and you think we are getting any money back?

Defendant: I hope.

Judge: You hope?

Defendant: I pray and I cross my fingers.

Judge: Ok. Prayer might be the answer. 'Cause, he just signed an order to start building the wall and he has no money to do that, and so if you think you are going to get taxes back this year, uh-yeah, maybe, maybe not. But don't worry[,] there is a tax cut for the wealthy so if you make over \$500,000 you're getting a tax cut. You're right[,] there[,] right? Pretty close? All[,]right, so do you have a plan? Other than just get the tax cut and pay it off?

In response to the judge's contention that he "intended to be funny, not rude," the Court stated: "It is an immutable and universal rule that judges are not as funny as they think they are. If someone laughs at a judge's joke, there is a decent chance that the laughter was dictated by the courtroom's power dynamic and not by a genuine belief that the joke was funny."

The Texas Commission publicly admonished a judge for closing his courtroom and draping black fabric over the door to protest the confirmation of Justice Brett Kavanaugh to the United States Supreme Court. [*Public Admonition of Lipscombe*](#) (Texas State Commission on Judicial Conduct August 8, 2019). On October 8, 2018, a TV news reporter posted to Twitter a photograph of the closed courtroom doors draped in black fabric, with the statement:

County Court of Law, Judge John Lipscombe draped his door with funeral bunting and shut down his court today (office is still open) as a form of silent

Past issues of the
*Judicial Conduct
Reporter*
and an index are
available at
www.ncsc.org/cje.

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protest after Brett Kavanaugh was confirmed as a Supreme Court Justice. He told me he felt the need to do something because Kavanaugh's confirmation was a big step backwards for this country. He said it shows disrespect to women and men. The rest of the courthouse is open.

The judge's conduct received significant media attention. Five complaints were filed with the Commission.

The judge told the Commission that he had felt "a personal obligation to show" his disapproval of Kavanaugh's character and conduct and the confirmation process and to demonstrate his "utmost respect for the Judiciary and . . . dedication to our Constitution and its principles of fairness and justice." The Commission found that the judge's protest was "clearly inconsistent with the proper performance of his judicial duties," "cast public discredit on the judiciary and the administration of justice," and "was influenced by partisan interests and public clamor."

What they said to or about court staff that got them in trouble

- "So did you do it? Are you going to own up to it? No one is owning up to it? Somebody ... did it. People aren't telling the truth." Judge to clerks in a "line-up" in the clerk's office to identify who had assisted a domestic violence petitioner. *Russell*, 211 A.3d 426 (Maryland 2019) (six-month suspension without pay for this and other misconduct).
- "If you want to work on [my campaign], you want to volunteer, that's great, you know I would appreciate it." Judge to court staff. *Horton* (Ohio 2019) (indefinite suspension of former judge from the practice of law for this and other misconduct).
- "We had many times where we didn't have enough clerks, plus the clerks that were there were not trained in some of the areas, and we fell behind. And so, in falling behind trying to keep a very busy court going, I stepped in—was trying to answer phones, dealing with people at the, at the, uh, window. Uh, in doing that, I made some mistakes. And so the Censure involves some of the mistakes that I made." Judge in radio interview misrepresenting the misconduct for which he had been previously censured. *Walton* (New Mexico 2019) (three-week suspension without pay).

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What they said to or about other judges that got them in trouble

- The administrative judge “is a complete and utter incompetent vicious coward,” and “[she] is not your boss. You don’t need to listen to her.” Judge to new judge. *Russell*, 211 A.3d 426 (Maryland 2019) (six-month suspension without pay for this and other misconduct).
- “No! It was a gift from my parents. I’m not taping the meeting. I don’t know how this thing works.” Judge when a digital voice recorder was found in her purse during a meeting with other judges. *Gross-Quatrone*, 200 A.3d 411 (New Jersey 2019), based on the [presentment of the Advisory Committee on Judicial Conduct](#) (two-month suspension for this and related misconduct).
- “We had an oral argument yesterday re: fracking ban where there was standing room only and a hundred people in our overflow video room. The little Mexican is going to write in favor of the Plaintiffs and it looks like I am dissenting in favor of the Oil and Gas Commission.” Appellate judge referring to a colleague in a text to her intimate partner. *Booras* (Colorado 2019) (censure of now-former judge for this and related misconduct).

