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State judicial discipline in 2014

From 1980 through 2013, approximately 405 judges were removed from office as a result of state disciplinary proceedings. In 2014, 10 judges (or former judges in two cases) were removed. In addition, one judge was suspended without pay until the end of her term and censured; two judges were retired due to disabilities; and one former judge was permanently barred from judicial office and censured. Fourteen additional judges resigned or retired in lieu of discipline pursuant to public agreements with conduct commissions

Further, 94 judges (or former judges) received other public sanctions. Over one-third of the sanctions were imposed pursuant to the consent of the judges.

- Sixteen judges were suspended without pay for from

30 days to one year. (Two of the suspensions were stayed in whole or part.)

- Fifteen judges were publicly censured. (One censure included the judge's agreement to resign; one included a \$2,000 fine.)
- Public reprimands were issued to 39 judges. (One reprimand included an order to resign effective December 31 and a bar to further service in judicial office until completion of a treatment program; one included a \$25,000 fine.)
- Fifteen judges were publicly admonished.
- One judge received a public warning; one received a letter of informal adjustment; one private reprimand was made

continued on page 2

Top judicial ethics stories of 2014

“Commit the oldest sins the newest kind of ways”

From Shakespeare, *Henry IV*, Part 2, Act 4, Scene 5

Inappropriate private comments by judges are not new to the internet age, but the ease of electronic communication increases the likelihood such comments will become public.

The Arkansas Supreme Court removed a judge for comments he posted on “Tiger Droppings,” a public Louisiana State University sports fan forum page, in addition to other misconduct. *Judicial Discipline and Disability Commission v. Maggio*, 440 S.W.3d 333 (Arkansas 2014). The decision was

based on a “report not contested” filed by the Judicial Discipline and Disability Commission (<http://www.arkansas.gov/jddc/pdf/pr080614.pdf>).

Beginning in November 2005, the judge made posts as “geauxjudge” on the fan-site from his telephone, his personal home computer, and the office computer owned by the county and supplied to his circuit court office. The Commission found that the judge's comments were not anonymous, stating “it took little time . . . to find numerous facts in the posts that proved [his] actual identity.” The Commission

continued on page 7

**INSIDE
THIS
ISSUE**

1 State judicial discipline in 2014

1 Top judicial ethics stories of 2014

2 What they said that got them in trouble

11 Quotable Quotes

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public pursuant to the judge's waiver; one private warning was made public pursuant to the commission's discretion.

- In bar discipline proceedings, one judge's law license was suspended for one year for her conduct as a judge (her judicial position does not require a law license), and four former judges were disciplined for their conduct as judges.

Maladministration

Two of the removal cases involved substantial administrative failures by the judges, coupled with refusal to accept assistance and inappropriate demeanor, and aggravated by failure to cooperate in the discipline investigation.

What they said that got them in trouble

"You cannot continuously argue with the Court! Because you're going to lose! I don't care if I'm right, wrong, indifferent - I could be speaking Swahili, you're going to lose. You know why? One, I'm the judge. Two, I'm the judge. Three, I'm the judge." Judge to attorney who asked to put additional information on the record regarding her postponement request. *Mays*, 101 A.3d 1042 (Maryland 2014) (*approving* <http://tinyurl.com/2338bup>).

"Was I a party to that contract?" Judge refusing to allow attorney to confer with her client about withdrawing his plea after the judge rejected a plea agreement. *Walters* (Minnesota Board 2014) (<http://tinyurl.com/m8r8hfy>).

"I'll explain it to you sometime when you pay tuition." Judge when attorney asked why the judge had overruled an objection. *Sohigian* (California Commission 2014) (<http://tinyurl.com/mpw9lba>).

"This is the first time I've seen you, but if you are exposing your daughter to one-fifth of the attitude I'm getting from you right now, you might as well have her start walking the streets as a hooker, because that's the life you're going to subject her to when you treat her like this, when you flash this attitude like this." Judge during hearing in family court case. *Healy* (California Commission 2014) (<http://tinyurl.com/onlxs6g>).

