

JUDICIAL CONDUCT REPORTER



★★★★★ A PUBLICATION OF THE NATIONAL CENTER FOR STATE COURTS CENTER FOR JUDICIAL ETHICS

VOLUME 45, NO. 2 · SUMMER 2023

INSIDE THIS ISSUE

Public comments on cases 2

Writing reviews, blurbs, and prefaces 11

Exceptions to the confidentiality of judicial discipline proceedings 15

Recent cases

Like a cardiologist, a ninth grader, and “a guy off the street” 18

Kassel (New Jersey 2023)

“Ominous Bible verses” 21

Davis (Michigan 2023)

Weekends 22

Williams (West Virginia 2022)

The 27th National College on Judicial Conduct and Ethics will be
Wednesday October 18 through Friday October 20, 2023 in D.C.

JUDICIAL CONDUCT REPORTER Summer 2023

Center for Judicial Ethics
David J. Sachar, Director
djsachar@ncsc.org

Cynthia Gray, Director Emeritus
cgray@ncsc.org

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185

© 2023
National Center for State Courts
ISSN: 0193-7367

An index and past issues are
available at www.ncsc.org/cje

Disclaimer: Opinions contained herein
do not necessarily reflect those of the
National Center for State Courts.



NCSC
NATIONAL CENTER FOR STATE COURTS

Center for Judicial Ethics

Public comments on cases

The 1972 American Bar Association *Model Code of Judicial Conduct* provided in Canon 3A(6): “A judge should abstain from public comment about a pending or impending proceeding in any court.” That rule survived First Amendment challenges in state supreme court cases in California, New Jersey, and Oregon. See *Broadman v. Commission on Judicial Performance*, 959 P.2d 715 (California 1998) (rejecting a judge’s argument that he had a First Amendment right to make public comments on pending cases unless those comments posed a substantial likelihood of material prejudice to a fair trial); *In re Broadbelt*, 683 A.2d 543 (New Jersey 1996) (rejecting a judge’s First Amendment challenge to an advisory opinion forbidding him from appearing on television to comment on cases pending in other jurisdictions); *In re Schenck*, 870 P.2d 185 (Oregon 1994) (concluding that the prohibition is a limited restriction on the judge’s right to speak that is directly related to and was narrowly drawn to further a “profound” governmental interest).

In contrast, a federal court in Alabama entered a preliminary injunction barring the enforcement of the rule to the extent that it proscribed comments that could not reasonably be expected to affect the outcome or impair the fairness of a proceeding in the state. An agreed permanent injunction was subsequently entered, and the Alabama canons were amended to reflect that holding. *Parker v. Judicial Inquiry Commission*, 295 F. Supp. 3d 1292 (U.S. District Court for the Middle District of Alabama 2018), [*permanent injunction entered pursuant to agreement*](#); Alabama Canons of Judicial Ethics, [Canon 3\(A\)\(6\)](#) (“A judge should abstain from public comment that reasonably can be expected to affect the outcome or impair the fairness of a proceeding that the judge knows or reasonably should know is pending or impending in any court in Alabama”).

In revising the model code in 1990, the ABA was concerned that the canon’s language was “overbroad and unenforceable.” Milord, *The Development of the ABA Judicial Code*, at 21 (1992). Thus, the rule was revised to provide: “A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness.” There was no substantive change to the provision in the 2007 revisions to the model code, and current [Rule 2.10\(A\)](#) provides: “A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court . . .” [Comment 1](#) explains that “restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.”

Note that the provision:

- Applies to proceedings “in any court” in both versions (although some states have amended the rule to apply only to proceedings in state and federal courts within the jurisdiction).

Although the prohibition applies to matters in any court, most cases in which a judge has been disciplined for inappropriate public comments involve matters over which the judge is presiding or presided and involve the judge defending their rulings in response to criticism.

- Applies to matters that have “commenced” and “through any appellate process until final disposition,” according to the definition of “pending” in the [terminology section](#);
- Applies to proceedings that are “imminent or expected to occur in the near future,” based on the definition of “impending” in the [terminology section](#).
- Requires that a judge “require court staff, court officials, and others subject to the judge’s direction and control to refrain from making statements that the judge would be prohibited from making” ([Rule 2.10\(C\)](#)).
- Also prohibits “any nonpublic statement that might substantially interfere with a fair trial or hearing” ([Rule 2.10\(A\)](#)).

Under the rule, a judge:

- May make “public statements in the course of official duties” ([Rule 2.10\(D\)](#)), an apparent reference to statements on-the-bench, in settlement and status conferences, and similar settings, and in written decisions or orders,
- May explain court procedures ([Rule 2.10\(D\)](#)),
- May comment on proceedings in which the judge is a litigant in a personal capacity, although that does not include cases in which they are a litigant in an official capacity ([Comment 2](#)), and
- May “respond directly . . . to allegations in the media or elsewhere concerning the judge’s conduct in a matter” ([Rule 2.10\(E\)](#)), as long as the response would not reasonably be expected to affect the outcome of a matter or impair its fairness, although [Comment 3](#) encourages judges to “consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge’s conduct in a matter.”

Although the prohibition applies to matters in any court, most cases in which a judge has been disciplined for inappropriate public comments involve matters over which the judge is presiding or formerly presided and involve the judge defending their rulings in response to criticism. Like all provisions in the code, the prohibition on public comments on cases applies on social media.

- [Comments about criminal cases to reporters for which judges have been disciplined.](#)
- [Comments about civil and family cases to reporters for which judges have been disciplined.](#)
- [Comments about cases on social media for which judges have been disciplined.](#)
- [Comments about cases in letters to the editor, on TV, and in speeches for which judges have been disciplined.](#)
- [Comments about cases pending on appeal for which judges have been disciplined.](#)

Comments about criminal cases to reporters for which judges have been disciplined:

