

# JUDICIAL CONDUCT REPORTER



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*Center for Judicial Ethics*

## State judicial discipline in 2023

In 2023, there were approximately 121 public dispositions in state judicial discipline proceedings.

Seven judges were removed from office. (For more information about those cases, see [Removal cases in 2023](#), *infra*.)

Judicial conduct commissions agreed to conclude proceedings against 15 judges based on their agreement to resign or retire and never serve in judicial office again. In two of those cases, the now-former judges also agreed to a public censure or admonishment.

Four former judges were barred from judicial office; in one of those cases, the former judge also agreed to a public censure.

Ten judges were suspended without pay for from seven days to one year.

- One judge was suspended for seven days.
- One was suspended for 14 days.
- Two suspensions were for 30 days; one included a reprimand; one included a censure.
- One judge was suspended for 45 days.
- One judge suspended for 60 days was also fined \$1,500 and reprimanded.
- One judge was suspended for six months, fined \$5,000, and required to comply with a monitoring agreement with the Judges and Lawyers Assistance Program.
- One judge who was suspended for six months was also censured.
- One judge was suspended for 200 days.
- One was suspended for 1 year.

Public reproofs were issued to 75 judges or former judges.

- There were 16 censures, one of which was severe.
- There were 33 reprimands; one reprimand was severe, and one included a \$15,000 fine and probation.
- Admonishments were issued to 24 judges.
- Two judges received public warnings.

In six of those cases, the judges were also ordered to take remedial measures such as training, counseling, or mentoring.

There were 10 additional public dispositions of complaints about judicial misconduct.

- Three judges were ordered to cease and desist certain conduct.
- One judge was issued an informal adjustment.

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**In 2023, there were approximately 21 public dispositions in state judicial discipline proceedings.**

- One judge received a private admonishment that was made public based on his waiver of confidentiality.
- One former judge was conditionally suspended for six years; the suspension will only take effect if the former judge is elected or appointed to the bench within six years.
- Four former judges were sanctioned in attorney discipline proceedings for conduct while they were judges; one was publicly censured, one was disbarred, one was suspended from the practice of law for two years, and one was indefinitely suspended from the practice of law.

Approximately 60% of the cases were resolved pursuant to an agreement. In this count, “judge” refers to any type of judicial officer, whether full-time or part-time, including supreme court and appellate court justices, justices of the peace, magistrates, pro tem judges, referees, court commissioners, and hearing officers.

Follow the [Center for Judicial Ethics blog](#) to read monthly summaries of recent judicial discipline cases.

## Removal cases in 2023

From 1980 through 2022, approximately 470 judges were removed from office as a result of state disciplinary proceedings. In 2023, seven judges were removed.

### “No place for dishonest persons”

Based on the recommendation of the Judicial Qualifications Commission, the Georgia Supreme Court removed a court of appeals judge from office for taking advantage of a vulnerable person, transferring campaign funds to his law firm, and using campaign funds to pay for a family vacation in Hawaii. *Inquiry Concerning Coomer*, 892 S.E.2d 3 (Georgia 2023). The Court emphasized:

We do not expect judges to be perfect; judges are human. But we can and do expect them to be honest. The judiciary has no place for dishonest persons. And public confidence that judges are honest is particularly important given the place of the judiciary in our system of government . . . .

(1) Many of the allegations related to the judge’s conduct toward James Filhart, a client the judge began representing in 2015 before he became a judge. Filhart was in his late seventies and relatively isolated socially, with few friends and no family close by.

In May 2018, the judge drafted a will for Filhart that named the judge and his heirs as beneficiaries and the judge as executor and trustee. In August

(continued)

2018, the judge applied for an appellate judgeship and became subject to the code of judicial conduct and the Commission’s jurisdiction. *See Inquiry Concerning Coomer*, 885 S.E.2d 738 (Georgia 2023) (conduct before applying for judgeship was outside the Commission’s jurisdiction).

While his application was pending, the judge borrowed \$130,000 from Filhart; the judge did not provide security, and Filhart funded the loan by selling stock. After his appointment was announced, the judge drafted a new will for Filhart; the judge remained a beneficiary, and although the new will removed him as executor and trustee, “it did not remove [him] far; instead, it merely turned those roles over to his wife.” Filhart “later became disenchanted” with the judge and “sent him an angry email” about the loan and stock sale, but the judge “disingenuously feigned ignorance,” stalled Filhart when he asked for documents, and did not offer to repay the loans until Filhart sued him.

The Court concluded:

These actions present to the public a picture of a judge who will abuse a position of trust in order to take advantage of a vulnerable person for his own personal financial benefit. They present a picture of a judge who, when confronted with the consequences of those actions, does not cooperate or try to rectify his wrongs, but stalls and obfuscates. And they present a picture of not mere negligence, but conscious wrongdoing motivated by self-interest, and thus actions taken in bad faith.

(2) Three times in late 2018, the judge, who had been a member of the state legislature until he became a judge, transferred funds from his legislative campaign to his law firm operating account. In addition, in the fall of 2018, the judge used funds from his campaign account to pay for a vacation he and his family took to Hawaii. The judge failed to disclose these transfers and payments on his campaign reports.

The Court concluded: “These actions, especially when combined with all the rest of his self-interested conduct, present to the public a picture of a judge who will not honestly account for his handling of campaign cash, and thus cannot be trusted to handle judicial matters before him with honesty and integrity.”

### “Anyone but a judge”

Adopting the findings of a three-judge panel, the New Jersey Supreme Court removed a former judge from office for her “defiant trespass” at her children’s school, her untruthful testimony at her criminal trial, and her failure to appear for a court-ordered deposition in her husband’s lawsuit against the school. *In the Matter of Mullen*, Order (New Jersey Supreme Court March 8, 2023). The Court permanently barred her from holding judicial office in the state.

In December 2016, the judge’s husband filed suit against St. Theresa School where their two daughters attended. On February 1, 2017, the school asked the family to withdraw their daughters from the school because the lawsuit violated school policy.

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“[These actions] present a picture of not mere negligence, but conscious wrongdoing motivated by self-interest, and thus actions taken in bad faith.”

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“In defiance of that request,” the judge arrived at the school the next morning with her daughters. School officials repeatedly directed the judge to leave, but she consistently refused, and a police officer went to the school in response to a call. The panel found that the judge “created a scene for nearly an hour,” “on a busy morning, in offices, a reception area, and school hallways.”

Judge Mullen was charged with defiant trespass. The judge who presided over her bench trial found her guilty and also found that Judge Mullen had testified falsely when she denied having any contact with the police officer. The appellate division affirmed her conviction.