"She ought to be working. She can't sit around and eat Bon-Bons." Judge in hearing about whether a litigant was voluntarily under-employed. *Solomon* (Tennessee Board 2014) (<http://tinyurl.com/n3ag9j6>).

"I think he understands English. The last time I heard, I think Puerto Rico was bilingual." Judge failing to appoint an interpreter for a Spanish-speaking tenant in a summary eviction. *Merino* (New York Commission 2014) (<http://tinyurl.com/lh3eaot>).

The Arizona Supreme Court removed a judge and barred him from judicial office for failing to effectively oversee court administration, inefficient and ineffective calendar and court management, prohibiting clerk/staff training, hostile work environment, poor demeanor, lack of professionalism and decorum, questionable judgment, and racially discriminatory or offensive remarks. *Inquiry Concerning Sulley*, Order (Arizona Supreme Court September 23, 2014) (<http://www.azcourts.gov/portals/137/reports/2014/14-114.pdf>). The Court did not issue an opinion; this summary is based on the Commission's findings, conclusions, and charges.

"I don't find their testimony convincing and I don't find it believable." Judge finding two defendants guilty after a trial for which he had denied them a public defender and during which he had examined the police officer because the prosecutor was absent. *DiLeo*, 83 A.3d 11 (New Jersey 2014).

"This court respectfully suggests that the Court of Appeals went astray in those cases." Judge explaining why he was not following holdings that immigration consequences should not be considered in sentencing. *Cahill* (Minnesota Board 2014) (<http://tinyurl.com/lwkvbzt>).

She "should have used that law school money and gone to Jenny Craig instead." Judge to court staff about a deputy prosecutor. *Brown*, 4 N.E.3d 619 (Indiana 2014).

Defendant is "discharged . . . from all further liability for the offense." Judge in numerous acquittal orders entered without the prosecutor receiving notice of trials or filing motions to dismiss. *Cedillo* (Texas Commission 2014) (<http://tinyurl.com/nk6ehkk>).

"It was and, to a very large part, still is the culture of the people in charge to dictate by directly telling you or by innuendo you will be fired if you do not do as they say." Judge explaining why he had dismissed hundreds of citations at the request of local politicians and officials. *Romo* (Texas Commission 2014) (<http://tinyurl.com/nk6ehkk>).

"Prosecutor dismisses." Judge in false journal entry dismissing ticket received by attorney who was representing him. *Hale* (Ohio Supreme Court November 2014) (<http://tinyurl.com/nboq3vw>).

"Laws are enforced in a discriminatory fashion." Judge at a symposium on racial profiling. *Cohen* (Florida Supreme Court 2014) (<http://tinyurl.com/mcl3eme>).

Much of the evidence in the case was part of an independent audit of the two courts over which the judge presided (one municipal court and one justice court). The audit had found, for example, \$112,588.97 in undeposited funds in the municipal court offices, over \$65,600 of which was in opened or unopened mail on top of a desk. As a result of the audit, the Arizona Supreme Court placed the judge's courts under the administrative control of a superior court judge. The new administrative team "discovered a complete systems breakdown."

The Commission concluded that the broad-ranging misconduct "has likely resulted in a substantial negative impact

on the public's respect for the judiciary" and directly injured the parties in at least seven cases. The Commission noted that the judge was an experienced judge and attorney and there was no indication that his misconduct was the result of improper or insufficient training or resources but that he "willfully avoided the assistance and training for himself and his staff that could have ameliorated his misconduct or its impact on the public." The Commission also noted that the judge failed at every opportunity to cooperate fully and honestly in its investigation, adding that, if he had been

continued on page 4

"Cheap shot." Judge in ex parte telephone conversation with an attorney who had filed a disqualification motion. *In re Free* (Louisiana Supreme Court December 2014) (<http://tinyurl.com/prxw3zd>).

