JUDICIAL CONDUCT REPORTER

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State judicial discipline in 2013

From 1980 through 2012, approximately 400 judges were removed as a result of state disciplinary proceedings. In 2013, five judges (or former judges in two cases) were removed from office. In addition, 17 judges resigned or retired in lieu of discipline and agreed not to serve in judicial office again pursuant to public agreements with judicial conduct commissions. Two former judges were barred from serving in judicial office. (One of those former judges was also censured; one was suspended from the practice of law for a year.) One judge was suspended without pay until the end of his term. Two judges were involuntarily retired due to disabilities.

Further, 80 judges (or former judges in 10 cases) received other public sanctions, approximately half of those sanctions pursuant to the judge's agreement.

- 11 judges were suspended without pay for from 30 days to one year; two of those suspensions were stayed in whole or in part conditioned on the judge committing no additional misconduct. One suspension also included a censure; three included reprimands; one included a reprimand and $1,000 fine; one included a reprimand and an order not to run for re-election.
- One judge was ordered to reimburse the court for pay she received for almost four months while she was suspended with pay pending criminal charges.
- 13 judges were censured.
- 40 judges were publicly reprimanded; three of the reprimands also includes fines ($500, $1,000, or $2,500).
- 11 judges were publicly admonished.
- One judge received a public warning.
- Two judges received letters of informal adjustment.
- One judge was privately reprimanded, but the reprimand was made public with his consent.

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Top judicial ethics stories of 2013 by Cynthia Gray

Comic judge

Agreeing with an opinion from the Advisory Committee on Extrajudicial Activities, the New Jersey Supreme Court held that a part-time judge's career as a comedian was inconsistent with his judicial position because his routines demeaned his ethnic and religious upbringing and his roles on a TV show disparaged the needy, disabled, and overweight and harassed people based on race and sexual orientation. *In the Matter of Advisory Letter No. 3-11 and Opinion No. 12-8*, 73 A.3d 1244 (New Jersey 2013).

Under the name Vince August, Judge Vincenzo Sicari performed as a stand-up comedian and improvisational comic at comedy clubs. He admitted that his routines were founded on "demeaning comments, often self-directed and based on his personal experiences growing-up in an Italian-American Catholic family. . . ." The Court highlighted comments from recordings of three of his routines, which he provided to the Court.

During one monologue, the judge said, "Barack won. And its weird, because, like, I voted for him. But, I almost don't know . . . do I congratulate black people?" In another clip, the judge participated in a roast of Vincent Pastore, an actor who appeared in the television show *The Sopranos* as Salvatore "Big Pussy" Bonpensiero. The judge named other roles Pastore had played and then asked: "Do you realize that 'Big Pussy' was the most masculine role you actually had?"

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Recent advisory opinions

• To disclose on the record information reasonably relevant to the question of disqualification in matters that are not reported or electronically recorded, a judge must document the disclosure in a writing entered in the case file (for example, a minute order, official clerk's minutes, or a formal order) and notify the lawyers and parties of the document orally or by service of the document. *California Opinion 2013-2.*

• A judge may present a "challenge coin" to jurors, court personnel, or citizens for contributions to the court or community. *Florida Opinion 2013-22.*

• A judge may display art in his chambers as part of a program in which the local government acquires art for public buildings. *Florida Opinion 2014-1.*

• A court may advertise for local non-profit organizations willing to accept court placements of defendants to serve community service sentences. *New York Opinion 13-42.*

• A judge who concludes that an attorney has threatened to file a complaint against her to try to influence her decision should report the attorney to the disciplinary committee. *New York Opinion 13-61.*

• Subject to certain limitations, a judge may provide headnote-style information about a decision when submitting it to a law journal for possible publication. *New York Opinion 13-86.*

• In connection with implementation of a new counsel-at-arraignment program for indigent defendants, a judge may not meet privately with the public defender unless the district attorney consents but may meet jointly with the public defender and the district attorney or attend an open forum to which the district attorney is invited. A judge may speak ex parte with a defendant on topics relevant to determining if the defendant is financially eligible for the program. If the district attorney is on notice that the program is in effect, a judge may treat the district attorney's failure to send a representative to arraignments as implied consent to conduct the arraignments ex parte. A judge may not accede to a public defender's request that the judge contact the public defender's office only in cases in which bail may be imposed and incarceration is a possibility. *New York Joint Opinion 13-124/13-125/13-128/13-129.*

• A judicial official may not be honored at a cocktail party fund-raiser co-hosted by a section of the bar association and a national, non-profit, law-related organization that works for recognition of the civil rights of a particular class of citizens through litigation, education, and public policy work, but may attend the event and donate to the organization. *Connecticut Informal Opinion 2013-35.*

• A judge may not lecture at a correctional facility's anti-violence program to incarcerated persons who could appear before the judge for sentencing or disposition of their cases. *New York Opinion 13-34.*

• A judge may make religious comments from the pulpit at an annual "God and Country Day" event organized by a church and pose for a photograph with the pastor and elected officials that will be published in a newspaper. *Florida Opinion 2013-23.*

• A judge may not serve as an officer of a non-profit organization that provides testimony or documentary evidence or participates in case status conferences regularly in adversary proceedings before any court or is likely to do so in proceedings that would ordinarily come before the judge. A judge may not serve as an officer of a non-profit organization that raises money for the court's own court-ordered programs, such as drug court. *Michigan Opinion JI-139* (2013).