- Prior to a hearing on a motion for a new trial in a case in which a jury had found the defendant guilty of domestic violence, the judge presiding over the case told a reporter that he had denied the prosecution's request for a protective order because "I wanted everything to remain the status quo until we had a chance to review the issue at the motion for a new trial" and denied the perception that he was giving the defense an argument for a retrial, stating, "No, I wasn't quite doing that. I was expecting a motion for a new trial. It is not that unusual to make that motion, no matter what the circumstances of the case. This one had at least an arguable issue for appeal, and I thought it would be brought up." *In the Matter Concerning Lord*, Decision and order imposing public admonishment (California Commission on Judicial Performance April 11, 2018).
- Knowing that his discussions, although off the record, would be used in articles, a judge discussed with a journalist the progress of a murder trial over which he was presiding, including providing his opinions about the attorneys, witnesses, and jury. *In re Hayes*, 541 So. 2d 105 (Florida 1989).
- After an attorney made a motion to recuse a judge from a criminal matter, the judge commented to a newspaper reporter, "I don't think much of [the motion to recuse]. It's frivolous. There's not a reason in the world to recuse myself." *In re Best*, 719 So. 2d 432 (Louisiana 1998).
- After holding the police chief in contempt for failing to comply with his order to immediately release an ex-husband incarcerated for domestic violence, a judge talked with a television reporter about the possible charges that might have been filed against the ex-husband, stating, for example, "At the most, this is a third degree assault, at the very most, and it probably won't even be filed, so there was no merit to the claims." *In re Conard*, 944 S.W.2d 191 (Missouri 1997).
- After imposing a sentence of 15 years in prison with all but 31 days suspended on a former high school teacher who pled guilty pursuant to an agreement to one count of sexual intercourse without consent with a 14-year-old student, a judge attempted to justify the sentence to the press, stating, for example, that "it was horrible enough as it is just given her age, but it wasn't this forcible beat-up rape." *Inquiry Concerning Baugh*, 334 P.3d 352 (Montana 2014).
- After an appellate court had ordered a new trial for a defendant on the ground that the judge presiding over the trial had improperly responded to a note from the jury during deliberations without notice to the defendant and his counsel, the judge sent written statements to two reporters who had called him, stating, for example, "The non-substantive ministerial decision on the note from the jury was not affirmed. A disagreement exists between this court and the Appellate Court on that issue. A further appeal by the District Attorney to the Court of Appeals should resolve this disagreement." *In the Matter of O'Brien*,

Past issues of the *Judicial Conduct Reporter* and an index are available on the [CJE website](#).

(continued)

Determination (New York State Commission on Judicial Conduct March 4, 1999).

- Several days before a hearing was scheduled in a case in which the defendant had been charged with rape, a reporter called the judge presiding in the case and asked him about the public criticism of a rumored reduction of the charges, and the judge gave his opinions about the law controlling the case and his view of the facts, stating, for example, "I think it started without consent," "maybe they ended up enjoying themselves," and this was "not like a rape on the streets" or of a "poor girl in the park dragged into the bushes." *In the Matter of Fromer*, Determination (New York State Commission on Judicial Conduct October 25, 1984).
- During his campaign for a different judicial office, a judge gave one-on-one interviews to three media outlets in his chambers about a murder case in which he had declared a mistrial, describing his decision-making process, discussing the legal issues in the case, and relating his interactions with the jury and his sense of its deliberations. *In the Matter of Piampiano*, Determination (New York State Commission on Judicial Conduct March 13, 2017).
- After his decisions in two criminal cases had been reversed and remanded to him, the judge told a newspaper reporter, "I stand firmly by my ruling." In an unrelated case in which he had set a \$20,000 bail, the judge told a reporter that he believed that the defendant was a danger to the community and that the bail that he had set was probably not high enough to keep the defendant in jail. *In the Matter of Maislin*, Determination (New York State Commission on Judicial Conduct August 7, 1998).
- While a case in which a defendant had called 911 as a means of political protest was pending before him, a judge initiated contact with the media about the case, motivated, he said, by concern that publicity would prompt others to copy the behavior. *In re Mittet*, Stipulation, agreement and order (Washington Commission on Judicial Conduct December 3, 1999).
- In response to a police captain's criticism of the bond he had set in a case in which a defendant was charged with severely damaging several police cruisers, a magistrate made statements to a reporter, explaining, for example, that he set a low bond to make sure "the department gets restitution" and insinuating that police officers had beaten the defendant, stating, for example, "He'd taken some knocks. I mean his face was all swollen and I was kinda like 'yikes,' . . . he'd paid for that." *Public Admonishment of Gaujot* (West Virginia Judicial Investigation Commission April 25, 2022).

Comments about civil and family cases to reporters for which judges have been disciplined:

- A judge showed his draft opinion in a civil case to a newspaper reporter and discussed his rationale for the decision; his statements appeared in the newspaper before the parties received the decision. *Ryan v. Commission on Judicial Performance*, 754 P.2d 724 (California 1988).
- In an interview with a reporter while presiding over a case against a pharmaceutical company, a judge stated that the defendant was trying to bury the plaintiffs in documents and had only itself to blame for developments in the litigation; that its defense strategy had backfired; and that the special master’s database in the case would provide a “blueprint” for other suits about the drug. *Inquiry Concerning Andrews*, 875 So. 2d 441 (Florida 2004).
- During his re-election campaign, a judge contacted a reporter who had written an article about his decision in a custody case and made comments that resulted in a follow-up article entitled, “Judge Defends Custody Decision in Lesbian Mom Case.” *In the Matter of Potter*, Findings of fact, conclusions of law, and imposition of discipline (Nevada Commission on Judicial Discipline November 22, 2017).
- In response to a telephone call from a reporter requesting a summary of a court proceeding in a case challenging the suspension of a community school board, a judge said, for example, “I felt a degree of uneasiness about using standards of academic achievement as some kind of criteria about whether the board should remain in office,” and explained that he wanted the chancellor’s attorneys to offer specific examples of how the school board had failed to take steps to improve academic performance. *In the Matter of McKeon*, Determination (New York State Commission on Judicial Conduct August 6, 1998).
- In an interview at his home with a television news reporter after the court of appeals had reversed and remanded his decision in a custody case, a judge, for example, erroneously claimed that one of the parties had filed for bankruptcy and “stuck people thousand dollars [sic] for court reporters fees;” stated that the court of appeals decision was “purely political” and made and written by a law clerk who “made a value judgment that was based in error and on law that doesn’t exist;” and said that “volumes of data [were sent] to the court of appeals which obviously went unread.” *Office of Disciplinary Counsel v. Ferreri*, 710 N.E.2d 1107 (Ohio 1999).
- The day after she had ordered a boy’s name changed from “Messiah Deshawn” to “Martin Deshawn,” contrary to the parents’ agreement, a magistrate explained in a TV interview that “the word ‘Messiah’ is a title and it’s a title that has only been earned by one person and that one person is Jesus Christ,” and the name “could put [the child] at odds with a lot of people and, at this point, he has had no choice in what his name is.” *In re Ballew*, Opinion (Tennessee Board on Judicial Conduct April 25, 2014).