Sexual misconduct

Top Judicial Ethics Stories of 2019

Eleven judicial discipline cases in 2019 involved sexual misconduct by judges, violations of the code of judicial conduct if not sexual harassment as defined by statute. The inappropriate actions were directed to litigants, court staff, attorneys, or other judges and included single statements, inappropriate texts, patterns of inappropriate comments and touching, predatory behavior, sexual relationships, and retaliation for complaints about harassment.

Single lapses of judgement

For example, the Arizona Commission on Judicial Conduct publicly reprimanded a judge for saying, “sit on my lap if you want . . . no, no I take that back” to a female drug court participant when she seemed confused about where to sit or stand when her case was called. *Fell, Order* (Arizona Commission on Judicial Conduct June 10, 2019). The Commission acknowledged “the gravity of the comment” and stressed that such comments could warrant a

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more serious sanction. In mitigation, it noted that the comment appeared to be an isolated incident and that the judge had immediately self-reported his conduct, had expressed remorse, had been suspended for three weeks without pay by his appointing authority, and had been a judge for more than 20 years without any previous sanction.

Approving a stipulation for discipline by consent, the California Commission on Judicial Performance publicly admonished a judge for, in addition to other misconduct, using inappropriate language when talking with a court administrator about a case. [*Inquiry Concerning Jacobson, Decision and order*](#) (California Commission on Judicial Performance December 19, 2019). In 1986 and 1987, the judge had clerked for a federal judge in Texas who presided over a civil rights action filed by the Department of Justice against a Tarrant County judge. The trial had received a great deal of publicity. In early 2016, the judge asked a female court administrator who had previously worked in the Tarrant County Court if she knew of the case. When she said she did not, the judge used “crude and inappropriate language” to tell her that prostitutes had performed sex acts on the Texas judge in chambers in exchange for leniency.

The Commission acknowledged that, “judges can, and sometimes must, discuss sensitive case-related facts with court personnel.” However, it stated that using “crude and inappropriate language when doing so” was improper, noting that the conversation had not even been about a case before the judge.

Electronic misconduct

The Pennsylvania Court of Judicial Discipline suspended a judge for 45 days without pay and fined him \$5,000 for viewing images of naked and partially naked women on a computer in his chambers, in addition to other misconduct. [*In re Muth, Opinion*](#) (October 31, 2018), 220 A.3d 1220 (Pennsylvania Court of Judicial Discipline 2019). The images had been loaded onto the computer, which was the judge’s personal property, before it was installed in his chambers where it was not integrated into the court system or connected to the internet. If a clerk entered his chambers while he was viewing the images, the judge would close the display. Nevertheless, three employees in five separate incidents saw the images while they were in his chambers on court-related matters.

The Court found that, although he did not intentionally show the pictures to staff, the judge intentionally displayed the images in a manner that made it virtually inevitable that staff would see them. The Court concluded that viewing “sexually provocative materials at work where his staff or others may inadvertently stumble across them” was not “within the standards of normal propriety.” The Court also found that the judge violated the state court policy against sexual harassment.

The Utah Supreme Court approved the Judicial Conduct Commission’s reprimand of a judge for texting to court clerks a “short, graphic video showing a man’s scrotum.” [*Inquiry Concerning Dow*](#) (Utah Supreme Court September 13, 2019). The text was in a group chat used for official and personal

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purposes. The judge apologized to the clerks the next day but did not report himself to the administrative office of the courts or to the Commission.

Sexual relationships

Based on stipulations, the Pennsylvania Court of Judicial Discipline severely reprimanded a former judge and fined him \$5,000 for sending salacious text messages to several women, including a probation officer on his treatment court team. *In re Shaw*, 192 A.3d 350 (2018), 207 A.3d 442 (Pennsylvania Court of Judicial Discipline 2019). In addition, the judge had sexted with and engaged in sexual relations with the girlfriend of a participant in the treatment court over which he presided.