The panel concluded that “anyone but a judge” would have been “swiftly and unceremoniously ejected from the building, and/or arrested and removed on the spot” if they had acted as the judge had. The panel found that the judge’s refusal to leave “in the presence of numerous school officials, law enforcement officers, and students and parents entering and leaving the school, could only erode public confidence in the judiciary.” The panel noted that the judge’s “emotional stress over the conflict with school administrators, which involved her children” did not excuse her violations when she “knew she had better alternatives than an in-person confrontation.” The panel also stated that “when a judge’s credibility is publicly called into question, there is a patent and significant risk that the public’s confidence in the judiciary will be eroded.” Further, noting that there was no valid reason for the judge’s failure to appear for the court-ordered deposition in her husband’s lawsuit, the panel emphasized: “Respondent is not entitled—by virtue of her judicial appointment—or for any other reason—to disregard court orders.”

### Transcending poor judgment

Five non-lawyer town or village court justices from New York were removed from office in 2023.

Accepting the determination of the State Commission on Judicial Conduct, which was based on an agreed statement of facts, the New York Court of Appeals removed a non-lawyer judge from office for (1) brandishing a loaded firearm at a litigant in the courtroom and repeatedly mentioning the litigant’s race when he recounted the incident and (2) engaging with eight Facebook posts that promoted non-profit fundraising events. *In the Matter of Putorti*, 222 N.E.3d 519 (New York 2023).

(1) One day in late 2015, while presiding in court, the judge brandished a loaded firearm at a litigant who was waiting for his case to be called. Although the judge claimed that he “subjectively feared for his safety,” he admitted in the stipulation of facts that he had “no reasonable basis” to believe that the man “was about to use imminent deadly force” and agreed that he was “not justified” in brandishing the firearm.

The judge repeatedly recounted the incident to others. In early 2016, Judge Putorti told another judge about a time he drew his firearm on an “‘agitated’ ‘big Black man’” when the man approached the bench too quickly. From his “manner and tone,” the other judge had the “impression” that he

“was bragging about his actions . . .” The judge also told other judges about the incident at a 2016 county magistrates association meeting.

At another association meeting in 2018, while seeking advice about courtroom security, Judge Putorti said that he had once pointed his firearm at a “large [B]lack man” who had passed the stop line and came within “a couple” feet of the bench. In a telephone conversation with his supervising judge, Judge Putorti described the litigant as “a ‘large [B]lack man,’ about 6’9” tall and ‘built like a football player.’” The litigant was, in fact, six feet tall and weighed 165 pounds.

In the agreed statement in the disciplinary proceeding, the judge admitted that he had failed to perform his judicial duties “without manifesting in words or conduct bias or prejudice based upon race” and that his conduct “may have created the appearance of racial bias.” “Despite these conclusive admissions,” the judge argued on appeal that “he was not acting with racial bias” but merely describing the litigant. Noting that the Commission was bound to base its determination on the agreed statement, the Court emphasized that the judge’s repeated references to the litigant as a “big Black man” were “not a mere physical description” but “exploited a classic and common racist trope that Black men are inherently threatening or dangerous,” and, therefore, exhibited “bias or, at least, implicit bias.” Stressing that the appearance of impropriety “is no less to be condemned than is the impropriety itself,” the Court stated that “New York’s judicial system recognizes the pernicious effect that implicit bias often has on the fair and equal administration of justice . . .”

Noting that removal is often reserved for judges who engage in a pattern of misconduct, the Court concluded that this was one of the “rare cases where the misconduct is so inexcusable that no amount of mitigation can be ‘sufficient to restore the public’s trust’ in the judge’s ability to discharge the responsibilities of judicial office ‘in a fair and just manner’ . . .” The Court stated that “the record amply supports the conclusion that petitioner’s misconduct ‘transcends poor judgment’ and warrants removal.”

(2) From October 2019 through November 2020, which was after he had learned that the Commission was investigating the gun incident, the judge shared and commented on Facebook posts promoting seven events to raise funds for the Elks Lodge, in which he held office. In addition, in October 2019, the judge was “tagged” in a post promoting a spaghetti dinner to raise money to cover medical expenses that he had incurred in a motorcycle accident; rather than delete the post from his page, the judge wrote, “I hope to see as many people as I can.” Over 500 people attended, raising \$9,400.

The Court acknowledged that the judge’s fundraising on social media “would not by itself warrant removal” but stated that “its timing and the circumstances under which it occurred”—while he knew he was under investigation for the gun incident—“evinced an unwillingness or inability to abide by the Rules of Judicial Conduct,” further demonstrating his unfitness for office.

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**Five nonlawyer town or village court justices from New York were removed from office in 2023.**

### **Improper priorities**

Based on a referee's report following a hearing, the New York Commission removed a non-lawyer judge for "self-dealing and prioritizing his personal business interests over his judicial duties" in connection with the installation of a security camera system at the courthouse. [\*In the Matter of Mercer\*](#), Determination (New York State Commission on Judicial Conduct December 27, 2023). The judge had acknowledged that he engaged in misconduct but asked the Commission to "show leniency."

Without the town board's approval, the judge had directed that a security camera system be included in a grant application filed with the state court system. When the grant was approved, the judge's company purchased the system, and the judge installed it without disclosure to the town board and without following a bidding process. The judge also signed a voucher for payment knowing that the amount was based on the cost of a higher priced camera system than what he had installed. When the town withheld payment after discovering the judge had used his own company, the judge pressed for payment using his official court email account and submitted a second invoice that still included the higher price and also added a finance charge for a past due balance. The Commission found that the judge engaged in a pattern of failing to be forthright with court and town officials and agreed with the referee's finding that he had been "deliberately deceptive."

### **The totality of misconduct**

Granting a motion for summary determination based on the judge's failure to answer the formal complaint, the New York Commission removed a non-lawyer judge for (1) making sexually charged comments to and about attorneys appearing in his court; (2) driving a car with inappropriate graphics and/or bumper stickers; (3) failing to timely report or remit court funds to the state comptroller and failing to cooperate with court and town officials investigating that failure; (4) on various occasions, visibly carrying a handgun while inside or just outside the courthouse, in violation of his concealed-carry permit; (5) failing to answer two traffic tickets and using his judicial email account to communicate with the court about the traffic violations; and (6) failing to participate in the Commission's investigation and proceedings. [\*In the Matter of Persons\*](#), Determination (New York State Commission on Judicial Conduct February 23, 2023). The Commission concluded that, given the totality of his misconduct, which demonstrated his neglect of his ethical responsibilities and his unwillingness to participate in the disciplinary proceedings, the judge "should be removed from the bench to protect the integrity of the courts." For a description of the judge's inappropriate comments, see, [What judges said to and about litigants and attorneys that got them in trouble in 2023](#) and [What judges said outside the courthouse that got them in trouble in 2023](#), *infra*.

### **Irretrievably damaged**

Granting a motion for summary determination based on the judge's failure to file an answer to the complaint, the New York Commission removed a non-lawyer judge for (1) posting Nazi imagery to his Facebook page and (2) "liking" Facebook pages that demeaned or sexually objectified women. [\*In the Matter of Futrell\*](#), Determination (New York State Commission on Judicial Conduct December 12, 2023). The judge had not answered the complaint, responded to the motion for summary determination, or made a submission regarding sanction.