"If this were still the law firm, I'd have taken care of the problem a long time ago, but since you work for the state it's going to be a little tougher." Judge to court reporter who resisted his efforts to talk to her and have lunch with her. *Corwin*, 843 N.W.2d 830 (North Dakota 2014).

"It was horrible enough as it is just given her age, but it wasn't this forcible beat-up rape." Judge explaining to the press his decision to suspend all but 31 days of a sentence for sexual intercourse without consent. *Baugh*, 334 P.3d 352 (Montana 2014).

"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 "it 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." Judge to reporter explaining why she had changed a child's name from Messiah to Martin against his parents' wishes. *Ballew* (Tennessee Board 2014) (<http://tinyurl.com/mkgtr3d>).

"In light of the fact he'll be going for next 8-9 years while still in [the school] system obviously she's got nothing to lose by litigating." Judge in letter to school counsel on judicial stationery seeking funding for summer camp for the son of the woman with whom he was in a relationship. *Isabella* (New Jersey Supreme Court 2014) (<http://tinyurl.com/n2jxx9n>).

"Ask Clancy Jayne Anything." Statement on a judge's website. *Jayne* (Arizona Commission 2014) (<http://tinyurl.com/onxff8y>).

"Help me help little ones have a good Christmas. We will be having a toy drive at Judge Nicholds Office. Anything would be greatly appreciated. Thank you for the help." Judge on flyer for church's Christmas toy drive. *Nicholds* (Texas Commission 2014) (<http://tinyurl.com/lwzv2ex>).

"From my years in the courtroom: 1) All women have an agenda. 2) Women look at 2 bulges on a man A) the front and/or B) the back (wallet). 3) As long as either one is big enough they can make do without the other." Judge on university fan-site. *Maggio*, 440 S.W.3d 333 (Arkansas 2014) (reviewing <http://tinyurl.com/knbzl49>).

"I'll C U 2morrow, & WE'LL 'HAVE FUN':-)." Judge in text to complaining witness in child support case several days after telling the Judicial Tenure Commission he had ended their affair. *McCree*, 845 N.W.2d 458 (Michigan 2014).

"Like." Judicial candidate on Facebook post endorsing a candidate for public office. *Cohen* (Kentucky Commission 2014) (<http://tinyurl.com/pyx59mc>).

"Colleen Mary O'Toole, Judge, 11th District Court of Appeals." Former judge on a badge she wore during a campaign in which she was not the incumbent. *O'Toole* (Ohio Supreme Court September 24, 2014) (<http://tinyurl.com/kkbfa95>).

"Fight the good fight." Judge explaining her failure to cooperate with the Judicial Qualifications Commission. *Hawkins*, 151 So.3d 1200 (Florida 2014).

"Witch hunt." Judge characterizing special counsel's investigation of her extra-marital affair with the director of the community corrections program. *Wilfong*, 765 S.E.2d 283 (West Virginia 2014).

facing physical or mental health issues, he could have hired counsel or sought the appointment of a guardian. Instead, the Commission found, he “appeared interested only in pursuing a delay of the resolution of this matter beyond the completion of his current term of office.”

The Indiana Supreme Court removed a judge for (1) failing to maintain court files and records in an accessible manner; (2) failing to complete paperwork necessary to effectuate court decisions, delaying many rulings, failing to rule promptly on motions to continue, continuing bench trials if she believed the trials could not be completed by 4:00 p.m., and unnecessarily continuing several trials; (3) delaying the release of 10 defendants from jail; (4) failing to cooperate with the court’s executive committee to address the issues that led to the delayed releases; (5) treating some attorneys, particularly public defenders, rudely and discourteously; (6) making derogatory and inappropriate remarks to court employees, treating court employees discourteously and with hostility, and favoring some court employees over others; and (7) retaliating when she thought court staff had complained to or cooperated with the Commission on Judicial Qualifications. *In the Matter of Brown*, 4 N.E.3d 619 (Indiana 2014).