• A judge may dance in an event similar to the popular television show "Dancing with the Stars" to raise money for his religious institution. *South Carolina Opinion 11-2013.*

• A new judicial officer may not finish the last two years of her term on the board of fire commissioners. *Washington Opinion 14-1.*

• A new judge who briefed six points raised in an appeal may not be listed as an author on the brief finished by another attorney. *New York Opinion 13-8.*

• A judge may not sign a legislator's petition regarding a proposed change in the law that is framed as a partisan political initiative to garner statements of public support for the legislator. *New York Opinion 13-17.*

• Provided she does not invoke her judicial status, a judge may, in her capacity as a parent, express her concerns about her child's public school teacher by speaking directly with the teacher, signing a petition, or writing a letter to the principal. *New York Opinion 13-38.*

• A judge who attended a victim impact panel as part of his own sentence on a driving under the influence charge may not participate as a presenter at a victim impact panel in the jurisdiction where the judge presides, but may in another jurisdiction. *New York Opinion 13-79.*

• A judge must not meet privately with a local political party regarding the inner workings of the court, including its procedures, personnel, or decisions. *New York Opinion 13-92.*

• A judicial official may attend a holiday party hosted by a municipality's governing body provided the hosts and the municipality do not have any matters pending before her or regularly appear before her. *Connecticut Emergency Staff Opinion 2013-47*.

• A judge may not attend a retirement party for several public officials when one of them is currently one of the defendants in a matter pending in his court. *New York Opinion 13-88.*

The Center for Judicial Ethics has links to the websites of judicial ethics committees at www.ajs.org/judicial-ethics/.

Misrepresentations

The Michigan Supreme Court removed a judge for (1) committing perjury in her divorce case; (2) signing her former attorney's name on legal documents and filing those documents without the attorney's permission; and (3) making numerous misrepresentations under oath during the Judicial Tenure Commission proceedings. *In re Adams*, 833 N.W.2d 897 (Michigan 2013). Because her conduct involved "deceit or intentional misrepresentation," the Court also ordered the judge to pay costs of $8,498.40 to the Commission.

While she was the defendant in a divorce case before Judge Mary Ellen Brennan, Judge Adams called Judge Brennan's chambers five to 15 times to try to reschedule a hearing even though Judge Brennan's staff advised her each time that her calls were improper because she was represented by counsel. Under oath during a hearing before Judge Brennan, however, Judge Adams repeatedly denied ever calling Judge Brennan's chambers while she was represented by counsel.

After attorney Andra Dudley was released from representing her in her divorce, Judge Adams prepared a motion to set aside or modify the judgment of divorce, a brief, and a notice of hearing, signed Dudley's name to the documents, and filed them with the court.

The Court concluded that the judge engaged in a pattern and practice of misconduct, noting she "continues to shirk any responsibility for her wrongdoings or express any indication of remorse. . . . Respondent lied to Judge Brennan, lied to the JTC, lied to the master, and lied to this Court." The Court stated that "there is not much, if anything, that is more prejudicial to the actual administration of justice than testifying falsely under oath."

Sexual misconduct

Two of the removal cases involved sexual misconduct.

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed a former judge for sexual contact with a five-year-old girl. *In the Matter of Hedges,* 988 N.E.2d 509 (New York 2013). The Court noted that the "catalyst" for the judge's April 2012 resignation was the allegation that, in 1972, when he was 25 years old, he had engaged in sexual misconduct involving a five-year-old girl and that, "while the exact events are subject to dispute, [the judge] has admitted to sexual contact with the child, which he has described as indefensible."

The Court acknowledged it was troubling that the removal was based solely on conduct that occurred 40 years ago and 13 years before he became a judge. However, it noted, "the significant danger of fading memories is tempered" because the judge admitted that conduct of this nature occurred.

Without opinion, the Pennsylvania Supreme Court affirmed the decision of the Court of Judicial Discipline to remove a judge from office for showing two photographs of his penis to a female court cashier. *In re Singletary*, 71 A.3d 249 (Pennsylvania 2013), *affirming,* Opinion (October 9, 2012), Order (Court of Judicial Discipline 2012) (www.cjdpa.org/decisions/jd12-03.html). One evening when the court was not busy, the judge showed the cashier photographs by scrolling through the camera roll on his phone. Two of the pictures were of his erect penis, which were part of a previous sexting exchange between the judge and another woman. The pictures were on the screen for only seconds. Immediately, the judge stepped back, but he returned moments later, stood behind the cashier, leaned in closely, and showed her more photographs. The judge stated that he had not recalled that the photographs of his penis were on his phone and had not realized that he would be showing them to cashier.

See also In the Matter of Traylor-Wolff, Order (Indiana Supreme Court April 9, 2013) (www.in.gov/judiciary/jud-qual/files/order-other-2013-09s00-1302-jd-148.pdf) (senior judge banned from judicial office and suspended from the practice of law for a romantic relationship with a client while serving as his public defender).

Failure to disqualify, ex parte communications

The New York Court of Appeals removed a non-lawyer judge from office for (1) dismissing a charge against a defendant he had a professional and social relationship with and (2) engaging in ex parte communications with a prospective litigant. *In the Matter of George* (New York Court of Appeals December 10, 2013) (http://www.cjc.ny.gov/Court.Decisions/George.Glen/George.Glen.R.COA.Decision.pdf).

The judge and Lynn Johnson had known each other since childhood, having attended school together. From 1982 until 1990 and again from 1999 to 2009, the judge worked for a family-run company founded by Johnson. The judge had officiated at the wedding of one of Johnson's sons and had been a guest at other Johnson family weddings and Johnson's 50th birthday celebration. When the judge was home recuperating after a major surgery, Johnson visited him several times.

Despite his relationship with Johnson, the judge presided when Johnson appeared before him on a seat belt violation the day after the judge retired from his second stint of employment with the Johnson family company. The prosecutor assigned to the court was not scheduled to be present that day, and, as a result, the district attorney's office was not represented. The judge did not adjourn the case so that he could disclose the relationship to the district attorney's office.