Comments about cases on social media for which judges have been disciplined:

- After a member of a Facebook group of the judge’s law school classmates asked about his decision to hold a lawyer in contempt for failing to show up for dockets, the judge posted, for example, “Here’s the whole story. Please spread it far and wide. There’s a collection lawyer named [Lawyer A]. . . . She’s made a bad situation much worse. She’s basically in open defiance of numerous orders from me to turn herself in. She’s gone from one act of contempt to about five. She’s a fugitive and she’s facing twenty-five days now.” *In the Matter of Allred*, Reprimand and censure (Alabama Court of the Judiciary March 22, 2013).
- After dismissing a jury panel in a criminal case because the panel did not represent a cross-section of the community, a judge posted comments on Facebook that criticized the commonwealth attorney, stating, for example, “Complaining he should have had an all-white jury panel after losing a trial is poor form at the very least. At most it is something much more sinister.” *In re Stevens*, Agreed order of suspension (Kentucky Judicial Conduct Commission August 8, 2016).
- A judge posted on Facebook: “Some things I guess will never change. I just love doing the stress of jury trials. In a Felony trial now State prosecuting a pimp. Cases are always difficult because the women (as in this case also) will not cooperate. We will see what the 12 citizens in the jury box do.” *In the Matter of Bearse*, Public reprimand (Minnesota Board on Judicial Standards November 20, 2015).
- After a member of the town council was indicted in another court, a judge made and liked posts on Facebook that expressed the view that the prosecution was unjust, stating, for example, that the case had been charged as a felony rather than a misdemeanor because of a “personal vendetta;” the investigation was the product of “CORRUPTION” and “personal friends calling in personal favors;” and the defendant had “absolutely” no criminal intent. *In the Matter of Whitmarsh*, Determination (New York State Commission on Judicial Conduct December 28, 2016).
- In response to a Facebook post describing another Texas judge’s decision to release on bond a defendant charged with capital murder, a judge posted: “This makes me so sad. I wonder how Judge Johnson would feel if the woman that was pistol whipped was his daughter, wife, or sister? He sounds like an activist judge trying to prove a point. That doesn’t help the woman who was hurt.” *Public Warning of Crow and Order of Additional Education* (Texas State Commission on Judicial Conduct October 28, 2020).
- On his Facebook page, a judge posted a photo from a news story that showed him conducting an initial appearance with the caption: “Police: Woman Exploits over One Million Dollars from Dying Mom.” *Public Admonishment of Hall* (West Virginia Judicial Investigation Commission October 31, 2017).

- A magistrate posted on Facebook about a search warrant he had issued and the subsequent charges, stating, “4:30 a.m. and just signed a search warrant. 4 overdosed in the last 24 hours. Hope they nail the SOB,” and “And the good news is the person the search warrant was on led to the arrest of a person with alleged fentanyl-laced heroin and over \$6,000.00 in cash and two digital scales. Good job by State Police.” *In the Matter of Williamson*, Order (West Virginia Supreme Court of Appeals April 15, 2021).

Comments about cases in letters to the editor, on TV, and in speeches for which judges have been disciplined:

- A judge wrote a letter to the editor defending the unusually severe sentence he had imposed in a driving under the influence case because the defendant requested a jury trial. *Ryan v. Commission on Judicial Performance*, 754 P.2d 724 (California 1988).
- On a public television public affairs program, a judge discussed a juvenile case pending before him, including the juvenile’s difficult family background, the nature of the offenses, and his intentions regarding disposition. *Inquiry Concerning Ross*, Decision and order (California Commission on Judicial Performance November 16, 2005).
- At a symposium, a judge made statements about a criminal case pending before him, accused law enforcement of racial profiling, alleged that “laws are enforced in a discriminatory fashion,” and praised law enforcement officers for doing a dangerous, difficult, but necessary job. *Inquiry Concerning Cohen* (Florida Supreme Court January 21, 2014).
- During a presentation to the local bar association, a judge criticized the public defender and defense attorneys for not publicly supporting him in a dispute with the district attorney about representation on jury panels, stating, for example, “We should not sit quietly while our community suffers this. We should not remain quiet. Not when someone is doing this to our community. We should stand. We should say it’s not right. We don’t want all-white juries in our community.” *In re Stevens*, Agreed order of suspension (Kentucky Judicial Conduct Commission August 8, 2016).
- In an effort to lessen division in the region, a judge wrote a letter published in a newspaper that addressed community reaction to the arrest of five Native Americans for murder and discussed the dynamics that feed racism. *Press Release [Wolf]* (Minnesota Board on Judicial Standards 1996).
- On nine occasions, a judge appeared on the TV program “Good Day New York” to discuss the civil case against O.J. Simpson pending in California, commenting on the quality of proof, the effectiveness of the attorneys’ strategies, and the credibility of witnesses. *In the Matter of McKeon*, Determination (New York State Commission on Judicial Conduct August 6, 1998).

Follow the
[Center for Judicial
Ethics blog.](#)

New posts
every Tuesday
plus Throwback
Thursdays.

- In a speech to a group of police officials while one of the first prosecutions under the state's new capital punishment statute was pending before him, a judge spoke about constitutional problems with the statute, noted that prosecutors had found the statute difficult to work with, criticized the capital defenders office, and criticized defense lawyers generally for using "technicalities" to block prosecutions and obtain reversals. *In the Matter of Bruhn*, Determination (New York State Commission on Judicial Conduct June 24, 1998).
- In a letter to the editor of a newspaper, a judge defended the conditions for release he had set in a criminal case with which the district attorney had disagreed and, in a guest editorial, wrote that the district attorney lacked competence, experience, professional demeanor, and personal maturity, citing specific instances in identifiable cases in his court. *In re Schenck*, 870 P.2d 185 (Oregon 1994).
- At a meeting of the Kiwanis Club, a judge answered questions from the audience about a recent local murder, expressed his opinion about the facts, made disparaging remarks about the victim, stated that some people "need to be killed," and opined that "the state will never get an indictment." *Public Reprimand of Clifford* (Texas State Commission on Judicial Conduct September 5, 2015).
- A judge allowed a litigant to submit in a judicial proceeding a sworn affidavit signed by the judge that gave her opinions and conclusions about the role of a guardian ad litem in juvenile court, the ultimate issue in the proceeding. *In re McCully*, 942 P.2d 327 (Utah 1997).