The Court found “particularly egregious” that, as a result of the judge’s conduct, 10 defendants were not promptly released from jail when they should have been. The delays, from three to 22 days, resulted from the judge failing to complete paperwork showing that the defendants were being ordered released and failing to train, instruct, and supervise the commissioner and other court staff to up-date court records and correctly fill out, and catch errors in, minute entries. Although she was alerted to several of the delays, the judge did not immediately take any action to remedy the problems.

The Court stated that the judge’s post-hearing apology was “entitled to little mitigating weight” because she made it after putting “the Commission to its burden of proof at a lengthy hearing” and after failing to cooperate in the Commission investigation, including refusing to take an oath at her deposition. In aggravation, the Court noted that the judge “was not a novice” and others in the court system had attempted to assist her. “Regrettably,” the Court concluded, the judge’s “pattern of neglect, hostility, retaliation, and recalcitrance toward investigating officials indicates an unwillingness or inability on her part to remedy deficiencies, alone or with others’ assistance.”

Belated remorse

Obstruction was a factor and belated remorse was unavailing in another removal case. The Florida Supreme Court removed a judge for operating Gaza Road Ministries, a for-profit business, from her judicial chambers, on official

time, and using judicial resources and her judicial assistant during work hours; offering to sell the business’s products (books) in the courthouse to persons over whom she had influence and authority, including lawyers who appeared before her and courthouse employees; promoting the sale of the books on a web-site that included photographs of her in her robes; failing to pay state sales tax on the book sales and to register the name of her business under the fictitious name law; and a lack of candor during the investigation. *Inquiry Concerning Hawkins*, 151 So.3d 1200 (Florida 2014).

The judge had given materially misleading and incomplete statements during a deposition by the Judicial Qualifications Commission, refused to answer questions during the investigation, and refused to turn over documents after being ordered to do so. “Especially distressing,” the Court stated, was the judge’s deletion of “Gaza Road Ministries financial data in the early morning hours of the day of her deposition after that data had been subpoenaed and after Judge Hawkins had originally agreed to produce it.”

The Court acknowledged the judge’s “generally exemplary record as a dedicated public servant who cares about others and who has been efficient and innovative in dispensing justice.” It also noted that the “sale of her book to employees and lawyers in the courthouse, standing alone, would not justify removal” but stated that the judge “employed court resources in the operation of her business for a lengthy period of time and failed to see that such conduct was improper under the Canons of Judicial Conduct.”

The Court emphasized that the judge had not accepted responsibility for her actions or acknowledged their impropriety until her response to the Court’s second order to show cause why she should not be removed. The Court concluded that a belated apology when faced with removal “fails to overcome the grievous nature of her conduct during this proceeding, which was ‘fundamentally inconsistent with the responsibilities of judicial office’ and which ‘struck at the heart of judicial integrity.’” Thus, it concluded, her “prior record of service and good intentions” did not outweigh her misconduct.

Repeat offenders

That a judge had received a previous sanction was a significant aggravating factor in three removal cases.

The New York Court of Appeals removed a surrogate judge for presiding over matters involving (1) a lawyer who was her close friend and personal attorney; (2) a lawyer who was or had been her campaign manager; and (3) a lawyer who was her former attorney. *In the Matter of Doyle*, 17 N.E.3d 1127 (New York 2014). The Court emphasized the 2007 censure the judge had received from the State Commission on Judicial Conduct for her misleading

and evasive testimony in its investigation of her role in a fund established to help pay for legal expenses of one of the lawyers involved in the current charges. One of the other lawyers involved in the current case had represented her in that earlier proceeding. The Court concluded:

Without question, a heightened awareness of and sensitivity to any and all ethical obligations would be expected of any judge after receiving a public censure. Petitioner's failure to exercise that vigilance within just a year of her prior discipline is persuasive evidence that she lacks the judgment necessary to her position.