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During the proceeding, Johnson asserted that the model year for the Mercedes Benz he had been driving at the time of the traffic stop was 1976—not 2000 as the ticket indicated. Crediting Johnson's claim, the judge concluded that the state trooper, who was not in court, had erred, and, citing "this purported defect," dismissed the seat belt violation without notifying the prosecutor or the state trooper.

The judge contended that his conduct, although evidencing poor judgment, was not sufficiently egregious to justify removal from office, characterizing the traffic infraction as "minor," claiming that he treated Johnson just as he would any other litigant, and maintaining that he has always been a "stickler" about clerical errors on traffic tickets.

The Court found the judge's arguments "unpersuasive."

> Although the charge against Johnson was relatively minor, petitioner's decision to hear a case involving a friend and former employer without even disclosing the existence of the personal relationship to the District Attorney was, under the circumstances presented here, no small matter. . . . A judge's perception of the nature or seriousness of the subject matter of the litigation has no bearing on the duty to recuse or disclose a relationship with a litigant or attorney when necessary to avoid the appearance of bias or favoritism.

The Court held that the judge's conduct was significantly aggravated by a letter of dismissal and caution the Commission had issued to him in 2000 for presiding over four cases involving Johnson's then daughter-in-law.

(2) An owner of vacation property went to the court intending to initiate a proceeding against his neighbor, a long-time resident of the town whom the judge had known for decades and with whom he was friendly. The prospective litigant explained to the court clerk that the neighbor was diverting water onto his property, causing damage. Overhearing, the judge injected himself into the conversation, expressing the view that, as the senior property holder, the neighbor was permitted to divert water onto

What they said that got them in trouble

"Piece of shit . . . . [I hope] you rot in prison." Judge while sentencing a defendant convicted of crimes related to sexual abuse of a child. *Barnack*, 299 P.3d 525 (Oregon 2013).

"[Your legal arguments are] stupid and screwy. . . . If you don't like it, move to Mexico." Judge to pro se criminal defendant. *Holt* (Arizona Commission 2013) (http://tinyurl.com/nah3v5r).

Do not **"quot[e] any of the rules or regulations of Arizona law."** Judge to pro se litigant in a small claims case. *Madanick* (Arizona Commission 2013) (http://tinyurl.com/qxgv83w).

"I say it has to be, and that's how I run my court. And everybody knows it." Judge rejecting attorney's attempt to appear for a defendant at a hearing despite absence of rule requiring attorneys to first file a notice of appearance. *Newell* (Arizona Commission 2013) (http://tinyurl.com/lou86qp).

"Little stinker," "the biggest jackass in this whole operation," and **"Well, honey. It ain't an accident. You don't get 'em off of toilet seats. Okay?"** Judge referring to a child and father and responding to the mother's comment that she had not chosen to have a child with the father. *Watkins* (West Virginia 2013) (http://tinyurl.com/csejsnr).

"There goes another angry black man." Judge as a defendant with whom he had exchanged claims of racism left the courtroom. *Batton* (Arkansas Commission 2013) (http://tinyurl.com/k7a5fta).

"I know you gave the money to my opponent. Don't come back." Judge "in jest" to an attorney. *Bass* (Georgia Commission 2013) (http://www.gajqc.com/news.cfm).

"The lawyers who do the work at trial now get criticized by backseat drivers who weren't there and who didn't try the case." Judge to attorney about an ineffective assistance of counsel claim in a motion for relief from a death sentence conviction. *McDonald* (Kentucky Commission 2013) (http://tinyurl.com/og4vd5n).

"Do you know what I do when my wife and I disagree? I just let her talk. . . . I find that it is best just to let her talk until she's finished." Judge during a sidebar argument by a female attorney. *Shea*, 110 So. 3d 414 (Florida 2013).

"Is that bullshit? Is that bullshit?" Judge during an argument with a criminal defendant. *Parise* (Washington Commission 2013) (http://tinyurl.com/pjd79sf).

"Good thinking. The show is just beginning. You won't get better tickets anyplace. I'd sit up close if I were you. . . . The front row is good." Judge, laughingly, to someone after recalling an attorney to the courtroom to review a contempt issue. *Post*, 830 N.W.2d 365 (Michigan 2013).

"I was thinking facetiously, do the prosecutors also wear

the litigant's property and speculating that the deeds permitted such activity. Discouraged, the litigant did not file a claim at that time.

Eleven months later, the litigant called the court about filing the action, and the judge answered the telephone because the court clerk was busy. The judge again discussed the merits of the case and repeated his opinion that the neighbor had a right to divert water onto the litigant's property. Believing that the judge had a prejudicial view in favor of the neighbor, the prospective litigant again decided not to pursue the claim.

After he filed a complaint against the judge with the Commission, the litigant again contacted the court. When the judge answered the telephone, the litigant stated that he did not want the judge to preside over the matter. The clerk subsequently informed the litigant that the judge had disqualified himself because he knew about the complaint. When the litigant told his neighbor that the judge would not be hearing the case, the neighbor apparently ceased diverting water onto the litigant's land.

The Court stated:

> Although the litigant came to the courthouse seeking adjudication of a dispute by a neutral and unbiased magistrate, petitioner responded by advocating the position of the prospective opponent, a "local" petitioner had known for decades. Whether accurate or not, the litigant reasonably came away with the impression that petitioner was biased against his position and that he could not receive fair consideration of his claim in the Middletown Town Court.

Ex parte communications

Accepting the recommendation of the Commission on Judicial Conduct, the Alaska Supreme Court removed a former judge for, in ex parte communications, suggesting relevant case law to the prosecution in two cases. *In re Cummings*, 292 P.3d 187 (Alaska 2013). On June 1 and 2, 2011, the judge told an assistant district attorney, while they were alone in a courtroom with a clerk, to read the court of appeals' memorandum opinions issued on June 1, "because they involved matters [he] was currently litigating." After

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a paper bag over their head during these? Because in all seriousness, I can tell you this, I'm getting tired of the sloppiness of the County Attorney's Office. It's like, well, we can go to sleep. We can screw off. We can text mail or whatever we're doing." Judge during oral argument in an appeal from a justice court conviction. *McClennen* (Arizona Commission 2013) (http://tinyurl.com/ozthwq2).