Comments about cases pending on appeal for which judges have been disciplined:

- While the validity of his contempt order was pending in the superior court on a petition for a writ of habeas corpus, a judge defended his order to a newspaper, stating, for example, that the individual had said "some really rude and nasty things in court." *Ryan v. Commission on Judicial Performance*, 754 P.2d 724 (California 1988).
- While an appeal was pending from a jury verdict in favor of the plaintiff in a suit against the actress Kim Basinger for withdrawing from the movie "Boxing Helena," the judge who presided over the trial gave an interview to a newspaper reporter and, in response to allegations that her rulings exhibited bias against Basinger, was quoted in the article as saying, "The fact of the matter is that throughout the trial, a significant portion of my rulings were in favor of Kim." *Public Admonishment of Chirlin* (California Commission on Judicial Performance August 28, 1995).
- On a public television public affairs program, a judge commented on the release of a violent sexual offender in a case pending before the state supreme court, including stating that the defendant's family was wealthy and the defendant was "somewhat charismatic" and suggesting that the case "is being watched" by some who felt it might have

- “political overtones.” *Inquiry Concerning Ross*, Decision and order (California Commission on Judicial Performance November 16, 2005).
- A judge explained why he had imposed a “no pregnancy” condition on two probationers in interviews with magazines while the cases were pending on appeal. *Broadman v. Commission on Judicial Performance*, 959 P.2d 715 (California 1998).
 - While a \$1 billion jury verdict in favor of oyster fisherman and against the state was pending on appeal, the judge who had presided over the trial was quoted in two newspaper articles blaming the verdict on the state and the tactics of its lead attorney, saying that he would have awarded much less money to the plaintiffs, explaining that the state’s biggest mistake had been insisting on a jury trial, and responding to criticism that he had treated the state’s attorneys harshly. *In re Roe*, 931 So. 2d 1076 (Louisiana 2006).
 - In an on-camera interview with an investigative reporter in his chambers, a judge discussed a murder case that he had prosecuted over a decade earlier that was pending in the state supreme court on appeal from the denial of the defendant’s petition for a writ of habeas corpus. *In the Matter of Kephart*, Stipulation and order of consent to public reprimand (Nevada Commission on Judicial Discipline August 31, 2017).
 - Following the filing of a notice of appeal from the sentence he had imposed after rejecting the sentence proposed in a plea agreement, a judge gave interviews to a radio station and a reporter defending the sentence, for example, telling the reporter that the defendant “got quite a deal, quite a break,” the judge also wrote a letter to the editor responding to statements by the defendant’s grandfather. *In the Matter of Herrmann*, Determination (New York State Commission on Judicial Conduct December 15, 2009).
 - In an interview on “Good Morning America” while a candidate for re-election, a judge defended the sentence he had imposed in a highly publicized murder case while appeal was likely and still possible, explaining, for example, “I felt no mercy for her, after listening to the testimony, and the horror and . . . I didn’t feel as though mercy was – should have been shown in this case. It was my personal choice.” *In the Matter of McGrath*, Determination (New York Commission on Judicial Conduct November 12, 2004).
 - In an appearance on a nation-wide television program, a judge discussed the facts and issues in a case that was pending on appeal from his decision to change custody from the mother to the father based on the mother’s cohabitation with another man, stating, for example, “My primary concern, and I want to make this clear, is for the welfare of that child, and I don’t think it is in the welfare, the best interests of a child 13 years old to see her mother sleeping with a man that is not her father, and next week there may be a different man in the house, and the third

The 27th National
College on Judicial
Conduct and Ethics
will be Wednesday
October 18
through Friday
October 20, 2023
in D.C.

week there may be a third one.” *In the Matter of Hey*, 425 S.E.2d 221 (West Virginia 1992).

Writing reviews, blurbs, and prefaces

With some limits, judicial ethics advisory committees have given judges permission to write book reviews. However, the opinions prohibit judges from allowing their positive reviews to be used to promote books and from “blurbing” books solely for marketing purposes. ([Merriam-Webster](#) defines “blurb” as “a short publicity notice (as on a book jacket)” and “blurbing” as “to describe or praise in a blurb.”)

For example, the advisory committee for federal judges stated that judges may review books as long as the reviews “are bona fide contributions addressing the substance of the volumes, and neither the books nor the judicial writings exploit or detract from the dignity of the office.” [U.S. Advisory Opinion 114](#) (2014). The opinion directed judges to “undertake reasonable efforts to guard against the subsequent use of their reviews . . . in promotional materials that may tend to exploit the prestige of the office . . .”

The California Supreme Court advisory committee explained that, if the primary purpose “is to engage in educational discourse related to the law, the legal system, or the administration of justice,” a judicial officer “may review, critique, or comment on legal education books in a legal publication” and include their title in the review. [California Supreme Court Committee Advisory Opinion 2022-48](#). The opinion cautioned that the substance of the review “must otherwise comply with the canons; for example, the judicial officer must not engage in improper political commentary or undermine the integrity or impartiality of the judiciary.”

The opinion noted that the code “generally permits and encourages judges to engage in educational activities, particularly those concerning the law, the legal system, and the administration of justice” but also prohibits using judicial prestige to advance others’ interests. To “harmoniz[e]” those provisions, it explained:

Discussions regarding legal education books or writings in legal publications, such as legal periodicals or newsletters, have important educational value and contribute to the improvement of the law and legal system. . . . While the committee agrees that judges may not promote others’ written works, review or critique of legal works is an educational exercise and consistent with the canons. Although a positive review or discussion may incidentally lead to increased sales, the primary purpose of such discussions is educational rather than promotional.

However, the committee stated that a judicial officer may not provide a written endorsement that includes their title to be used on the book cover

With some limits, judicial ethics advisory committees have given judges permission to write book reviews.

because such an endorsement is primarily intended to allow the publisher to “leverage” the judicial title to market the publication. It stated:

Authors and publishers typically seek written endorsements from high-profile or prestigious individuals, sometimes called “book blurbs,” for the placement on a book cover to market and promote the book for sale. An endorsement from a well-known judge, for example, might suggest to would-be readers that a law-related book is particularly interesting or useful, leading to increased sales. When a judicial officer has not authored, co-authored, or contributed to the book, the primary purpose of such an endorsement is not to identify a contributor by judicial title or engage in an educational exercise, but rather to use the endorsing judicial officer’s title to promote sales.

Similarly, the Illinois committee explained that “the issue is one of intent.”

If the intent of the judge's written appraisal is, in the first instance, to promote sales of the book, the judge's appraisal is made to advance private interests and is therefore proscribed On the other hand, if the judge offers an appraisal of the book by way of a written review in a journal or newspaper and the intent, in the first instance, is to inform the legal community or the general public of a new contribution to the legal or general literature, the review is permitted

Illinois Advisory Opinion 1994-15. The Illinois committee stated that a review otherwise permitted under that analysis would still be allowed even “if the publisher later used excerpts from the judge’s review to promote sales of the book, or if the newspaper or journal compensated the judge for the review.” Because the inquiring judge had been asked by a publisher to give a book “a one or two sentence appraisal” that might be used in marketing, the committee concluded that the intent was clearly promotional and that the judge was therefore prohibited from providing the requested assessment.