As his profile picture on his Facebook page, the judge posted an image of a human skull that appeared identical to the Nazi SS/Totenkopf forces insignia utilized during World War II. The letters "FF" ("Futrell Firearms") were emblazoned above the eye sockets of the skull in a style that simulated the "SS" abbreviation of the Nazi Schutzstaffel. For a description of the judge's other inappropriate Facebook posts, see [\*What judges said on social media that got them in trouble in 2023\*](#), *infra*.

The Commission concluded:

Here, when he posted Nazi imagery on Facebook, including in his Facebook profile, respondent engaged in truly egregious and troubling conduct that warrants removal. He also detracted from the dignity of judicial office when he promoted posts that demeaned women. Moreover, his decision to ignore the Commission's proceedings aggravated his underlying misconduct. . . . Respondent's usefulness as a judge is irretrievably damaged and he is unfit for judicial office.

### **Another failure to answer**

Granting a motion for summary determination based on the judge's failure to answer the complaint, the New York Commission removed a non-lawyer judge for (1) during a dispute with another customer at a service station, repeatedly asserting his judicial office with the police; (2) making sexually charged comments to his co-judge and court staff and in the courtroom; (3) while on the record in the courtroom, publicly inquiring about employment with the police department; (4) making comments during arraignments that gave at least the impression that he had prejudged the guilt of defendants; and (5) making sexual and otherwise inappropriate comments on his public Facebook page, some of which referenced his judicial position. [\*In the Matter of Hall\*](#), Determination (New York State Commission on Judicial Conduct October 17, 2023). For examples of the judge's comments and posts, see [\*What judges said outside the courthouse that got them in trouble in 2023\*](#); [\*What judges said to and about litigants and attorneys that got them in trouble in 2023\*](#); [\*What judges said to court staff and other judges that got them in trouble in 2023\*](#); and [\*What judges said on social media that got them in trouble in 2023\*](#), *infra*.

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

## What judges said on social media that got them in trouble in 2023

- “[I intend to] really crack down on truancy problems;” “every unexcused absence that a kid has in school they are going to do seven hours of community service at our local recycling center;” and “[Parents could possibly] be incarcerated up to ten days at a time for these unexcused absences.” Judge in a video about truancy posted on a school’s Instagram page. [Randolph](#) (Tennessee Board).
- “Drive sober or get pulled over” and “kiss your license goodbye!” Post from the governor’s highway safety program shared by judge on Facebook. [Sansom](#) (West Virginia Commission).
- “I hope to see as many people as I can.” Judge in comment on Facebook post promoting a spaghetti dinner to raise money to cover his medical expenses following a motorcycle accident. *Putorti*, 222 N.E.3d 519 (New York) (removal for this and other misconduct).
- “She’s one of a kind.” Judge sharing on Facebook a “GoFundMe” account to help a woman pay her medical expenses. [McCroskey](#) (Washington Commission) (admonishment).
- “You know what’s more therapeutic than shopping? Cross examining someone and being absolutely F\*\*KING AWESOME at ripping them apart on the stand like the baddest b\*\*ch there is!!!! #ladyboss #bossbitch BAHAAAAHA!...” Part-time attorney judge in Facebook post. [Nunnery](#) (New York Commission) (censure for this and other misconduct).
- “Driving down the mean streets of Batavia after tanning and thought I recognized the ass of one of my favorite marines walking through the Tops parking lot lol 😊 It’s been too long! Good to see ya, ya f\*\*king boot! 🥰😭” Judge in Facebook post. [Nunnery](#) (New York Commission) (censure for this and other misconduct).
- “Omg everyone was so f\*\*king hungover lol;” and “I remember drawing a dick on his face when he passed out on the plane lol.” Judge in comments on a re-shared Facebook page post that had been originally posted seven years earlier. [Nunnery](#) (New York Commission) (censure for this and other misconduct).
- “Like.” Judge on the Facebook pages “Only Men Lovers,” “Psychopathic +21,” “Dirty Biker Trash,” and “Porngirls.” [Futrell](#) (New York Commission) (removal).
- “EXPOSING FRIENDS TO EXTREMIST CONTENT.” Meme posted by judge on his Facebook page with a picture of Facebook co-founder and CEO Mark Zuckerberg dressed in Nazi military garb. [Futrell](#) (New York Commission) (removal).

- “It was not a hung jury but they say the judge sure is.” Judge in Facebook post, with a beaming face emoji. [Hall](#) (New York State Commission) (removal for this and other misconduct).
- “Now heres utopia sneeze, break wind just as you reach happy ending! I think I’ll put it on my bucket list.” Judge in post on Facebook. [Hall](#) (New York State Commission) (removal for this and other misconduct).
- “Summers Close Enough. Time to Strut Those Bikinis and Ankle Monitors.” Caption to photo of a woman wearing a bikini and ankle monitor at a gas station that judge posted on Facebook. [Honaker](#) (West Virginia Commission) (admonishment for this and other misconduct).
- “Absolutely!!!” Judge in comment to Facebook post she shared from the group “I Support Law Enforcement Officers” that asked, “Would you help an officer in distress?” [Honaker](#) (West Virginia Commission) (admonishment for this and other misconduct).
- “Like.” Judge on the Facebook pages of a judicial candidate and a school board candidate. [Nunnery](#) (New York Commission) (censure for this and other misconduct).
- “Hello Facebook community! I’m honored to formally announce my candidacy for Magisterial District Judge.” Judicial candidate before first resigning from the county Democratic committee. [LeFever](#) (Pennsylvania Court of Judicial Discipline) (reprimand, \$15,000 fine).

## Impatient, undignified, and discourteous conduct

*Top judicial ethics and discipline stories of 2023*

As in every year, in 2023, violations of a judge’s duty to be patient, dignified, and courteous to everyone they meet in their judicial role were the basis for many—approximately a third—of the judicial discipline cases. The sanctioned conduct included profanity, demeaning statements, name calling, sexually charged comments, inappropriate hugging, mocking gestures, aggressive questioning, and misuse of the contempt power. For examples of inappropriate demeanor, see [What judges said to and about litigants and attorneys that got them in trouble in 2023](#) and [What judges said to courts staff and other judges that got them in trouble in 2023](#), *infra*.

Some of the decisions in 2023 emphasized the importance of appropriate judicial demeanor to maintaining public confidence in the judiciary, particularly when the pressure to be injudicious is greatest.

For example, the Tennessee Board of Judicial Conduct noted that “regardless of how rude or disrespectful a participant in a legal proceeding may

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be, the judge cannot reciprocate. To the contrary, the more tense or difficult the situation, the more important it is for the judge to remain dignified and composed and not be drawn into an escalating situation.” It stated:

Name-calling in court, such as referring to a party as “tough guy,” telling a witness to “shut up,” or making injudicious comments to a litigant leaving the courtroom such as “I hope you meet someone just like yourself one day,” are neither dignified nor courteous and set a poor example for everyone present.