The Mississippi Supreme Court removed a former judge and fined her \$1,000 for wrongfully incarcerating eight parents and three minors without affording them basic due process rights. *Commission on Judicial Performance v. Darby*, 143 So. 3d 564 (Mississippi 2014). The Court noted that in 2011 it had publicly reprimanded the judge and fined her \$500 for depriving a parent of her constitutional right of due process. The Court also noted that the judge's conduct had a negative impact on the 11 citizens she wrongfully incarcerated and had resulted in a "no confidence resolution" by the county board of supervisors.

In *In re McCree*, 845 N.W.2d 458 (Michigan 2014), the Michigan Supreme Court emphasized that the judge's willingness to engage in a sexual relationship with a complaining witness in a case pending before him while the Judicial Tenure Commission was investigating other allegations "demonstrates the extent of his disregard for the rules of judicial conduct." In April 2012, the judge had told a reporter, "There is no shame in my game" about a picture of himself shirtless he had sent to his bailiff via cell phone. The Commission began investigating and eventually the Court censured the judge (with his consent) for bringing "shame and obloquy" to the judiciary by his flippant manner in the interview. *In re McCree*, 821 N.W.2d 674 (Michigan 2012).

In May 2012, the judge began a sexual relationship with Geniene Mott, the complaining witness in a case in which Robert King was charged with failure to pay child support.

In an e-mail to Mott in June, he stated:

My Judicial Tenure Commission matter has me nervous, as you might expect. I have to be real careful until this matter is put to rest. I can only ask humbly for your indulgence. Sorry. Second, you are the complaining witness on a case that is before me. Naturally if it got out that we were seeing each other before your B.D.'s [baby daddy's] case closed, everybody could be in deep shit.

In a text message, he said:

Yeah, I'm DEEPLY concerned that certain levels of 'us' remain COMPLETELY UNDETECTED as long as U'r still a litigant N case B4 me & while my nuts R still on a chopping block B4 the JTC.

They also had numerous ex parte communications about Mott's case often via text messages. For example:

Respondent: We'll hold the case till U get there, or B sure 2 call [the prosecutor] ahead of time so she'll know U (the 'C.P.') will B N the courtroom. I figured if [he] hasn't come current by his courtdate, he gets jail 2 pay. If he says he can bring me the \$\$ I'll put him on a tether till he brings the receipt 2 FOC or do 'double time'.

Respondent: . . . No, some guys say if they get locked up they can't bring the \$\$ but if let out they can. So here's the deal: go 2 jail (150 days), release upon payment of \$1500. OR, get a tether & bring back w/n 30 days \$2500 or serve 9 months! BONUS: pay w/n the 30 days, remove tether

Mott: He's about 15k behind ... 2500 is asking much plus YOU only ordered him 2 pay \$50 bucks a month towards arrage..@ that rate ill be getting CS [child support] til Racheal is 26

Respondent: OK, the math will be based on his failures since being placed on probation, but if U'r righ the threat of jail will loosen his purse strings!

Mott: ok so let's go with what u proposed go to jail (150 days), release upon payment of \$1500. OR, get a tether & bring back w/n 30 days \$2500 or serve 9 months! BONUS: pay w/n 30 days, remove tether

Mott: He will pay cause they won't let him go 2 jail PLUS u sending him 2 jail would violate his oakland county probation and he gets 10yrs.

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continued on page 6

Respondent: Cool. I'll run it by the prosecutor.

Mott: Make sure she's aware they already let him off by accepting 400 for probation when they told him 1000

* * *

Respondent: Will do. That's good 2 know.

The judge did not transfer the case to another judge until September 18.

The judge did not dispute that he and Mott had sexual intercourse in his judicial chambers, that he permitted Mott to enter the courthouse through an employee entrance without going through security, that he allowed her to remain alone in his chambers while he was on the bench, that he arranged for Mott to park her vehicle in an area reserved for judges, and that he brought Mott's cell phone into the courthouse for her, in violation of the court's security policy, so that they could communicate while he was on the bench. When their relationship soured, the judge concocted charges of stalking and extortion against Mott and sought to use the prosecuting attorney's office as leverage against her. Finally, the judge "engaged in a pervasive pattern of dishonesty that included lying under oath to the Commission and to the Master."