Other opinions state:

- A judge may review a book about an historical event for a legal periodical as an academic exercise and not for commercial purposes but may not write for marketing purposes a testimonial regarding the value of a bar publication or write commentary to be included on a book jacket. **California Judges Association Advisory Opinion 65** (2012).
- A judge may not write a testimonial/endorsement for a legal practice guide published by a non-profit, bar-related legal organization. **Connecticut Informal Advisory Opinion 2010-35.**
- A judge may not give a judge’s perspective on how an expert witness’s book would contribute to the legal profession when the comments are intended to be included in the book and potentially used in advertisements. **Florida Advisory Opinion 2021-17.**
- A judge may write book reviews for compensation for an out-of-state newspaper when they were asked because of their prior journalism experience, not because they are currently a judge, and they would not be identified as a judge in the reviews. **Kansas Advisory Opinion 186** (2020).

(continued)

- A judge may review a friend’s novel and post the review online without mentioning their judicial position provided it is not to promote the book’s sale and the judge does not authorize use of the review on the book jacket or elsewhere to promote sales. [*New York Advisory Opinion 2020-85*](#).
- A judge may not provide an endorsement of a friend’s non-fiction book that would appear on the cover and identify them as a New York judge even if their name is not used. [*New York Advisory Opinion 2012-26*](#).
- A judge may not provide a quote to be included on the inside leaf of a book about auditing fraud that a friend has written even if their title will not be mentioned. [*New York Advisory Opinion 2011-54*](#).
- A judge may submit to the *New York Law Journal* a review of a book authored by a clergy member from the judge’s house of worship but should not permit the author or publisher to use any portion of the review to promote the book’s sale. [*New York Advisory Opinion 2006-114*](#).
- A judge may review a novel for a local legal newspaper but should not permit the author or publisher to use part of the review to promote the book’s sale and should inform the newspaper, in writing, that the review is being provided on the understanding that no portion can be used for promotion. [*New York Advisory Opinion 2005-28*](#).
- A judge may review a legal publication but should not prepare a testimonial that would be included in a marketing brochure or provide a quote about a book for the book jacket. [*New York Advisory Opinion 1997-133*](#).
- A judge may not author a quote about a book on legal issues solely for use on the book jacket but may write a book review for publication in the *New York Law Journal* or elsewhere. [*New York Advisory Opinion 1993-14*](#).
- A judge may not review a book on a legal subject when the publisher has stated that it will use some of the judge’s comments to promote sales. [*Pennsylvania Informal Advisory Opinion 11/4/03*](#).
- A judge may write a letter on judicial letterhead at the request of a for-profit publisher to be included in a booklet about substance abuse as long as the letter cannot be interpreted as an endorsement of the booklet and does not impact the appearance of the judge’s impartiality in the trial of related matters. [*Texas Advisory Opinion 192*](#) (1996).

Prefaces

With some caveats, most judicial ethics advisory committees allow judges to write a foreword, prologue, or preface for a book. For example, the Ohio committee approved the Chief Justice’s request to write a foreword to a book about the U.S. Constitution’s bicentennial, without remuneration, explaining that a review of “the very document which forms the foundation of American law” was “undoubtedly” the type of extra-judicial activity that the drafters of the code of judicial conduct intended to encourage when they gave judges permission to write, lecture, or speak on legal and non-legal subjects. [*Ohio Advisory Opinion 1987-8*](#).

[Sign up to receive notice when the next issue of the *Judicial Conduct Reporter* is available.](#)

(continued)

The Connecticut advisory committee concluded that a judicial official may author a foreword to a book written by a police officer on child safety and the Internet. [*Connecticut Advisory Opinion 2010-15*](#). They had been associated with the author while working in law enforcement before becoming a judge. The judicial officer planned to refer to that past experience and association but not to identify their current judicial position in the foreword.

The committee did impose several conditions. It stated that the judicial official:

- Should “maintain editorial control over the content of the foreword;”
- Should “retain the right to review any biographical information that may be published in connection with the book” even if their official title would not appear in the book; and
- Should “review the entire contents of the book and satisfy” themselves that authoring the foreword would not cast doubt on their impartiality in future cases or reflect a predisposition regarding particular cases, issues, parties, or witnesses that may appear before them.

The committee also stated that the judicial official should disclose that they wrote the foreword to the book and what it says (1) if the author appears as a party or witness before the judicial official and (2) in a case concerning the subject of the book. The committee added that if, after disclosure, a party files a motion to recuse based on the judge having written the foreword, the judicial official should decide the motion based on factors such as “the nature of the proceeding or docket, whether reference to or reliance upon the book is foreseeable, whether the Judicial Official is the sole decision maker (i.e. whether the matter is to the court or a jury) and whether self-represented parties or lawyers are involved.”

The Florida judicial ethics committee also adopted those conditions when it advised that a judge may write the foreword to a family member’s self-published memoir. [*Florida Advisory Opinion 2020-11*](#). The opinion noted that the inquiring judge did not plan to state that they were a judge in the foreword. See also [*Florida Advisory Opinion 1977-5*](#) (a judge may write the preface to a book about the history of a county if they do not mention their official position in the preface).

The Massachusetts committee advised that a probate and family court judge could write a foreword for a book on divorce but warned they should be careful to ensure that nothing that they write or any way that they associate themselves with anything in the book casts doubts on their capacity to make impartial decisions. [*Massachusetts Advisory Opinion 1993-2*](#).

The advisory committee for federal judges stated that a judge may write a foreword for a book if the foreword is a “bona fide” contribution addressing the substance of the book but should make reasonable efforts to prohibit its use in promotional materials. [*U.S. Advisory Opinion 114*](#) (2014). Similarly, the Maryland committee advised that a judge who is writing an introduction to a book should take reasonable steps to ensure that the publisher does not exploit the prestige of their judicial office in marketing the

book. [Maryland Advisory Opinion Request 2013-26](#). The committee noted that different considerations may apply to law-related works and books published by for-profit entities than to books that are not law-related and books that are published by commercial publishing houses. The judge who had requested the opinion had been asked to provide an introduction to a book about a law-related topic published by the Maryland State Bar Association as part of its continuing legal education program. In that context, the committee advised the judge to ask “the publisher to consult with the [judge] before mentioning [their] name or position in any marketing efforts.” *See also* [Maryland Advisory Opinion Request 1980-7](#) (a judge may write an introduction recommending a book about the prevention and treatment of alcoholism to judges and other professionals).

In contrast to the cautious permission given in other states, a New York advisory opinion prohibited a judge from writing a foreword for a book, specifically, a book about the court over which the judge presides, that was intended to earn a profit for the publisher and author. [New York Advisory Opinion 1997-1](#). The committee reasoned:

[T]here is a clear and overt nexus between the writing that is sought and the private interests of the publisher and author. For, in writing such a Foreword, the judge could readily be perceived as endorsing the publication and providing it with a judicial stamp of approval. Indeed, that perception of a judicial imprimatur is heightened considerably in this instance, since the subject matter of the book is the workings of the very court over which the judge presides and about which the judge has special knowledge and expertise.