The Texas State Commission on Judicial Conduct publicly reprimanded a former judge for engaging in a sexual relationship with an employee and giving her preferential treatment. [*Public Reprimand of Riley*](#) (Texas State Commission on Judicial Conduct February 20, 2019). A confidential complaint to the Commission had alleged that the judge hired a woman with whom he was engaged in a sexual relationship over more qualified applicants and then gave her unmerited raises and promotions. The allegations were confirmed by reports in a local newspaper, county employees during the Commission's investigation, and the Commission's review of the woman's employment record. *See also* [*Sutherland, Voluntary agreement to resign from judicial office in lieu of disciplinary action*](#) (Texas State Commission on Judicial Conduct June 6, 2019) (two complaints alleged that a judge sexually harassed a woman and/or engaged in a sexual relationship with a county employee; the judge denied the allegations).

Inappropriate touching

A Texas Special Court of Review publicly reprimanded a former judge for inappropriately touching another judge and two court staff members at a social function, in addition to other misconduct. [*In re Williams, Opinion*](#) (Texas Special Court of Review May 17, 2019).

The judge attended a function at the Havana Club honoring a municipal court judge. The next morning, Chief Deputy Clerk Lilia Ann Gutierrez told her boss, Anne Lorentzen, that Judge Williams had touched her inappropriately at the event, and Lorentzen stated that he had done the same to her. They went to Judge Sandra Watts for advice, and Judge Watts disclosed that Judge Williams had touched her in the same offensive manner at the event. Judge Watts had also received a text message from Judge Williams with the group picture from the event attached and the message "nice body for a 70 year old." They decided to file complaints with the Commission, but not to file criminal charges.

In the disciplinary proceeding, the judge denied the allegations, arguing they were "incredible and/or impossible," noting inconsistencies in the testimony, and challenging the credibility of the witnesses. However, the court found that the testimony of the complaining witnesses and the corroborating testimony of two eyewitnesses were "credible and strong." The court explained:

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Each of the three complaining witnesses testified that she felt shocked and offended and that Judge Williams' physical contact with her buttocks and/or her breast was intentional and could not have been accidental or misinterpreted. Further, when told to stop what he was doing, all three complaining witnesses stated that Judge William's only response was to smile at them; he did not reply "what?" or say the touching was an accident.

The judge also argued that, even if he had touched the women as they described, he had not been acting in his "official judicial capacity" but at an "after-hours social function." The court concluded that the code of judicial conduct does not distinguish between misdeeds committed in a judge's official capacity and those committed as a private citizen.

Not "a normal working environment"

Stating that it took seriously its responsibility to set precedent concerning sexual harassment that will send "a strong message to members of the judiciary that abusing the trust of public employees and the public at large will result in significant consequences," the Ohio Supreme Court suspended a former judge indefinitely from the practice of law for his "predatory" sexual behavior and other misconduct. *Disciplinary Counsel v. Horton* (Ohio Supreme Court October 10, 2019).

The Court found that the judge had "created an inappropriate atmosphere in his office by telling members of his staff they were sexy during the work day and commenting on the attractiveness of other employees." For example, he told M.B., a law student intern, that he had asked her to a meeting so that he would have "something pretty to look at." Staff members believed that they could not turn down the judge's frequent invitations to go with him to bars, where, he admitted, his behavior "was 'rude' and 'obnoxious.'" The Court found that the judge's "conduct was beyond rude." For example, he told his staff attorney that her tights were sexy and that he would get in trouble if he told her how he would make her over.

The Court found that the judge's behavior with M.B., who was 23 years old at the time, and his secretary Elise Wyant, who was 25, "was even worse." For example:

Following one happy hour, after M.B. had completed her internship, but while she was still a law student, she and Horton engaged in sexual conduct. . . . On three other occasions, Horton encouraged his friends to touch M.B. inappropriately, and she was groped by his friends on at least two occasions, at Horton's insistence.

When asked why she had consented to sexual conduct with the judge, M.B. explained: "I felt like I had to do what Judge Horton wanted me to do. And, you know, I think at the time, 23 at this point, like, I was naive, certainly, but I also think I was just doing the best that I could, you know."

The judge "repeatedly told Wyant that she 'looked sexy' and that he wanted to 'f**k' her." Wyant admitted that she had engaged in explicit sexual conversations with the judge. When asked why, Wyant explained that was "the culture that he created in the office" but that she had learned

**Eleven judicial
discipline
cases in 2019
involved sexual
misconduct by
judges....**

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from friends that this was not “a normal working environment. This culture that he created wasn’t a good one and it wasn’t professional at all.”