In addition, a party who is the subject of overly harsh or intemperate words . . . may reasonably perceive the judge is biased. Nor do such comments inspire confidence in the integrity and impartiality of the judiciary.

...

**Stokes**, Public reprimand (Tennessee Board of Judicial Conduct January 4, 2023). Publicly reprimanding the judge, the Board noted that he had previously been privately warned about his lack of self-control in raising his voice and using intemperate words in court.

### Regardless of stress and tension

Accepting a **stipulation and proposed sanction**, the Florida Supreme Court publicly reprimanded a former judge for, in a high profile murder case, unduly chastising defense counsel, failing to curtail inappropriate statements directed at the defense, and embracing members of the prosecution, victims, and family members of victims. *Inquiry Concerning Scherer*, 367 So. 3d 1228 (Florida 2023). In the case underlying the discipline proceeding, Nikolas Cruz had pled guilty to 17 charges of murder and 17 charges of attempted murder for the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida. The prosecution sought the death penalty.

During the penalty hearing, the judge chastised defense counsel for when and how they announced that their mitigation presentation was over. Further, when victims’ family members directed vitriolic comments at defense counsel, the judge acknowledged that some of the comments were inappropriate but failed to take action to curtail them as counsel requested. When a member of the defense team stated, “Judge, I can assure you that if they were talking about your children, you would definitely notice,” the judge accused him of threatening her children; told him that he had violated “about every rule of professional responsibility;” ordered him to sit in the back of the courtroom, effectively denying him the ability to represent his client; and accused the elected public defender of instructing that attorney to “say something” about her children. The judge also denied the defense team’s request for a brief recess to confer.

At the conclusion of the penalty hearing, the judge stepped down from the bench in her robe and embraced members of the prosecution team, victims, and family members of victims. She contended that she had also offered to embrace defense counsel.

Noting that it was “mindful that the Cruz proceedings were emotional and highly contentious,” the Commission concluded that, “in limited

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“The more tense or difficult the situation, the more important it is for the judge to remain dignified and composed and not be drawn into an escalating situation.”

(continued)

instances during this unique and lengthy case, Judge Scherer allowed her emotions to overcome her judgment.”

The worldwide publicity surrounding the case created stress and tension for all participants. However, regardless of the gravity of the accusations or level of attention given a matter, the Commission expects that a judge will ensure due process, order and decorum, and act always with dignity and respect to promote the integrity and impartiality of the judiciary.

### **The judicial high road**

Acknowledging that the courtroom “is often a place for disagreement and argument, whether between the parties to a case or a party and the judge,” the Ohio Supreme Court reminded judges to “recognize when they need to control such a situation and take the high road.” [Disciplinary Counsel v. Gaul](#) (Ohio Supreme Court December 29, 2023).

When Arthur Smiley appeared before the judge by videoconferencing for arraignment on robbery charges, after the judge determined that he was going to set a \$25,000 surety bond, Smiley’s “apathetic quips,” expressions of indifference, and “cavalier attitude” “appeared to increasingly irritate” the judge. For examples of the judge’s comments, see [What they said to and litigants and attorneys that got them in trouble in 2023](#), *infra*. As a result of their exchange, the judge announced that he was raising Smiley’s bond to \$100,000. Smiley said that the judge was making himself “look stupid” by raising the bond because Smiley was being held on other cases and could not be released anyway. In response, the judge found Smiley in contempt and sentenced him to 30 days in jail. After Smiley appealed, the judge suggested that he would dismiss the charge if Smiley apologized. Smiley did, and the contempt charge was dismissed.

Noting that the judge “could have stopped interacting with Smiley after he set bond, but he chose not to,” the Court stated:

Judges—especially trial-court judges—deal with people of varying tempers on a near-daily basis, and a judge’s encountering a difficult person does not excuse the judge’s duty to exercise fair and impartial judgment and to treat that person with patience, courtesy, and dignity. . . .

Conduct such as that exhibited by Smiley during the arraignment might inflame the passions of an ordinary person so as to cause the person to respond with equal vigor, but judges are not ordinary. Rather, they are held to the highest standards of professional behavior. . . . Ohioans expect patience from their judges. By stepping up (or down) to Smiley’s level and engaging with Smiley when he did not need to do so, Gaul prolonged a bad situation and made it worse. Gaul’s continued interaction with Smiley ultimately led to his finding Smiley in contempt. That unnecessary interaction demonstrated that Gaul’s role as an impartial arbiter in the matter had ended, resulting in prejudice to Smiley.

The Court suspended the judge for one year without pay and suspended him from the practice of law for one year for his treatment of Smiley, as well as his aggressive questioning of another criminal defendant, demeaning statements to litigants and spectators, and other misconduct.

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## “Practice what they preach”

A recent judicial discipline decision from Texas reminded judges:

Media, movies, and television influence the public’s perception of their elected judges. Whether it be the wizened, yet stern, Judge Chamberlain Haller, or the witty, sharpened-tongued [sic] Judge Judy, their performance on screen may easily be perceived as examples of how we should act. Yet, we are not them or Judge Dredd or even Judge Elihu Smalls. We are not entertainers, but rather Texas jurists obligated to abide by actual rules as opposed to a story or show script.

*In re Rangel*, 677 S.W.3d 918 (Texas Special Court of Review 2023). (According to Wikipedia, [Judge Haller](#) is the judge in the 1992 film comedy *My Cousin Vinny*; [Judge Judy](#) is a former judge who presided over a reality court show from 1996-2021; [Judge Dredd](#) is a “street judge” who is “empowered to summarily arrest, convict, sentence, and execute criminals” in a dystopian city in the future in comics, films, and video games; and [Judge Elihu Smalls](#) is one of the founders of the country club in the 1980 film comedy *Caddyshack*.)

In *Rangel*, the three-judge court publicly warned a judge for her interactions with attorneys and court personnel during four hearings in 2020 to 2021; the court also ordered the judge to receive two hours of education on courtroom decorum and judicial deportment. The judge had presided over the hearings via Zoom, and the hearings had been livestreamed over YouTube. Including links to the YouTube videos in its opinion, the court stated that words “fall short of grasping” the essence of the judge’s conduct and that “truly, a picture is worth one thousand words, if not more.” For example, the judge had engaged in an extended rebuke of an assistant district attorney and the office of the district attorney in “an elevated, sometimes shrill, tone,” “hopping in her seat and waving her arms.” Further, in “a tone reasonable jurists would find disrespectful, if not contemptable, if directed at him or her,” the judge had engaged in “extended shouting” at two attorneys for calling another attorney’s discovery requests “nonsensical.”

The judge defended herself by noting that some of the people who viewed the court sessions on YouTube approved of her conduct. Finding her argument “troubling,” the court stated: “As said earlier, we are not entertainers; we do not play to the public crowd. Though the public is free to grade us through the ballot box, we grade our department through compliance with canons regulating judicial conduct.”