"I think it's the only way we can really put it on the record, especially if it's a high reading." Judge to prosecutor in an ex parte communication about the admissibility of a blood sample in a drunk-driving case. *Diamond* (New Jersey 2013) (http://tinyurl.com/kllysba).

"You want to drop these charges now after what he's accused of doing? Why would you want to subject your children to that, or yourself, to that type of person?" Judge to alleged victim in domestic violence case. *Prince* (New York Commission 2013) (http://tinyurl.com/o8ord5f).

"I won't lie to you. I've had a half day vacation for some time to play in a golf tournament tomorrow afternoon. So I will be out of here by noon come hell or high water." Judge to jurors in a criminal case before they began their deliberations. *Spicer* (Minnesota Board 2013) (http://tinyurl.com/qbzu6be).

Attorney **"is relieved of further obligation due to the conflict he has created with the Court"** and **"the Court's inquiry to the Office of Disciplinary Counsel"** regarding his conduct. Judge in entries in 63 criminal cases. *Evans*, 999 N.E.2d 674 (Ohio 2013).

"He's already lost enough, ok?" Judge to health inspectors about friend's restaurant, which had been closed for violations. *Foulds* (Ontario Council 2013) (http://tinyurl.com/nljqjog).

"This is Judge Hendricks. Lynn's iPad must be delivered to Kelly Underwood's mailbox by 9:30 a or I will turn matter over to Prosecuting attorney." Judge in text to step-sister's ex-husband. *Hendricks* (Arkansas Commission 2013) (http://tinyurl.com/ngmnroh).

"I took care of a ticket for [your] daughter" and **"this is the thanks that I get."** Judge during a town board meeting, linking his disposition of a ticket received by a board member's daughter to his pay raise. *Torregiano* (New York Commission 2013) (http://tinyurl.com/k24dape).

"Some of the most profane, manipulative and backstabbing people I've worked with have been women. Men tend to get physical and just hit you." Judge during staff meeting. *Goettemann* (Arizona Commission 2013) (http://tinyurl.com/q9gct5j).

"Here's the whole story. Please spread it far and wide." Judge beginning a Facebook post about pending contempt proceedings against a lawyer. *Allred* (Alabama Court of the Judiciary 2013) (http://tinyurl.com/chyf9d4).

reading the opinions, the attorney recognized that two of them supported his position in two cases he was actively litigating before the judge. The attorney filed notices of supplemental authority and notified opposing counsel of the ex parte communications.

In aggravation, the Court noted that it had previously suspended the judge for three months without pay for passing an ex parte note to a state trooper who was a witness for the prosecution in a trial and related misconduct. *See In re Cummings*, 211 P.3d 1136 (Alaska 2009).

Theft from the elderly

Based on a stipulation and agreement, the California Commission on Judicial Performance censured a former judge and barred him from seeking or holding judicial office for (1) while an attorney, breaching his fiduciary duty toward two elderly clients and, after becoming a judge, committing theft from an elder; (2) failing to disclose on his statements of economic interests a $250,000 personal loan from his elderly client, investments, and income he received from those investments; (3) making a false statement about the purchase price of a car on an application for title or registration; and (4) causing court personnel to access vehicle registration records for a purpose unrelated to his judicial duties. *In the Matter of Seeman*, Decision and Order (California Commission on Judicial Performance December 16, 2013) (http://cjp.ca.gov/res/docs/censures/Seeman_DO_12-16-13.pdf). The judge had resigned in March 2013 and pled no contest to a felony charge of elder abuse in August. He has also agreed to be disbarred.

In 1998, the home of Lee and Anne Nutting (both in their late eighties) was deemed unsuitable for habitation due to an accumulation of possessions and lack of up-keep, and they moved to a hotel. Seeman, their neighbor, offered to help them obtain permission to return to their home. They agreed. He handled some of their financial affairs, including payment of taxes, utilities, and other expenses via a trust account, and acted as a fiduciary—even after he became a court commissioner in 2004 and a judge in 2009. Among other actions, the judge used money in the trust account to pay personal American Express bills totaling over $5,000.

Variety of misconduct

In March 2013, the West Virginia Supreme Court of Appeals censured a family court judge and suspended him without pay until the end of his term (December 2016) for demonstrating contempt for the authority of other courts and judicial agencies; an inability to properly manage his office and staff; and a lack of courtesy and judicial comportment. The judge had stipulated that he committed 24 violations of the code of judicial conduct. *In the Matter of Watkins*, 2013 WL 1285995 (West Virginia 2013).

The Court concluded that the judge's refusal "to promptly issue orders or hold hearings, even when ordered to do so by the circuit court, . . . represents a profound threat to the integrity of the judiciary." As an example, the Court noted that, when the parties to a divorce asked for a hearing on distribution of a pension, the judge refused to hold a hearing. A party petitioned the circuit court for a writ of mandamus, the circuit court ordered the judge to hold a hearing within 30 days, but he did not hold a hearing until four months later and then failed to enter an order. After five months and three letters from counsel, the parties sought a second writ of mandamus. When the judge failed to respond to two circuit court orders, a party petitioned the Supreme Court of Appeals. A day after the Court issued the writ, the judge issued an order. The judge explained that he had delayed entering the order for 13 months because the circuit court had no authority over the family court to "compel me to do anything."