Rejecting the judge’s defense that Wyant and M.B. had consented to his sexual conduct and statements, the Court stressed that the code of judicial conduct is “concerned with the actions of judges,” not staff, and “as a judge and a supervisor, Horton held a position of power over his staff and interns” and expected loyalty, as he repeatedly emphasized. The Court stated that, “it seems to be no coincidence that Horton’s most egregious behavior occurred with and around the younger, less professionally experienced members of his staff who he could more easily manipulate.”

Unwanted attention

Adopting the conclusions of a special committee, the 10th Circuit Judicial Council publicly reprimanded a judge on the U.S. District Court for the District of Kansas for giving preferential treatment and unwanted attention to female court employees, in addition to other misconduct. *[In re: Complaint under the Judicial Conduct and Disability Act \(Murguia\), Order](#)* (10th Circuit Judicial Council September 30, 2019). The committee found that the judge made “sexually suggestive comments” to female court employees, sent them “inappropriate text messages,” and engaged in “excessive, non-work-related contact, much of which occurred after work hours and often late at night.” The harassed employees were reluctant to tell the judge to stop because of his power as a federal judge, and he continued his harassing conduct even after one of the employees told him to stop. The committee’s order does not contain specific details about the judge’s harassment.

The Pennsylvania Court of Judicial Discipline publicly reprimanded a former judge for his conduct toward court clerks, including violations of the court policy prohibiting harassment in the workplace, in addition to other misconduct. Noting that removal may have been appropriate, the Court stated that the former judge’s testimony at the sanctions hearing demonstrated that his physical and mental difficulties “played a large part in his misconduct” and made it unlikely he would serve in judicial office in the future. *[In re Hladio, Opinion](#)* (March 25, 2019), 220 A.3d 1219 (Pennsylvania Court of Judicial Discipline 2019).

The judge repeatedly asked Nancy Borkowski, a court clerk, to go on a date with him even after she refused; he also asked her questions about her private life and went to her home, uninvited and unannounced. The judge sulked and was vindictive toward Borkowski when she refused to go out with him or answer his questions and after he learned that she was dating another man. At times, he refused to speak with her, spoke to her sarcastically, or ignored her questions about work-related matters. He also spoke negatively about Borkowski and her work performance to the other clerks.

Borkowski and other court clerks filed complaints about the judge with court administration, and administrators repeatedly advised him to stop using inappropriate language and being intrusive and offensive to court staff. After the complaints, the judge would sit for hours in the court reception area and watch the clerks perform their duties without speaking. After

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the Judicial Conduct Board filed a complaint against him, the judge complained about staff to the state inspector general, the U.S. Equal Employment Opportunity Commission, and court administration.

Retaliation

The Illinois Courts Commission removed a judge from office for, in addition to other misconduct, retaliating against two employees who filed sexual harassment allegations against him. *In re O’Shea, Order* (Illinois Courts Commission September 27, 2019). For a summary of the other misconduct, see *Removal cases in 2019, supra*. Although the judge was not charged with sexual harassment, the Commission found that “behavior was established, found credible, and was the genesis of the retaliation,” which created “much turmoil in the courthouse” and distracted from the administration of justice.

For example, once in May 2016, Olga Renteria, a judicial assistant, was standing in the door of Judge Michael Wolfe’s chambers. Judge O’Shea passed by and said, “What are you guys doing in there, hugging and kissing?” He passed by again and stated, “Yeah you guys are always in there with the door closed, the lights off, hugging and kissing.” The next day when Renteria walked past the judge’s chambers, he said, “Hey, Olga, I have my lights dimmed for you just how you like them.”

Renteria documented those comments and others at the time and later filed a complaint. Judge Wolfe also filed a complaint.

After Renteria’s complaint, the judge became very hostile towards her. For example, he would not speak to her or let her in his chambers and would stare her down and make her feel intimidated. He acted so angry that she was worried that he would physically hurt her. The judge also complained to her supervisor about her.