The court also rejected what it called the judge’s “24 years . . . four complaints” defense—that “because only four complaints had been filed during her 24-year tenure on the bench, she necessarily erred only four times.” However, that argument required the inference that everyone who witnesses improper conduct files a complaint, the court explained, and “we know that is not true.” It continued:

In our field, it is not unheard of for attorneys to withhold complaint due to fear of retaliation, which fear one witness actually mentioned. . . . Many also accept ill conduct as part and parcel of practicing our trade.

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“We are not  
entertainers.”

(continued)

“More importantly,” the court stated, “referencing the prior 20+/- years and lack of complaint is somewhat misleading and irrelevant” because “Zoom and universal viewing through YouTube” were not used earlier in the judge’s career.

The court concluded that judges should “practice what they preach” and not engage in conduct that they would find to be contempt of court if displayed by lawyers, such as using inappropriate words, speaking in a loud and angry voice, or leveling “extended and global accusations of misconduct.” The court noted that being “patient, dignified and courteous to litigants” does not require judges to “be robots, shorn of individual personality and character,” adding, “it is that individuality in spirit, experience, and background that refreshes our ranks and reinvigorates our jurisprudence.” However, it emphasized, “there are limits.”

### What judges said to or about litigants and attorneys that got them in trouble in 2023

- “Sit up straight. You’re not at home watching TV on the couch.” Judge to the parents in a juvenile matter. [Kelliher](#) (Arizona Commission) (reprimand).
- “If she goes on the stand at a hearing later and lies, it’s not going to be a fun time for her, I guarantee you;” and “You can understand why she’s not going to have any credibility with the court at this point.” Judge about defendant during a probation revocation arraignment. [LaSota](#) (Arizona Commission) (reprimand).
- “I know you got a solid foundation in Christ. I don’t know what you guys’ beliefs are, but I know you do. If you have that, we can modify this thing to where you guys can have contact through email and maybe try to work this out to where you can be good citizens.” Judge during a hearing involving feuding neighbors. [Staggs](#) (Arizona Commission).
- “Ma’am if you’re not high, then I need to find a different job. I don’t think I need to find a different job;” “Ask yourself why we are here. Are we here because you’ve made good decisions?;” and “We don’t believe you. Your words don’t matter. Trust but verify.” Judge to the mother during a hearing in a juvenile case. [Kelliher](#) (Arizona Commission) (reprimand).
- “Your behavior is self destructive. You might as well stand up and start banging your head against that wall. You’re killing yourself. \* \* \* Do you want to enter a plea or not? . . .”; and “How do you plead? You’re going to plead no contest. Remember that. How do you plead?” Judge to defendant at pretrial hearing. [Gaul](#) (Ohio Supreme Court) (one-year suspension without pay for this and other misconduct).

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- “My brother,” and “This isn’t the drive-through window at Burger King, my friend. You don’t get it your way.” Judge to Black defendant at arraignment. *Gaul* (Ohio Supreme Court) (one-year suspension without pay for this and other misconduct).
- “Tough guy;” “I hope you meet someone just like yourself one day;” and “If somebody called [my] grandfather a SOB we would be in more than a cuss fight, we would be in a fist fight and probably to the death.” Judge to litigant in courtroom. *Stokes* (Tennessee Board) (reprimand).
- “How many cops did you take down?;” “It’s going to be an expensive lesson;” and “Look at me. Stay the hell out of trouble, will ya?” Judge to three defendants at their arraignments. *Hall* (New York State Commission) (removal for this and other misconduct).
- “Snowflake,” “hypersensitive,” and “litigate like a grown up.” Judge referring to an attorney who used a fictitious name to file a defamation lawsuit alleging that member of the district attorney’s office referred to him as a terrorist. *Hunt* (California Commission) (admonishment for this and other misconduct).
- “Frankly, you can get a guy off the street that’s more experienced than me with this stuff.” Judge criticizing his temporary family court assignment. *Kassel* (New Jersey Supreme Court) (reprimand for this and related misconduct).
- “She’s better looking than [you].” Judge to assistant public defender about another public defender who was returning from vacation. *Persons* (New York Commission) (removal for this and other misconduct).
- “She likes the hole better than the pole.” Judge in the courtroom to two attorneys about a three-way relationship with his ex-wife and another woman. *Persons* (New York Commission) (removal for this and other misconduct).
- “B\*\*ch,” and “Maybe it’s because I didn’t have sex with her. Or maybe it’s because I did have sex with her.” Judge complaining about an assistant state’s attorney’s failure to acknowledge him. *Araujo* (Illinois Supreme Court) (disbarment for this and similar misconduct).
- “Okay, I’m going to go shoot myself. You guys have a good afternoon.” Judge at the end of a court day, when most people were off a WebEx hearing except for one defendant, the prosecutor, and court staff. *Ridge* (Utah Supreme Court) (censure).
- “How you guys think and how you dispense justice . . . it’s outrageous;” “This isn’t the first time this outrageousness has been brought to my attention . . . this is case, after case, after case on big cases . . . you guys just gotta get a conviction;” and “play[ing] games” and “being obstructive in all the big big cases.” Judge rebuking the office of the district attorney during a hearing. *Rangel*, 677 S.W.3d 918 (Texas Special Court of Review) (warning for this and other misconduct).

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- “The DA wants to put you in jail, but I’m not going to do that;” “Probation, do you really think this person deserves to go to prison?”; “The DA wants to send you away, how do you feel about that?”; and a deputy district attorney was “addicted to jail,” “coming from a position of anger,” and “coming from a position of fear.” Judge on various occasions during criminal proceedings in open court. [Vlavianos](#) (California Commission) (censure for this and other misconduct).

## Artificial intelligence and judicial ethics

### *Top judicial ethics and discipline stories of 2023*

In 2023, the ethical issues posed for judges by the use of artificial intelligence were addressed for the first time, in advisory opinions from Michigan and West Virginia. [Michigan Advisory Opinion JI-155](#) (2023); [West Virginia Advisory Opinion 2023-22](#).

The Michigan opinion explains that “artificial intelligence (AI) is not a single piece of hardware or software but a multitude of technologies that provide a computer system with the ability to perform tasks, solve problems, or draft documents that would otherwise require human intelligence.” The West Virginia opinion includes several definitions of AI.

Black’s Online Law Dictionary 2<sup>nd</sup> Edition defines “AI” as “a software used to make computers and robots work better than humans. The systems are rule based or neutral networks. It is used to help make new products, robotics, [and] human language understanding.” Webster’s Online Dictionary gives two definitions for the term “AI.” The first is “a branch of computer science dealing with the simulation of intelligent behaviors in computers.” The second definition, which is the most instructive, states that AI is the “capability of a machine to imitate intelligent human behavior.”