The Judicial Inquiry Board had found that the judge and his staff repeatedly failed to conform to the statutes, rules, and regulations governing the family courts and that, rather than take corrective action, the judge supported the misconduct of his staff. As an example, the Court noted that the judge and his staff repeatedly refused to comply with the statutory requirement that a court immediately register all domestic violence protective orders into a database. In a memo, the judge stated that his staff did not have time for the "project." Noting that "domestic violence cases are among those that our courts must give priority status," the Court found that the judge and his staff's repeated disregard of their duty to promptly post protective orders endangered "both victims of domestic violence and police officers charged with enforcing those orders."

The Board had concluded that the judge demonstrated a lack of courtesy, civility, decorum, and judicial comportment in hearings and intemperance in correspondence when he had time for more careful reflection; preferred "threats, intimidation, profanity, and shouting rather than the tools available to judges, including civil and criminal contempt, to deal with admittedly difficult litigants;" failed to control his anger and emotions; and failed to disqualify himself after acknowledging on the record that he could not continue to preside in an impartial and unbiased manner. The Court gave examples from four family court proceedings.

Although acknowledging that "regulating the demeanor of a judge is a difficult task," the Court concluded:

> The excuse by Judge Watkins that he likes to "use earthy language at times to make a point" with certain litigants does not excuse his use of profanity and threats, but rather demonstrates his lack of impartiality. . . . A pattern of judicial discourtesy like that exhibited by Judge Watkins represents a profound threat to the integrity of the judiciary, and consequently demands a strong response. ★

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He also said, "Vincent Pastore, which we know comes from pastor. We know what pastors like to do with little boys." Then he stated, "You need a real Italian name. Pat Cooper, Frank Vincent, Vince August. These are names handed down generation after generation by FBI witness protection programs." In a clip he provided from a performance at a comedy club, he related that "he hates kids" and described them as "awful," "soft," "spoiled," and "creepy."

As Vince August, the judge had appeared in at least 17 episodes of *What Would You Do?,* which is broadcast weekly by ABC News. In the series, actors play out scenarios in public places "to capture the reaction of members of the public and whether they will come to the aid and/or intervene where a stranger is concerned." For example, he has played a security guard engaging in racial profiling; a bar patron attempting to sway customers against having gay men in a "straight" bar; a husband ridiculing his wife for wearing unflattering clothing; an out-of-shape husband being ridiculed by his wife as they walked on a boardwalk; a supermarket customer criticizing other actors posing as customers using food stamps; a waiter refusing to serve an inter-racial father and daughter; and a manager refusing to hire a person because she was deaf.

The Court concluded that the record belied the judge's "assertion that he has constructed two watertight vocational paths—law and comedy." The Court stated that it had "little doubt" that some people who have seen him performing at comedy clubs or have viewed *What Would You Do?* would readily associate Judge Sicari with Vince August, as a local newspaper had done. The Court acknowledged that there was no evidence that the judge has ever conducted proceedings in his courtroom in any other manner than a professional one.

However, noting that "many regard the maxim 'many a true word is said in jest' as a fundamental truth," the Court concluded that it could not "ignore the distinct possibility that a person, who has heard a routine founded on humor disparaging certain ethnic groups and religions, will not be able to readily accept that the judge before whom he or she appears can maintain the objectivity and impartiality that must govern all municipal court proceedings."

> Vincenzo A. Sicari, the lawyer, may be free to pursue a parallel career as an actor and comedian. . . . Once he chose to serve as a municipal court judge, his conduct outside the courtroom became subject to a higher standard. He may not pursue any activity that has the capacity to demean his judicial office or causes anyone to question his impartiality. Here, the focus of his comedy and his decision to participate in a pseudo-reality television show in situations that demean, ridicule, or embarrass others based on their race, religion, gender, sexual orientation, marital status, or physical characteristic are simply not consistent with the high standards of conduct expected of a judge.

Social media

For almost four years, the only public discipline of a judge for social-media-related misconduct was the reprimand of a judge for ex parte communications on Facebook with counsel in a matter before him. *Public Reprimand of Terry* (North Carolina Judicial Standards Commission April 1, 2009) (www.nccourts.org/Courts/CRS/Councils/JudicialStandards/PublicReprimands.asp).

That changed in March 2013 with two new cases. The Georgia Judicial Qualifications Commission suspended a judge for 60 days without pay for, in addition to other misconduct, a private Facebook chat with a woman who had contacted him about her brother's DUI matter. *In re Bass*, Public reprimand (Georgia Judicial Qualifications Commission March 18, 2013) (http://www.gajqc.com/news.cfm). (The judge consented to the discipline; he was also reprimanded, put on probation until the end of his term, and ordered not to run for re-election.) The judge advised the woman about how her brother could get the matter into his court where he would "handle it from there." When the case did come before him, he did not recuse himself.

The Alabama Court of the Judiciary sanctioned a judge for making public comments about pending contempt proceedings against a lawyer on his Facebook page and in an e-mail to other judges. *In the Matter of Allred*, Reprimand and Censure (Alabama Court of the Judiciary March 22, 2013) (http://judicial.alabama.gov/judiciary/COJ42PUBLICREP.pdf). The judge agreed to the discipline and to send a letter of apology to other judges, which noted that he had closed his Facebook account.

The judge had issued a warrant for the arrest of a collections lawyer after she failed to appear for a hearing on a rule to show cause why she should not be held in contempt for routinely not showing up for dockets on which she had multiple cases and then asking for reinstatement after the

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cases were dismissed. When a member of a Facebook group comprised of his law school classmates raised a question about his actions against the lawyer, the judge posted, "Here's the whole story. Please spread it far and wide" and then explained the lawyer's conduct and his response. In an e-mail to their court system addresses, the judge asked every circuit and district judge in the state to see that the lawyer was arrested if she appeared in their courtrooms. *See also In re Holmes*, Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action (Texas State Commission on Judicial Conduct June 14, 2013) (complaint alleged that the judge had engaged in inappropriate conduct with regard to messages sent through his Facebook account).