The Commission found Renteria’s testimony to be credible and the judge’s denials to be untruthful. The Commission concluded that the judge’s hostile conduct toward Renteria was retaliatory and an attempt to damage her standing with her employer and dissuade her from filing more complaints.

Obsession and intimidation

The Wisconsin Supreme Court sanctioned a former municipal court judge for a “pattern of obsessive conduct about whether [the court manager] liked him as a friend” and trying to intimidate her or retaliate against her for reporting him. *Judicial Commission v. Kachinsky*, 930 N.W.2d 252 (Wisconsin 2019) (three-year suspension from eligibility to serve as a reserve judge). Although not a sexual harassment case, the judge blurred professional boundaries and became angry when snubbed, which is common in such cases.

The judge served part-time on a municipal court that holds sessions three evenings a month for 90-120 minutes. In spring 2016, the judge hired M.B. as the full-time court manager. They shared a small office in the municipal building. At the beginning of M.B.’s employment, they talked about

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their personal lives, developed a friendship, and occasionally engaged in activities together outside of work.

Beginning in March 2017, however, their relationship became strained after “a couple of incidents that M.B. found concerning.” First, in a public comment to a post on M.B.’s Facebook page, the judge stated that M.B. was “on her second honeymoon” at “an undisclosed location,” which was incorrect. A few days later, the judge hid behind a counter at the court office and, when M.B. walked in, popped up and shouted “roar,” startling M.B.

After the visit, M.B. told the judge in an email that “it would help her focus on her job if they kept their relationship work-related.” However, the judge continued to send M.B. numerous emails about personal matters, even after she filed a complaint about him and village officials met with him and warned him about his conduct. In fact, the panel found, the meeting “upset” the judge, who expressed his displeasure to M.B. and insisted that they needed to be friends.

On three occasions, the judge went to the court office, sat close to M.B.’s desk, facing her, and did nothing except tap his pen and make “cat noises;” on one visit, the judge “continued this extremely odd behavior for 45 minutes.” During one visit, the judge twice told M.B. a story about a dog being raped.

After one letter from the village attorney, the judge “elevated his conduct.” He posted to his Facebook page that “the sh— is not over. I might have an employee termination today. Not mine.” Once when alone with M.B. in the office, the judge lunged over her desk, knocking some items off, and whispering to her: “Are you afraid of me now?” That evening, when the judge bumped into something on his way out of the courtroom, he used an envelope to stop the bleeding on his arm, then left the blood-stained envelope on his desk where M.B. could see it.

One day, the judge sent an email to M.B. that stated: “By this time next week some things are going to happen that will cause a lot of fire and fury at the Municipal Building. No, I am not resigning. Just be psychologically prepared. Have a good weekend.” M.B. and village officials were disturbed by that email. When the police chief interviewed him, the judge giggled.

The judge also wrote several reprimands to M.B. There were additional incidents and emails, and, eventually, M.B. sought and received a harassment injunction against the judge.

Less than two weeks later, the judge left a poster in the court office that had a picture of the village manager and the caption: “I am from the government and I am here to help you. WWRD #notmetoo.” The judge also posted a page from the village personnel manual, entitled “Sexual Harassment,” with the word “sexual” highlighted seven times in yellow marker.

On July 11, the judge was charged with one count of felony stalking and two misdemeanor counts of violating a harassment injunction. The district attorney’s office dropped the misdemeanor counts, and a jury found the judge not guilty on the felony charge. The Court noted that his acquittal did not mean that he was innocent of the ethical violations.

The inappropriate actions were directed to litigants, staff, attorneys, or other judges and included single statements, inappropriate texts, patterns of inappropriate comments and touching, predatory behavior, sexual relationships, and retaliation for complaints about harassment.

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The judge's primary argument in the discipline case was that his efforts "to 'restore a level of personal rapport'" with M.B. were "legitimate and laudable" and "necessary for a workplace to perform effectively." However, the Court concluded:

Serving the people as a judicial officer does not allow a judge to impose his/her every opinion about personal interactions on subordinate court personnel or to force those subordinates to be the judge's personal friends.

Judges are entitled to ensure that their subordinate employees perform their work responsibilities in appropriate manners. Judge Kachinsky's pattern of obsessive conduct about whether M.B. liked him as a friend clearly passed well over the line and brought the municipal court he administered into public disrepute. . . .