The West Virginia opinion notes that whether judges realize it or not, they already use some forms of AI in their everyday life, citing facial recognition on their cell phone, smart email categorization, friend suggestions from Facebook, recommendations on streaming apps, and directions on sites such as Google Maps. It also describes examples of “AI encroachment in the law.”

Both opinions conclude that judges have a duty to maintain competence in technology, including AI, and that that duty is ongoing. The opinions cite the code of judicial conduct provisions regarding public confidence in the integrity and impartiality of the judiciary; performing judicial duties, including administrative duties, diligently, competently, and without bias; and avoiding external influences on judicial conduct.

The Michigan committee explains that the ethics requirement that judicial officers competently handle their administrative duties includes

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“competency with advancing technology,” including “knowing the benefits and risks associated with the technology that judicial officers and their staff use daily, as well as the technology used by lawyers who come before the bench.” The Michigan opinion also describes why knowledge of AI technology is essential to ensuring that a judge’s use of AI does not conflict with other provisions in the code. For example, it states that the code requirements could be implicated if the algorithm or training data for an AI tool is biased.

Specifically, if an AI tool’s algorithm’s output deviates from accepted norms, would the output influence judicial decisions . . . ? An algorithm may weigh factors that the law or society deem inappropriate or do so with a weight that is inappropriate in the context presented . . . AI does not understand the world as humans do, and unless instructed otherwise, its results may reflect an ignorance of norms or case law precedent.

The West Virginia opinion advises that “a judge may use AI for research purposes” but cautioned that a judge must realize that no AI program is perfect. It explains that older AI models may fail to produce some relevant results or flag irrelevant documents. Further, it states that general use AI may produce inaccurate or offensive information and that, while much better, specific use AI “may have downsides if used for other than its intended purpose.”

The West Virginia opinion emphasizes that “because of perceived bias that may be built into the program,” “a judge should **NEVER** use AI to reach a conclusion on the outcome of a case.” The opinion also states that the use of drafting AI to prepare an opinion or order is “a gray area.”

It is one thing to use a product like Microsoft Word that corrects spelling, punctuation, grammar, maintains a built-in thesaurus and provides an editor’s score for the finished document. Those products are perfectly acceptable. However, the use of an AI product to actually draft the findings, conclusions and ultimate decisions should be met with extreme caution. The drafting product may have built in biases or over time may develop perceived biases based on the judge’s thought process. AI should never decide the conclusion.

Thus, the West Virginia opinion concludes that “judges should think of AI as a law clerk . . . .”

Importantly, the law clerk never decides the case. The judge alone is responsible for determining the outcome of all proceedings. At the end of the day if the judge somehow violates the Code of Judicial Conduct in reaching a conclusion on the case, he/she cannot say, “the law clerk made me do it” nor can he/she say, “AI made me do it.” The responsibility for the finished product rests solely with the judge. Therefore, just as a judge would do with a law clerk’s work, he/she must check the final draft of any written decision to make sure it contains the most current case law and is error free. . . .

As he/she would with a law clerk, the judge must decide which way he/she wants to rule and let the program know in advance to ensure that the product conforms with the decision rendered by the judge. Like the

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**Both opinions conclude that judges have a duty to maintain competence in technology, including AI, and that that duty is ongoing.**

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final draft of the law clerk, the judge must review it to ensure that it is what the judge wishes to convey to the parties in any given case and make changes where needed.

The opinion also advises that a judge should research specific AI products to ensure that confidentiality for certain cases like juvenile or abuse and neglect matters will be maintained and to guard against potential plagiarism, again stressing the need for a judge to double check the finished product.

The Michigan opinion concludes:

AI is becoming more advanced every day and is rapidly integrating within the judicial system, which requires continual thought and ethical assessment of the use, risks, and benefits of each tool. The most important thing courts can do today is to ask the right questions and place their analysis and application of how they reached their conclusion on the record.

### What judges said to or about court staff and other judges that got them in trouble in 2023

- “Just so all of you are on the same page, I am not retiring because I want to, I am leaving because several staff members here at the court filed complaints against me. The judicial conduct commission acted on those complaints and are requiring that I retire. Those staff members know who they are and I know too because their names were listed in the report. Thanks for playing the character assassination game, appreciate ya.” Judge in email to court staff. [Ridge](#) (Utah Supreme Court).
- “Don’t you ever f\*\*cking hang that phone up. Do you know who I am?” Judge to court clerk. [Gaujot](#) (West Virginia Commission) (admonishment for this and other misconduct).
- “I’m not making this up and I’m not trying to piss you off;” “you pissed me off with your attitude;” and “goodbye and have a good life . . . figure it out, please.” Judge to court interpreter about deactivating the interpreting program. [Rangel](#), 677 S.W.3d 918 (Texas Special Court of Review) (warning for this and other misconduct).
- “Sometimes I have naughty thoughts about you!! Do you want to know what they are about??” Judge in text to chief deputy clerk. [Howse](#) (Texas Commission) (reprimand).
- “So, I can’t tell a joke like this?”; “What about this joke?” and “So, I can’t say, ‘So that’s what she said?’” Judge during sexual harassment awareness and training program. [Hall](#) (New York State Commission) (removal for this and other misconduct).

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- “You know it when you hear the humming.” Judge to court clerk, who understood it as a reference to a vibrator. *Hall* (New York Commission) (removal for this and other misconduct).
- “I may be stupid, but I know when someone is saving face.” Judge in email to appellate court justice who had vacated one of his decisions. *Hunt* (California Commission) (admonishment for this and other misconduct).
- “Esther doesn’t want to do her f\*\*king job,” and “She won’t f\*\*king take it even though it’s her f\*\*king case.” Judge about another judge just before a remote judges meeting, apparently believing that she was muted. *Spear* (California Commission) (admonishment for this and other misconduct).
- “I didn’t know I had to tell people about my personal lunch plans.” Judge to supervising judge while being counseled about her absences and early departures. *Spear* (California Commission) (admonishment for this and other misconduct).
- “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.” Judge in email to her supervisors and colleagues when she was required to report when she arrived at the courthouse. *Davis*, 991 N.W.2d 212 (Michigan) (six-year conditional suspension for this and other misconduct).

## Judges and symbols

### *Top judicial ethics and discipline stories of 2023*

In 2023, a discipline case and an advisory opinion added to the guidance for judges with questions about displaying symbols in different situations.

A Texas Special Court of Review held that it was inappropriate for a judge to display a pride flag in her courtroom. *In re Speedlin-González*, Opinion (Texas Special Court of Review January 30, 2023). However, the court dismissed the warning, finding that the judge’s violation had not been willful.

During formal proceedings in her courtroom, the judge had placed a rainbow or pride flag beneath the county seal behind her bench, next to the U.S. and Texas flags. The pride flag had been given to the judge by a local LGBTQ organization to commemorate her investiture as its first openly gay member to take the bench. The judge explained that she displayed the flag “to encourage commemoration and community.” The Commission alleged that the “display unambiguously conveyed to the public a perceived partiality on behalf of the partisan interests of the LGBTQ community.”