The number of judicial ethics advisory opinions on social media also increased in 2013 with the release of opinions by the American Bar Association Standing Committee on Ethics and Professional Responsibility and the Connecticut Committee on Judicial Ethics. *ABA Formal Opinion 462* (2013) (www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_462.authcheckdam.pdf); *Connecticut Informal Advisory Opinion 2013-6* (http://jud.ct.gov/Committees/ethics/sum/2013-06.htm). As have all previous opinions on the issue, both committees stated that judges could participate in social networking but warned against, for example, forming relationships on social media that may convey an impression that persons or organizations are in a position to influence the judge, making comments that may be interpreted as ex parte communications, obtaining information regarding a matter before the judge, commenting about a pending or impending matter, or offering legal advice. The Connecticut committee also advised judges not to post any material that could be construed as advancing the interests of the judge or others.

The Connecticut opinion concluded that a judge should not become a social networking "friend" of attorneys who may appear before him. Further, the committee stated that a judge should not "friend" law enforcement officials, social workers, or others who regularly appear in court in an adversarial role, but may add court staff as "friends."

The ABA committee assumed judges would be social media "friends" with attorneys and others appearing before them and addressed the issue in the context of disclosure and disqualification. It stated that, because of "the open and casual nature" of electronic social media, "a judge will seldom have an affirmative duty to disclose an [electronic social media] connection," but a judge "must very carefully consider" whether to disclose any connection that "includes current and frequent communication." The opinion advised that a judge is not required to search her social media connections to determine if she has a connection with a party, a witness, or a lawyer in a case. However, the committee stated, when a judge knows that she has an electronic social media connection with an individual in a case, the judge "should conduct the same analysis that must be made whenever matters before the court involve persons the judge knows or has a connection with professionally or personally."

Both committees warned judges not to engage in inappropriate political activities on social networking sites, including not publicly endorsing a candidate for public office by clicking the "like" button on a candidate's Facebook page. The Connecticut committee also advised that judges should not create links to political organizations' web-sites or post comments on a proposed legislative measure or a controversial political topic. The ABA committee also stated that "websites and [electronic social media] promoting the candidacy of a judge or judicial candidate may be established and maintained by campaign committees to obtain public statements of support for the judge's campaign"—but not by the judge or judicial candidate personally.

Stop-and-frisk judge

Granting New York City's motion for a stay of a remedial order and preliminary injunction in cases challenging the police department's stop-and-frisk practices, the U.S. Court of Appeals for the Second Circuit also ordered that on remand the cases would be assigned to a different judge because District Judge Shira Scheindlin had run "afoul of the Code of Conduct for United States Judges" and compromised the appearance of impartiality by her "improper application of the Court's 'related case rule,' . . . and by a series of media interviews and public statements purporting to respond publicly to criticism . . . ." *Ligon v. City of New York,* 2013 WL 5835441 (2nd Circuit 2013).

Subsequently, emphasizing that it was not expressing any views on the merits of the case, the Second Circuit issued a decision explaining the re-assignment. *In re Reassignment of Cases*, 736 F.3d 118 (2nd Circuit 2013). The Second Circuit clarified that it had not intended in its previous order to imply that Judge Scheindlin had engaged in misconduct and stated that it was not making any findings of misconduct, actual bias, or actual partiality. The Court concluded, however, that her comments on the bench and her statements to the media and the resulting stories "might cause a reasonable observer to question her impartiality," requiring disqualification. The Court emphasized that, to re-assign a case, it only had to find that the facts might reasonably cause an objective observer to question the judge's impartiality or that re-assignment is advisable to preserve the appearance of justice even if there is reason to believe that a district judge would fairly conduct further proceedings.

Judge Scheindlin had presided over a previous case in which a settlement agreement required the City, inter alia, to establish policies that prohibited racial profiling. Ten days before her supervisory authority was set to expire, she heard argument on the plaintiff's motion to extend the

settlement period and obtain additional information from the City. Observing that the settlement agreement did not entitle the plaintiffs to the relief they sought, the judge made several statements such as, "And if you got proof of inappropriate racial profiling in a good constitutional case, why don't you bring a lawsuit? You can certainly mark it as related," and "What I am trying to say—I am sure I am going to get in trouble for saying it, for $65 you can bring that lawsuit."

The Second Circuit found that a reasonable observer could interpret those comments as intimating the judge's "views on the merits of a case that had yet to be filed, and as seeking to have that case filed and to preside over it after it was filed."

> We do not mean to suggest that a district judge can never engage in a colloquy with a party during which the judge advises the party of its legal or procedural options. However, we think, particularly in combination with the public statements described below, that a reasonable observer could question the impartiality of the judge where the judge described a certain claim that differed from the one at issue in the case before her, urged a party to file a new lawsuit to assert the claim, suggested that such a claim could be viable and would likely entitle the plaintiffs to documents they sought, and advised the party to designate it as a related case so that the case would be assigned to her.

The Court stated that this appearance of partiality was exacerbated by interviews the judge gave, at the conclusion of the evidence but before a decision, to the Associated Press, *The New Yorker*, and the *New York Law Journal*. For example, the AP article began, "the federal judge presiding over civil rights challenges to the stop-and-frisk practices of the New York Police Department has no doubt where she stands with the government. 'I know I'm not their favorite judge,' U.S. District Judge Shira A. Scheindlin said during an Associated Press interview Friday." The lengthy profile of the judge in *The New Yorker* was titled, "Rights and Wrongs: A Judge Takes on Stop–and–Frisk."