What they said in their personal lives that got them in trouble

- "Okay, you need to stop for a minute," and, "You are lying. You're such a liar." Judge interrupting a deposition in her divorce case. *Brennan*, 929 N.W.2d 290 (Michigan 2019) (removal for this and other misconduct).
- "If I hear the basketball bounce one more time I am going after Chico's disability." Judge to next-door neighbor. *Guthrie* (New Mexico 2019) (censure).
- "I'm not denying that I said something or egged it on ... I mean I fully acknowledge that I drink and get mouthy, and I'm fiery and I'm feisty, but if I would have ever thought for a second that they were gonna fight or that that guy had a gun on him, I would never, never...." Judge to police officer after a verbal altercation she and two other judges had with two strangers outside a White Castle restaurant led to a physical altercation and the other two judges being shot. *Adams, Jacobs, and Bell*, 134 N.E.3d 50 (Indiana 2019) (suspensions for three judges).
- Woman "goes from older men to older men with money." Judge during a telephone conversation about a woman she believed was cohabitating with her estranged husband. *Rocha* (Texas Commission 2019) (admonition).
- "For all we know, he could be frying up some platanos in the front seat." Part-time judge about a party's ethnicity in court while acting as an attorney. *Tawil* (New York Commission 2019) (censure for this and other misconduct).
- "This is my livelihood!" and "Judas Iscariot." Judge publicly confronting people who supported his campaign opponent. *Maruszczak* (Pennsylvania 2019) (reprimand).

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What they said that abused the prestige of office that got them in trouble

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- “What do you think you’re doing pulling me over?” and “You better check the registration on this plate soon, mister.” Judge to police officer at traffic stop. *Reinaker* (Pennsylvania Board 2019) (letter of counsel).
- “[I want] to take the trooper back to 1982 . . . when there was professional courtesy [my] daughter would not have received a ticket.” Judge to prosecuting attorney. *Marshall*, 125 N.E.3d 856 (Ohio 2019) (one-year suspension of former judge’s law license for this and other misconduct).
- “I am Judge Abbott of Palmyra and I just won’t do any arraignments for you anymore.” Judge when police in a neighboring town refused to help unlock his personal vehicle. *Abbott* (New York Commission 2019) (censure for this and other misconduct).
- “What is this b***s***?” and “Take this s**t down.” Judge to store employees about smoking paraphernalia in window display, while referring to his judicial office. *Tawil* (New York Commission 2019) (censure for this and other misconduct).
- “Give him a break.” Judge to police chief about a pending traffic stop in which his former brother-in-law was the driver. *Mann* (New York Commission 2019) (proceeding closed based on judge’s resignation and agreement not to seek or accept judicial office).
- “Help [me] out.” Judge to sheriff’s investigator about prostitution charge against a woman whose family he knew. *Sutton*, 275 So.3d 1062 (Mississippi 2019) (reprimand and fine for this and similar misconduct).
- “Now as a parent I learned one thing, and as a judge, when you say stay away to a young person, they often don’t stay away.” Judge in court when representing his daughter, who was petitioning for an order of protection. *Edwards* (New York Commission 2019).
- “[I am] a current Part-Time Town Justice” and would never “intentionally make a racist comment.” Judge to another judge about making an insensitive remark in court when acting as an attorney. *Tawil* (New York Commission 2019).
- “I recommend the Redd Group for all your polling needs. Excellent work!—Steven C. Bailey.” Judge in a testimonial used on a business’s website with his title. *Bailey* (California Commission 2019) (censure for this and other misconduct).

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Recent posts on the blog of the Center for Judicial Ethics

Recent cases (November)

Recent cases (December)

Recent cases (January)

A sampling of recent judicial ethics advisory opinions

Another Facebook fail (*Lammey* (Tennessee Board 2019))

Yelp, “likes,” and judicial prestige

Ex parte communication: “Basic judicial obligation to act as a neutral arbiter”
(*Spanner* (Washington Commission 2019); *Jones-Tucker* (New Jersey 2019))

Refusing to perform same-sex marriages

What judges said that got them in trouble in the second half of 2019