Thus, it is not only the prestige of judicial office that is involved in this instance but the prestige of the particular judicial office held by the inquirer.

Exceptions to the confidentiality of judicial discipline proceedings

In all states, judicial discipline commission proceedings are confidential at the initial stages after an individual files a complaint against a judge, and a commission cannot confirm or deny that it has received a complaint or disclose information about an investigation of a judge—unless an exception applies. Most states have several exceptions to the confidentiality requirement. Some of those exceptions are described below.

Waiver

In approximately 16 states, confidentiality can be waived by the judge. For example:

- The rule in North Carolina states: “Upon an express written waiver by a judge, the [Judicial Standards] Commission may disclose documents

Most states have several exceptions to the confidentiality requirement.

(continued)

or information specified by the judge in the written waiver. Waiver shall not be implied, and a partial waiver as to the specified documents or information shall not constitute a waiver as to other Commission documents and information.” [Rule 6\(b\)\(2\)](#).

- In Pennsylvania, “A Judicial Officer who is the subject of a complaint . . . may request in writing that the matter be made public, or may waive confidentiality for a particular purpose specified in writing.” [Rule 18\(A\)\(1\)](#).

Safety

In approximately 16 states, commissions may disclose confidential information that involves a threat to an individual, the public, and/or the administration of justice. For example:

- The rule for the Michigan Judicial Tenure Commission provides: “When the commission receives information concerning a threat to the safety of any person or persons, information concerning such person may be provided to the person threatened, to persons or organizations responsible for the safety of the person threatened, and to law enforcement or any appropriate prosecutorial agency.” [Rule 9.161\(F\)](#).
- In Minnesota, the Board on Judicial Standards “may make such disclosures as it deems appropriate whenever the board has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.” [Rule 5\(e\)\(3\)](#).

Criminal violations

In approximately 17 states, an exception allows the commission to disclose information regarding possible criminal violations to law enforcement and/or prosecutorial agencies. In most states, the exception is discretionary, in a few states, it only applies when a law enforcement agency has requested the information. For example:

- In Arizona, the Commission on Judicial Conduct may “disclose confidential information . . . to comply with official requests from agencies and other organizations involved in criminal prosecutions . . .” [Rule 9\(c\)](#).
- The rule for the Arkansas on Judicial Discipline & Disability Commission provides: “If during the course of or after an investigation or hearing, the Commission reasonably believes that there may have been a violation of criminal law, the Commission shall release such information to the appropriate prosecuting attorney.” [Rule 7\(C\)\(7\)](#).
- The rule in Iowa provides: “Nothing in this chapter shall prohibit the commission [on judicial qualifications] from releasing any information regarding possible criminal violations to appropriate law enforcement authorities, wherever located . . .” [Rule 52.5\(8\)](#).

- The rule for the Massachusetts Commission on Judicial Conduct provides: “If, in the course of its proceedings, the Commission becomes aware of credible evidence that any person has committed a crime, the Commission may report such evidence to the appropriate law enforcement agency.” [Rule 5E](#).
- The Missouri Commission on Retirement, Removal and Discipline “may make otherwise confidential records of disciplinary proceedings available to . . . law enforcement agencies acting within the scope of their lawful authority when confidential records relate to possible criminal misconduct,” although it is not required “to make confidential records available without a subpoena or court order if the Commission chooses not to exercise the discretion granted in this Rule . . . to make those confidential records available.” [Rule 12.21\(4\)](#).

Bar authorities

In approximately 16 states, an exception allows the commission to disclose information to bar discipline authorities under certain circumstances. For example:

- The Kentucky rule provides: “The [Judicial Conduct] Commission may on its own initiative, and shall upon request of the Director or Board of Governors of the Kentucky Bar Association, make available to the Kentucky Bar Association any of the Commission's records pertinent to a disciplinary matter or inquiry under investigation by the Commission or by the Association.” [SCR 4.130\(4\)](#).
- In South Carolina, the Commission on Judicial Conduct may disclose information at any stage of the proceedings “to the appropriate disciplinary authority in any jurisdiction in which a judge is admitted to practice law or has applied for admission to practice law concerning a matter where there is evidence the judge committed misconduct under any lawyer or judicial disciplinary rules of that jurisdiction or where a judge receives any sanction” [Rule 12\(c\)\(5\)](#).
- The statute in Wisconsin provides that the confidentiality requirement “does not preclude the [judicial] commission, in its sole discretion, from . . . referring to an attorney disciplinary agency information relating to the possible misconduct or incapacity of an attorney or otherwise cooperating with an attorney disciplinary agency in matters of mutual interest.” [Chapter 757.93\(4\)\(c\)](#).

In two states, there is an exception to confidentiality that permits disclosure of information about former judges to bar authorities.

- California [Rule 102\(k\)](#) states: “If a judge retires or resigns from office or if a subordinate judicial officer retires, resigns or is terminated from employment after a complaint is filed with the commission, or if a complaint is filed with the commission after the retirement, resignation or termination, the commission may, in the interest of justice or to

Join Us in Our Mission.

[Donate](#) | [NCSC](#)



(continued)

maintain public confidence in the administration of justice, release information concerning the complaint, investigation and proceedings to the State Bar, provided that the commission has commenced a preliminary investigation or other proceeding and the judge or subordinate judicial officer has had an opportunity to respond to the commission's inquiry or preliminary investigation letter."

- If a judge "resigns or voluntarily retires prior to the disposition of the matter involving the subject judge," the Maryland Commission on Judicial Disabilities may provide "information to Bar Counsel pertaining to conduct that may constitute a violation of the Maryland Attorneys' Rules of Professional Conduct that raises a substantial question as to the judge's honesty, trustworthiness, or fitness as an attorney in other respects." [Rule 18-407\(4\)](#).

Recent cases

Like a cardiologist, a ninth grader, and "a guy off the street"

Adopting the [findings and recommendation of the Advisory Committee on Judicial Conduct](#), which the judge accepted, the New Jersey Supreme Court publicly reprimanded a judge for (1) presiding over a virtual hearing without wearing his judicial robe and with his legs propped up on his desk and (2) criticizing his temporary assignment to family court, failing to familiarize himself with the applicable law, and repeatedly advising parties and counsel that he lacked the knowledge and skill necessary to adjudicate their matters. [In the Matter of Kassel](#), Order (New Jersey Supreme Court May 31, 2023).