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On review, rejecting the judge’s free speech argument, the Court found that she “misapprehends the nature of the forum from which she speaks” and held that the display “was government speech subject to government regulation without restriction by the First Amendment.” It explained:

Perhaps from her perspective, the display of the pride flag commemorating her ground-breaking investiture was a personal expression of identity and community, but a judicial bench is an indisputably non-public forum from which only the government may speak and a courtroom participant or observer quite understandably views speech therefrom from a different perspective. Upon entering the courtroom of County Court at Law No. 13, one encounters a typical setting: counsel tables, a jury box, a witness seat, court reporter and clerk’s stations all separated from the gallery by a bar, and a judge’s bench separated and raised above them all. Displayed at and behind the bench are the symbols of government: the American flag, the Texas flag, the seal of Bexar County, and ... the pride flag.

The judge (an elected official/employee of the state) presides over misdemeanor domestic violence cases which, much like felony cases, begin with a charge brought, “In the name and by authority of the State of Texas.” . . . When the judge enters the courtroom she performs judicial functions, i.e., impaneling juries, trying cases, pronouncing judgment, and imposing sentences.

“It is axiomatic that a courtroom is not the judge’s living room for her to decorate as she pleases. It is the taxpayer’s forum for dispensing justice to all citizens – defendants and victims alike.”. . .

A Texas courtroom should remain “terrain neutre” to maximize the perception of equality of all litigants and spectators.

The Court concluded: “Whether one agrees or disagrees with the content of Respondent’s intended message, it is inappropriate for a Texas courtroom.”

Noting that evidence had been presented of “flag displays and reflections of personal flair” by other judges, the court stated, “while not the subject of our review, judges so inclined to personalize their courtroom should be ever mindful of the obligation to maintain courtroom decorum to ensure a neutral, impartial environment dedicated to justice, fairness and equal treatment.” *See also Disciplinary Counsel v. Carr*, 214 N.E.3d 496 (Ohio 2022) (finding that judge undermined public confidence in the independence, integrity, and impartiality of the judiciary based in part on the appearance of her bench, which was “covered with an array of dolls, cups, novelty items, and junk that her own counsel found to resemble a flea market”).

### Advice

In [\*Arizona Advisory Opinion 2018-3\*](#), the Arizona advisory committee responded to an inquiry from a judge about posting “safe place” placards on courtroom doors to reassure LGBTQ youth that they “are in a safe place and dealing with safe people,” increasing their trust in those involved in the system. The committee stated:

Courthouses should be safe venues for everyone, and they should also be perceived in that fashion. Rule 2.3 prohibits bias, prejudice, and

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harassment on the basis of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. Rule 2.3's mandate extends to judges, court staff, lawyers, and "others subject to the judge's direction and control."

Thus, it advised, "judges may communicate the judiciary's commitment to prohibiting bias, prejudice, and harassment by posting signs or placards in courthouses that communicate Rule 2.3's message." However, it concluded: "signs or placards should not single out a subset of the groups enumerated in Rule 2.3 when offering such assurances."

Similarly, the New York advisory committee stated that a judge may not display a rainbow flag or rainbow heart sticker on the bench or in the courtroom to communicate to individuals identifying as lesbian, gay, transgender, or queer that they are in a "safe, affirming and inclusive space." [\*New York Advisory Opinion 2019-50\*](#). Calling the courtroom "a uniquely public place in which cases are adjudicated," the committee explained:

The courthouse and courtroom must convey to the public that everyone who appears before the court will be treated fairly and impartially. We recognize the good intentions underlying the proposal to convey assurances of welcome or acceptance to historically marginalized or disadvantaged groups by displaying their symbols in the courtroom. However, we believe that giving symbolic assurances for particular groups in the courtroom will not promote public confidence in the judiciary's impartiality. . . .

In 2023, a judge who was member of an association of LGBTQ+ judges asked the New York advisory committee if they could display rainbow flags or LGBTQ+ pins or signs in their chambers or wear the association's pins or generic rainbow pins on their personal clothing. [\*New York Advisory Opinion 2023-147\*](#).

Distinguishing its previous opinion, the committee stated that a display in a judge's personal chambers requires a different analysis than a display in a courtroom or on the bench. It explained:

In contrast to a courtroom, where cases are adjudicated and there is a presumption of public access, chambers may for some purposes "be considered generic in nature," like an office, "rather than representing a specifically judicial location" . . . . We have thus said judges may display photographs and other memorabilia of current or former elected officials in chambers, although the judge must "carefully consider the content, context and circumstances under which [they] are to be displayed" . . . .

The committee concluded that displaying rainbow pins, flags, or signs in the judge's personal chambers or on their personal clothing does not detract from the dignity of judicial office, "cast reasonable doubt on the judge's capacity to act impartially," manifest bias or prejudice based on sexual orientation, gender identity, gender expression, or other grounds, or "suggest a predisposition to decide cases in a specific way." Thus, it stated that such displays did not violate ethical standards.

In contrast to displays on personal clothing, the Arizona committee advised that a judge's robe should be free of adornment, including symbols, pins, or messages. [Arizona Advisory Opinion 2018-3](#). It explained:

No matter how worthy the cause suggested by items such as a rainbow pin, domestic violence awareness ribbon, cross, or military veteran's insignia, the judicial robe should not serve as a platform for conveying messages or for communicating a judge's personal beliefs or extrajudicial activities.

See also [Rule 2.340](#), Florida Rules of Judicial Administration ("During any judicial proceeding, robes worn by a judge must be solid black with no embellishment"); [Michigan Advisory Opinion JI-68](#) (1993) (a judge may participate in health education and social awareness activities such as AIDS prevention and encourage other persons to support the same cause but should not wear on the judicial robe a symbol indicating the judge's support or opposition to a particular political, social, or charitable/civic cause, for example, a red AIDS awareness ribbon).

### What judges said outside the courthouse that got them in trouble in 2023

- "Judge Dredd." Graphic on judge's car. [Persons](#) (New York Commission) (removal for this and other misconduct).
- "Boobies Make Me Smile." Bumper sticker on judge's car. [Persons](#) (New York Commission) (removal for this and other misconduct).
- "Stupid b\*\*ch." Judge to teacher whose car was double parked in front of a school, blocking the judge. [Epstein](#) (New York Commission).
- "Why don't you be a \*\*\*\*\*, you don't know what the f\*\*\* is going on here," and "You don't know what's going on, shut up, you don't have a clue." Judge to a third party at the scene of a police investigation at his son's home. [Davis](#) (Indiana Commission) (admonition).
- "On Official Business." Placard judge placed on her vehicle when she parked in a handicap loading zone at a gym. [Davis](#), 991 N.W.2d 212 (Michigan) (six-year conditional suspension for this and other misconduct).
- "I'm Judge Williams, and, I don't . . . why are you stopping me?" and "You're going to have to do something with your police officers." Judge to police officer who stopped him for driving with a phone in his hand and later to the mayor. [Williams](#), 991 N.W.2d 212 (West Virginia) (six-month suspension, \$5,000 fine, and censure).
- "Officer . . . I'm a judge . . . okay, I'm not lying . . . I'm just saying I am not lying to you. I'm telling you that this guy threatened my life." Judge to