The Second Circuit noted that the judge had not specifically mentioned the cases in the interviews and that "nothing prohibits a judge from giving an interview to the media." However, the Court stated:

> Judges who affiliate themselves with news stories by participating in interviews run the risk that the resulting stories may contribute to the appearance of partiality. It is perhaps illustrative of how such situations can get out of the control of the judge that . . . in *The New Yorker* piece, the article quotes a former law clerk of Judge Scheindlin: "As one of her former law clerks put it, 'What you have to remember about the judge is that she thinks cops lie.'"

The Court noted that, in the articles, Judge Scheindlin describes herself "as a jurist who is skeptical of law enforcement, in contrast to certain of her colleagues, whom she characterizes as inclined to favor the government." The Second Circuit stated, "given the heightened and sensitive public scrutiny of these cases, interviews in which the presiding judge draws such distinctions between herself and her colleagues might lead a reasonable observer to question the judge's impartiality."

In a second opinion, the Second Circuit denied "the unprecedented motion" filed by Judge Scheindlin, through counsel, to appear and seek reconsideration of the reassignment order as a party, intervenor, or *amicus curiae*. *In re Motion of District Judge,* 736 F.3d 166 (2nd Circuit 2013). The Court stated:

> While a district judge may believe that he or she has expended a great deal of effort and energy on a case, only to see it reassigned, reassignment is not a legal injury to the district judge. Rather, reassignment allows the courts to ensure that cases are decided by judges without even an *appearance* of partiality. A district judge has no legal interest in a case or its outcome, and, consequently, suffers no legal injury by reassignment.

Performing weddings

Based on an agreement, the Washington State Commission on Judicial Conduct admonished a judge for publicly stating, after Washington voters passed a referendum approving same-sex marriage, that he would not perform same-sex marriages in his judicial capacity while continuing to perform opposite-sex marriages. *In re Tabor* (Washington State Commission on Judicial Conduct October 4, 2013) (http://tinyurl.com/qbavheb). Following contact by the Commission, of his own volition, the judge ceased performing all marriages in his judicial capacity.

The judge accepted the Commission's determination that his announcement "appeared to express a discriminatory intent against a statutorily protected class of people thereby undermining public confidence in his impartiality . . . ." The Commission stated:

> Respondent is not required as a judicial officer to solemnize marriages. Having chosen to make himself available to solemnize some weddings, however, he is bound by the Code of Judicial Conduct to do so in a way that does not discriminate or appear to discriminate against a statutorily protected class of people.

Judicial license plates

In a report (www.cjc.ny.gov/Publications/nyscjc.JudLicPlateRep.2013-05-07.pdf), the New York State Commission on Judicial Conduct concluded that a judge's display of a judicial license plate on a personal vehicle does not per se create an appearance of impropriety.

State law authorizes special license plates, which for judges usually spell out the name of the court and/or use abbreviations such as "JCC" for Judge of the County Court, followed by a number. According to the Department of

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Motor Vehicles, as of July 2012, judicial license plates had been issued to 424 state-paid judges, 1832 members of the state magistrates association, and nine federal judges. (The Commission noted that two of its four judge members have such plates.) At $31.25 each, the total annual revenue to the state from the sale of judicial license plates is just over $70,000. In addition to New York, 11 other states and the District of Columbia authorize judicial license plates.

The report stated that, during investigations of ticket-fixing complaints, law enforcement officers had advised the Commission that they have at times declined to issue tickets after they realized from the license plates that the drivers were judges. The report also noted that the Commission has issued confidential cautionary letters to judges after pedestrians submitted photos of the judges' cars parked without tickets in clearly illegal spots.

In response to its invitation, the Commission received comments from nine organizations and nine individuals. Some commenters argued that judicial license plates pose a security risk and help judges evade citations for speeding, parking, and other violations. In contrast, some commenters argued that judicial license plates honored the judicial profession or demonstrate pride in being a judge; facilitated parking at the courthouse and identification and parking when the judge is on assignment; "humanize[d]" the judiciary and allowed "members of the community to see judges as ordinary citizens when shopping, delivering the dry cleaning and eating at local restaurants;" equated judges with other public officials and professionals who display their positions on license plates; generated revenue for the state; and impressed upon citizens that judges obey the law because "a judge whose profession is identified by judicial plates is likely to drive more responsibly."

The Commission emphasized that it "does not suppose that any judge orders a judicial license plate for the purpose of evading speeding, parking or other motor vehicle related tickets." However, the Commission urged judges, in deciding whether to obtain judicial plates, to "consider whether the rationales for such plates override the potential dangers or abuses that could flow from displaying them on private vehicles." The Commission also directed judges to advise family and friends who may use a vehicle with judicial plates not to assert the owner's office if stopped for a traffic violation. The Commission recommended that the subject of judicial license plates be covered in education programs for new and veteran judges.

One attorney-member of the Commission dissented, arguing that there is "no difference between a judge getting leniency from a police officer because of the judicial plates on the judge's vehicle (and the inescapable public cynicism that accompanies learning of such an event), and a judge showing a judicial ID or otherwise voluntarily identifying himself as a judge when stopped by a police officer."

Closed courtrooms

The Georgia Judicial Qualifications Commission released an advisory opinion in "response to requests by judges for guidance as to how best to ensure compliance with the law regarding public access to judicial proceedings." *Georgia Advisory Opinion 239* (2013) (http://www.gajqc.com/news.cfm). The Commission also stated that it had received complaints about court staff or sheriff's deputies excluding the public from courtrooms, court personnel demanding that individuals state their business before being allowed to enter a courtroom, and signs on courtroom doors such as "no children," "attorneys and defendants only," or "no guests or family permitted."

Concluding that those "practices are, generally, improper," the opinion disapproved the "systematic exclusion of the public by the court." The Commission explained that "logistical concerns (i.e., too little space, too many cases on the calendar, etc.) . . . cannot be resolved by the blanket exclusion of the public, or a specified class or portion thereof, without violating both the law and the Code of Judicial Conduct." Acknowledging that many courtrooms lack adequate space, the opinion urged judges "to consider options and alternatives . . . including, but not limited to, viewing rooms, additional seating, smaller calendars, or dividing the docket between morning and afternoon calendars."