(1) On June 2, 2021, while presiding over a virtual hearing in a family court case, *M.N. v. A.R.*, the judge appeared in the courtroom with his legs propped up on the desk and without his judicial robes. The Committee emphasized that "a jurist's obligation to maintain a dignified demeanor when performing judicial duties, including wearing judicial robes when presiding over a court proceeding, either virtually or in-person, is a critical component of fostering the public's confidence in the judiciary." The Committee cited [New Jersey Court Rule 1:2-1\(d\)](#): "Every judge shall wear judicial robes during proceedings in open court"

(2) From April 10 through June 15, 2021, the judge, who was assigned to the civil division, was temporarily assigned to serve one day a week in the family division "to address a management need." On 16 occasions during that period, the judge told litigants and their counsel that he was not familiar with their case, was ignorant of the applicable law and inexperienced in

adjudicating family court matters, and was dissatisfied with his temporary assignment.

To illustrate, the Committee provided five examples of the judge's "problematic statements."

- In *M.N. v. A.R.*, while addressing the issue of parenting time during a virtual court proceeding, the judge stated that he "knew very little about the applicable laws" because he had not served in the family division for two decades and had removed what he may have known from his mind. The judge compared his involvement in the matter to that of a cardiologist seeing his first patient. The judge also remarked that he had not read all of the documents and did not understand what he had read, but agreed to hear the matter if counsel would "walk [him] through their issues step by step" and "treat [him] like [he's] a ninth grader in high school."
- In *L.M. v. S.M.*, while hearing an application for child support, the judge stated, "I am a judge helping out. I am not a family division judge. I have no expertise in family law." The judge also stated, "I know nothing about this case. I know nothing about you, the litigants." The judge then stated, "I have no expertise in any family law and the best I can do in any case is use some common sense and the legal knowledge I've accumulated over the past 20 years. That's the best I can do." The judge continued, "You're going to have to walk me through why we are here and what the issue is and then I'm glad to hear from [the litigants]."
- At the start of a proceeding in *D.R. v. G.P.*, the judge advised the litigants, "The last time I was a family division judge was 18 years ago and we're doing the best we can under very difficult circumstances." The judge also stated, "I think this couple would benefit from [mediation]. It would help you because [mediators] are professional people. These are people that know what they're doing and they're a lot more experienced than me, frankly. Frankly, you can get a guy off the street that's more experienced than me with this stuff."
- In *C.R. v. A.R.*, when counsel advised the judge that they would be attending mediation but that a trial might be necessary to address child support issues, the judge responded: "As a matter of fact, by the time this conference call ends, if I'm still in the family division, I'll be very unhappy about it, but it's unrealistic to expect my liberation from the family division is going to be sooner than that."
- Prior to the start of a hearing in *S.S. v. W.S.*, the judge advised the parties, "I did peruse the papers, I use the term liberally, peruse, all this stuff." The judge further stated, "I have very little knowledge of matrimonial law. I didn't do it as a practitioner and didn't do it as a judge. I have zero, zero matrimonial knowledge." After consulting with his court clerk and learning that there were five other cases on his calendar that day, the judge stated:

The Committee found that the judge's remarks were "a complete departure from the ethical standards to which all judges must adhere, undermine the integrity of the Judiciary and the judicial process, and trivialize the parties' legitimate interests in seeking redress with the court."

(continued)

I don't have the luxury of spending hours upon hours on this case to have the attorneys walk me through everything. I can give a morning or afternoon between now and June 15. If there is one discreet issue that can be resolved cleanly within an hour or so, I'll be glad to give you that time. If we go through all the issues in this case, all the paperwork, it will probably require me to set aside a full eight-hour day. You may not get that luxury until Judge Bernardin comes back. That's the reality of it. I'm not an apologist for the New Jersey court system.

The judge stated, "the attorneys can literally, literally walk me through their motions issue by issue by issue and I will make decisions, for better or worse. I'll make decisions." The judge continued, "That's the best I can do and I'm telling this to everybody to be 100 percent transparent. We're desperately short of judges in Camden County." The judge also commented, "If it's the type of issue that's clean and can be decided after both attorneys walk me through it in their paperwork, I'm glad to devote the next hour and 15 minutes to it." Later, the judge advised, "I'm not an idiot, but I'm not a family division judge."

The Committee found that the judge's remarks were "a complete departure from the ethical standards to which all judges must adhere, undermine the integrity of the Judiciary and the judicial process, and trivialize the parties' legitimate interests in seeking redress with the court." It explained:

Respondent's misdirected dissatisfaction with his temporary Family Part assignment towards the litigants and their counsel coupled with Respondent's gratuitous references to the vicinage's depleted staffing levels, which has no legitimate bearing on the parties' right to be heard, while stating crassly and in an overblown fashion that Respondent did not have seven hours to devote to the matter, was grossly inappropriate. . . . Such remarks, regardless of their intended impact, stifle the litigants' and their counsels' active participation in the proceedings . . . as it impugns the judicial system and its ability to serve the public with integrity.

The Committee also found that the judge's "stated unfamiliarity with the applicable precedent and statutory law governing Family Part matters, failure to read in full the parties' moving papers, and professed inability to understand that which he had read irretrievably diminished the efficacy of the judicial office" and violated "a judge's obligation to maintain professional competence in the law and the legal system . . ." The Committee emphasized that it was not saying that "a judge may not alert counsel or the litigants to his unfamiliarity with a particular legal issue or to the complex facts of the case" to signal "the need to clarify those issues or facts in their arguments or presentations." But it concluded that the judge's comments were "far different."

The Committee rejected the judge's argument that he was being transparent when he made those comments, stating that that defense was

“without merit and incompatible with the Judiciary’s core mission to preserve the rule of law and protect constitutionally guaranteed rights and liberties.” It reaffirmed that “judges, like attorneys, are responsible for their continuing legal education and for maintaining and enhancing their knowledge and skills on the bench.” The Committee described the continuing professional development provided to judges and concluded that the judge’s decision not to avail himself of those resources “was unconscionable” and his “failure to read and understand the parties’ submissions . . . prior to their scheduled oral arguments [was] inexcusable.”

“Ominous Bible verses”

Based on the [report and recommendation of the Judicial Tenure Commission](#), the Michigan Supreme Court conditionally suspended a former judge for six years for (1) failing to comply with a performance-improvement plan and orders issued by the Chief Judge and sending Bible verses to the Chief Judge and others; (2) summarily dismissing or adjourning cases because a party used a process server whom she believed was dishonest; (3) abusing her contempt powers in at least two cases; (4) disconnecting the videorecording equipment in her courtroom and failing to maintain a record for weeks; (5) using her personal cell phone to create unauthorized recordings of the proceedings in her courtroom; (6) parking in a handicap loading zone at a gym, placing a placard in her window to convey that she was there on official business, and, when the police responded, flashing her judge’s badge; and (7) making material misrepresentations to the Commission. *In re Davis*, 991 N.W.2d 212 (Michigan 2023). The suspension is “conditional” because it will only take effect if the former judge is elected or appointed to the bench within six years; the suspension would then extend until six years after the date of the decision.