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- police officer responding to a dispute at a gas station. [Hall](#) (New York State Commission) (removal for this and other misconduct).
- “Show mercy,” and “privilege to call friend.” Judge in a letter signed with his title to a federal judge sentencing two of his friends. [Jones](#) (Tennessee Board).
  - “My mail carrier is on for a parking ticket. I told her I would talk with you. If you could take her postal service into account when deciding whether or not to go lower on the fine than [the village prosecutor] is recommending that would be great.” Judge to another judge. [Leavitt](#) (New York Commission) (admonishment).
  - “Why’s my son in handcuffs?” and “[Why is an officer] “going through his pockets?” Judge at son’s traffic stop. [McKnight](#) (Pennsylvania Court of Judicial Discipline) (200-day suspension without pay for this and related misconduct).
  - “Bodas en Español” and “Juez Israel B. García, Jr.” Judge in advertisement for his performance of weddings. [Garcia](#) (Texas Commission) (admonition).

## Code of conduct for the U.S. Supreme Court

*Top judicial ethics and discipline stories of 2023*

In its introduction, the [Code of Conduct for U.S. Judges](#) adopted by the U.S. Judicial Conference lists the federal judicial officers it applies to; U.S. Supreme Court justices are not included in that list.

In November, the U.S. Supreme Court filled that gap and adopted the [Code of Conduct for Justices of the Supreme Court of the United States](#). In a statement, the Court explained:

The undersigned Justices are promulgating this Code of Conduct to set out succinctly and gather in one place the ethics rules and principles that guide the conduct of the Members of the Court. For the most part these rules and principles are not new: The Court has long had the equivalent of common law ethics rules, that is, a body of rules derived from a variety of sources, including statutory provisions, the code that applies to other members of the federal judiciary, ethics advisory opinions issued by the Judicial Conference Committee on Codes of Conduct, and historic practice. The absence of a Code, however, has led in recent years to the misunderstanding that the Justices of this Court, unlike all other jurists in this country, regard themselves as unrestricted by any ethics rules. To dispel this misunderstanding, we are issuing this Code, which largely represents a codification of principles that we have long regarded as governing our conduct.

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Commentary to the justices' code states that it "is substantially derived from the Code of Conduct for U.S. Judges, but adapted to the unique institutional setting of the Supreme Court," noting that it "does not adopt the extensive commentary from the lower court Code, much of which is inapplicable." It also explains that some of the "broadly worded general principles" in the code, such as the requirements that justices maintain "public confidence in the integrity and impartiality of the judiciary" and be "patient, dignified, respectful, and courteous" must be understood in light of "the often sharp disagreement concerning matters of great import that come before the Supreme Court."

The canons in the justices' code use the terms "should" and "should not" throughout, like the code for other federal judges (with one exception), but unlike the American Bar Association *Model Code of Judicial Conduct* and most state codes. Those other codes use "shall" and "shall not" to indicate a mandatory provision but use "should," "should not," "may," and "may not" to indicate which "provisions are committed to the personal and professional discretion of the judge."

The one use of "shall" in the canons for other federal judges provides that, "A judge *shall* disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned," and then lists the specific examples of circumstances in which disqualification is required. Canon 3C(1) (emphasis added). Canon 3B(2) of the justices' code provides: "A Justice *should* disqualify himself or herself in a proceeding in which the Justice's impartiality might reasonably be questioned" (emphasis added). The commentary explains that, although "the Justices follow the same general principles and statutory standards for recusal as other federal judges, . . . the application of those principles can differ due to the effect on the Court's processes and the administration of justice in the event that one or more Members must withdraw from a case." While "lower courts can freely substitute one district or circuit judge for another," it states, there is no such substitution for justices, and "the loss of even one Justice may undermine the 'fruitful interchange of minds which is indispensable' to the Court's decision-making process;" "have a 'distorting effect upon the certiorari process;" and risk "the affirmance of a lower court decision by an evenly divided Court—potentially preventing the Court from providing a uniform national rule of decision on an important issue."

Canon 3B(4) of the justices' code states: "Neither the filing of a brief amicus curiae nor the participation of counsel for amicus curiae requires a Justice's disqualification."

### Other provisions

Canon 4G of the justices' code provides that, "A justice should not to any substantial degree use judicial chambers, resources, or staff to engage in *activities that do not materially support official functions or other activities permitted under these Canons*" (emphasis added). The italicized section is an addition to the rule for other federal judges. The commentary explains:

The Center for  
Judicial Ethics  
website has [links](#)  
to judicial conduct  
commissions  
and judicial  
ethics advisory  
committees.

[This provision] recognizes the distinctive security concerns that the Justices face as high-profile public figures and allows the Justices to accept comprehensive security protection. . . . It also allows Court officials and chambers staff to perform their official duties in enhancing security and providing legal, ethics, and other appropriate assistance to the Justices in light of the high public interest in the Justices' activities and the acute security concerns that are distinct from such concerns for lower court judges. And, consistent with historic practice, chambers personnel including law clerks may assist Justices with speeches, law review articles, and other activities described in Canon 4.

The commentary notes that "Canon 4D(3) and 4H articulate the practice formalized in 1991 of individual Justices following the financial disclosure requirements and limitations on gifts, outside earned income, outside employment, and honoraria. Justices file the same annual financial disclosure reports as other federal judges."

The justices' code includes some specific guidance regarding participating in events that is not in the code for other federal judges.

- "A Justice should not speak at an event sponsored by or associated with a political party or a campaign for political office." Canon 4A(1)(a).
- "A Justice should not speak at or otherwise participate in an event that promotes a commercial product or service, except that a Justice may attend and speak at an event where the Justice's books are available for purchase." Canon 4A(1)(b).
- "A Justice should not speak to or participate in a meeting organized by a group if the Justice knows that the group has a substantial financial interest in the outcome of a case that is before the Court or is likely to come before the Court in the near future." Canon 4A(1)(c).
- "In deciding whether to speak or appear before any group, a Justice should consider whether doing so would create an appearance of impropriety in the minds of reasonable members of the public. Except in unusual circumstances, no such appearance will be created when a Justice speaks to a group of students or any other group associated with an educational institution, a bar group, a religious group, or a non-partisan scholarly or cultural group." Canon 4A(1)(e).

The justices' code does not include an enforcement mechanism but that is also true of the code for other federal judges and the state codes. Complaints about other federal judges are filed under [The Judicial Conduct and Disability Act of 1980](#), which does not apply to the justices; complaints about state courts judges are enforced through discipline procedures adopted by constitutional provisions, statutes, or court rules separate from the code of judicial conduct.

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