The Commission emphasized that its opinion did not apply to a judge's decision to close a specific proceeding based on findings made on the record and consistent with the law.

Financial disclosure report

In November, the Center for Public Integrity released a report on state supreme court financial disclosure requirements (http://www.publicintegrity.org/2013/12/04/13808/state-supreme-court-judges-reveal-scant-financial-information). Using the federal statutory requirements to compare, the report gave each state a grade based on factors such as what has to be disclosed, how accessible the disclosure statements are, and enforcement of the requirements. The only states that did not receive a failing grade were California and Maryland, which received C's, and Colorado, Hawaii, Illinois, Massachusetts, Pennsylvania, and Washington, which received D's. The report also noted that, in three states (Montana, Utah, and Idaho), justices are not required to file any disclosure reports at all. (In January 2014, the Montana Supreme Court asked for public comment on a proposed amendment to the code of judicial conduct that would require justices to comply with the financial disclosure requirements established by statute for other public officials.)

The report identified 14 instances in three years in which justices participated in cases when they or their spouses owned stock in companies involved in the litigation. The report's critique, however, used the federal standard for disqualification—ownership of a financial interest however small—rather than the standard applicable in most states—ownership of a more than "de minimis" economic interest. ("De minimis" is defined as an insignificant economic interest that could not raise a reasonable question regarding the judge's impartiality.) Although the de minimis standard reduces the instances in which disqualification is required, it arguably increases the need for comprehensive, accessible financial disclosure to facilitate analysis of whether the standard is met.

North Carolina changes

The North Carolina legislature eliminated public charges and hearings in formal judicial discipline cases brought by the Judicial Standards Commission so that judicial discipline proceedings will now remain confidential unless and until the North Carolina Supreme Court decides to publicly sanction a judge. No reason was given for the change, other than vague suggestions of abuse by the Commission that were unsupported by any evidence (no specific instance was identified) and contradicted by the public cases brought by the Commission (http://www.nccourts.org/Courts/CRS/Councils/JudicialStandards/Default.asp).

Moreover, the change ignored the fundamental principle of American democracy that open proceedings are the best protection against governmental abuse. Indeed, public hearings for judges charged with misconduct complements the pride judges justifiably take in the openness of the judicial system itself. In 1996, the American Judicature Society adopted a policy stating that the confidentiality of judicial discipline proceedings, while important during the investigation of a complaint, should cease when the judicial conduct organization files formal charges against a judge.

This is the first time a state has increased the confidentiality of judicial discipline proceedings and closed hearings that had previously been public. The change places North Carolina in the minority, joining only 16 other jurisdictions (15 states plus D.C.) with closed hearings, and in the minority within that minority, joining only three other jurisdictions (Delaware, Hawaii, and D.C.) in which proceedings remain confidential unless a court decides to publicly discipline the judge. (For a table of when confidentiality ceases in judicial discipline proceedings, go to https://www.ajs.org/judicial-ethics/.)

The new law also eliminated the Commission's authority to publicly reprimand a judge with the judge's consent; instead, it adds "public reprimand" to the list of sanctions the North Carolina Supreme Court can impose after the Commission files formal charges, holds a fact-finding hearing, and makes a recommendation—all of which will now be closed to the public. The law also deleted the section of the statute that provided that a panel of court of appeals judges would hear any recommendation for discipline of a supreme court justice; in other words, such a recommendation, which will be confidential, will now be heard by the justice's colleagues, following confidential charges and closed hearings.

Criminal proceedings against judges

- In Illinois, Judge Michael Cook resigned and pled guilty to federal charges of possession of heroin and unlawful use of a controlled substance while in possession of a firearm. Several months before Cook's arrest, Judge Joe Christ had died of cocaine intoxication while a guest at Cook's parents' cabin.
- Michigan Supreme Court Justice Diane Hathaway resigned shortly after the Judicial Tenure Commission filed a complaint alleging she had orchestrated the forgiveness of approximately $600,000 in mortgage debt by making spurious property transactions, hiding assets, and making misrepresentations to the lending bank. Subsequently, Hathaway pled guilty to federal felony bank fraud charges pursuant to a plea agreement.
- Justice Joan Orie Melvin resigned a month after a jury found her guilty of state charges of misapplication of government funds, theft of services, and conspiracy for using her superior court staff and her sister's legislative staff in her 2003 and 2009 campaigns for the Pennsylvania Supreme Court. She has appealed.
- Six current and three former judges of the Philadelphia traffic court, a court clerk, and two businessmen were indicted for, according to a statement from the U.S. Attorney, participating in a "widespread culture of giving breaks on traffic citations to friends, family, the politically-connected, and business associates." Several of the defendants have pled guilty; others have filed motions to dismiss.
- In Texas, Justice of the Peace Eric Williams and his wife have been charged with capital murder in the murders of a district attorney, his wife, and an assistant district attorney. At the time of the murders, Williams was appealing his conviction of theft for removing three computer monitors from a county storage area. His case had been prosecuted by the murdered assistant district attorney. After his arrest, a court of appeals affirmed his conviction on the theft charges, and Williams was permanently removed from office. The murder charges are pending.
- In West Virginia, pursuant to a plea agreement, Judge Michael Thornsbury resigned and pled guilty to federal charges that he worked with the county sheriff, county prosecutor, and others to prevent a man from telling the FBI that the sheriff had arranged for an informant to buy Oxycodone pills from him. If the plea agreement is accepted, federal prosecutors will dismiss charges that the judge attempted to frame the husband of his former secretary after she ended their affair. ★

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