As found by the Commission in its report, under a performance-improvement plan imposed by the Chief Judge of her district, the judge was required to report when she got to work. The Court found that, “purportedly” to comply with that requirement, the judge sent “ominous Bible verses” to the Chief Judge and court administrators when she arrived at the courthouse. For example, the judge sent emails to her supervisors and colleagues that stated:

- “Sovereign Lord, my strong deliverer, you shield my head in the day of battle. Do not grant the wicked their desires, Lord; do not let their plans succeed. Those who surround me proudly rear their heads; may the mischief of their lips engulf them. May burning coals fall on them; may they be thrown into fire, into miry pits, never to rise. Psalm 140:7-10.”
- “But the cowardly, the unbelieving, the vile, the murderers, the sexually immoral, those who practice magic arts, the idolaters and all liars – they will be consigned to the fiery lake of burning sulfur. This is the second death. Revelation 21:8.”

The First Amendment does not provide government employees carte blanche to engage in conduct that amounts to “insubordination” that “interfere[s] with working relationships.”

When a court administrator asked her to stop sending these messages, the judge replied in an email: “You brood of vipers, how can you who are evil say anything good?”

The judge argued that she was exercising her rights to free speech and religion when she sent the Bible verses. Rejecting that argument, the Court explained:

The Bible verses quoted by respondent were, in the context of respondent’s e-mails, clearly intended to be insulting, discourteous, disrespectful, and menacing toward the recipients. The e-mails also reflect a failure to demonstrate the professionalism demanded of judges.

The right of free speech generally entitles a person to, among other things, protection from government persecution based on speech. . . . The goal of disciplinary proceedings is not punitive; rather, it is to “restore and maintain the dignity and impartiality of the judiciary and to protect the public.” . . . Freedom of speech is not the freedom from all consequences for one’s actions. Moreover, a “judge must . . . accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.” . . . The First Amendment does not provide government employees carte blanche to engage in conduct that amounts to “insubordination” that “interfere[s] with working relationships.” . . . This type of conduct is certainly beyond the pale for a member of our judiciary.

The Court concluded that the judge’s “refusal to simply convey that she had arrived at work as required by the Chief Judge’s order amounted to insubordination and clearly interfered with multiple working relationships.”

Weekends

The West Virginia Supreme of Appeals suspended a judge for six months without pay, fined him \$5,000, and publicly censured him for discourteously invoking his judicial office during and after a traffic stop, threatening to use his power as a judge to retaliate for the traffic stop, and using his office to avoid traffic tickets. *In the Matter of Williams*, 991 N.W.2d 212 (West Virginia 2023). The Court also ordered that he comply for two years with his monitoring agreement with the Judges and Lawyers Assistance Program.

One Sunday, Moorefield Police Department Officer Deavonta Johnson stopped the judge’s vehicle after observing him with a cellphone phone in his hand on the steering wheel while driving. (West Virginia law prohibits operating a motor vehicle while texting or using a cell phone unless the driver uses hands-free equipment.) Officer Johnson approached the vehicle, but before he said anything, the judge asked, “[w]hat’s the problem?” Officer Johnson said, “How you doing, sir, . . . the reason I’m stopping you is . . .,” but the judge interrupted him and said “I’m Judge Williams, and, I don’t . . . why are you stopping me?” The judge repeatedly attempted to explain that he had just picked the phone up from between the door and the seat and was only holding it, not using it. The judge also stated several times that police officers are often on their cell phones on personal business, angrily asking Officer Johnson, “you’re never on yours?” The judge was visibly agitated from the beginning of the

conversation and became more agitated as it continued, and Officer Johnson asked why the judge was screaming at him. The judge told Officer Johnson several times to give him a ticket and motioned for Officer Johnson to return to his vehicle.

The judge then called Officer Johnson's supervisor, Lieutenant Melody Burrows, and she called Officer Johnson and told him not to write a ticket in order to diffuse the situation. When Officer Johnson returned to the judge's car and told him that his license had expired, the judge did not answer, grabbed the license, and said "next time I see you . . ." as he drove off.

The judge called Lieutenant Burrows again after driving away and later that evening also called the police chief, the mayor, the former police chief, and the chief judge. He told Lieutenant Burrows, for example, that "he's never been treated so badly as a Circuit Judge and that he couldn't believe that my boy would – wouldn't take his word for it and why he would lie. He's the Circuit Judge." Lieutenant Burrows stated that the judge expressed that he was tired of Moorefield police officers "acting like thugs, harassing hardworking people," and that their cases were sloppy. Lieutenant Burrows also stated that the judge said that "he heard our [Moorefield Police] cases all the time and that if we treated people . . . like we treated him today that it makes him question our cases that he comes across."

The judge conceded that his traffic offenses violated the code of judicial conduct, but he argued that his statements challenging the stop were constitutionally protected and could not be sanctioned. The Court emphasized that this is not "a police state—one is permitted to question why he is being pulled over and to contest a ticket if he believes he has done nothing wrong." Noting that "judges do not lose all First Amendment protections when taking the robe," the Court stated, "had Respondent's conduct been limited to loudly contesting whether Officer Johnson read the cell phone statute correctly, we might agree with his position . . . and would defer to the voters in Respondent's district to judge his conduct."

However, it explained, "inconvenient to Respondent's argument, . . . the Code of Judicial Conduct has rules aimed at activities and speech both on and off the bench, and the Code of Judicial Conduct works weekends too." Emphasizing that the judge had "stepped out of the shoes of an accused contesting a stop and into the shoes of a judge" when he identified himself as "Judge Williams," the Court concluded that the judge's "conduct was not an invocation of his rights as an accused to challenge a ticket he thought he did not deserve, but an invocation of and abuse of the prestige of his office." The Court also found that the judge had "employed coercive tactics in contacting various public officials that evening, and suggested he might change his rulings in cases in retaliation for the traffic stop."

[Recent posts on the blog of the Center for Judicial Ethics](#)

[Chastising, accusing, and embracing](#)

[“The character assassination game”](#)

[A sampling of recent judicial ethics advisory opinions \(May\)](#)

[A sampling of recent judicial ethics advisory opinions \(July\)](#)

[Recent cases \(May\)](#)

[Recent cases \(June\)](#)

[Recent cases \(July\)](#)

[Recent cases \(August\)](#)

[When a member of a judge’s family is a political candidate: Part 1](#)

[When a member of a judge’s family is a political candidate: Part 2](#)

[When a member of a judge’s family is a political candidate: Part 3 – Photos](#)

[Conduct related to political parties](#)