The Court concluded:

In respondent's words in his own defense, "Wade should have recused himself," but the failure to do so resulted in "no harm no foul." We disagree. The "harm" done was to the parties' rights to a fair legal process and the public's right to an impartial judiciary, and the "foul" committed was the resulting violation of Michigan's Code of Judicial Conduct.

Stress

The Illinois Courts Commission removed a judge from office for a mental disability that persistently interfered with the performance of her judicial duties. *In re Brim*, Order (Illinois Courts Commission May 9, 2014) (<http://www.illinois.gov/jib/Documents/Orders%20from%20Courts%20Commission/Brim.pdf>). After an incident on the bench and an incident in another courthouse in which she had been arrested after pushing a sheriff's deputy, the judge was diagnosed with bipolar disorder with psychotic features. Previously, she had been diagnosed with bipolar mood disorder and hospitalized five times for psychiatric-related issues.

The Commission expressed sympathy for the judge's mental health issues but concluded her "repeated failure to follow through with the proper medical treatment resulted in conduct that was prejudicial to the administration of justice and brought the judicial office into disrepute." The Commission stated:

Respondent testified that stress and being overworked trigger her mental breakdowns. The judicial office, due to the nature of the issues addressed and the extent of the caseload, is stressful. . . . The public expects and deserves predictability in the judicial process, and the unpredictable and unrecognizable nature of respondent's mental illness places the public at risk. While the testimony at the hearing before the Commission indicated that respondent's episodes would be minimal as long as she was on medication, there was still a five to ten percent chance of another episode. The specific incidents of misconduct in this case, and respondent's history of mental illness, demonstrate that respondent is unable to uphold the integrity of and promote public confidence in the judiciary.

Removal cases

The Pennsylvania Supreme Court affirmed without an opinion the decision of the Court of Judicial Discipline removing a judge (1) for lying repeatedly on the questionnaires he submitted to a bar association judicial selection commission while running for judicial office and (2) being held in contempt in a court case arising from a Philadelphia Board of Ethics complaint against a PAC he represented and, to avoid paying a court-ordered fine, dissipating the PAC's funds and engaging in delay, obfuscation, and deceit. *In re Nocella*, 102 A.3d 422 (Pennsylvania 2014), *affirming*, Opinion (June 26, 2013) and Sanction order (Court of Judicial Discipline August 5, 2013) (<http://www.pacourts.us/courts/court-of-judicial-discipline/court-cases/court-case-archive/judge-thomas-m-nocella-no-7-jd-12>).

The Pennsylvania Court of Judicial Discipline removed a former judge who had been convicted of 12 felonies in federal court based on his "participation in the infamous 'kids-for-cash' scheme," including racketeering, honest services mail fraud, money laundering conspiracy, conspiracy to defraud the U.S., and filing a materially false tax return. *In re Ciavarella*, Opinion (Pennsylvania Court of Judicial Discipline October 7, 2014) (<http://www.pacourts.us/courts/court-of-judicial-discipline/court-cases/court-case-archive/fmr-judge-mark-a-ciavarella-no-7-jd-11>).

The Arkansas Supreme Court removed a judge for comments he posted on a sports fan forum page, and other misconduct. *Judicial Discipline and Disability Commission v. Maggio*, 440 S.W.3d 333 (Arkansas 2014). For a longer discussion of the case, see "Top judicial ethics stories of 2014." ★

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Top judicial ethics stories of 2014 (continued from page 1)

gave examples of the hundreds of posts the judge made, including inappropriate gender, racial, and sexually related statements; legal advice on how to beat a DWI charge; comments on a closed adoption by a famous actress; and his wish to be assigned cases involving attractive women, sexual subjects, and nude pictures.

The Commission stated that the comments were “much more than a problem of taste, decorum or personal opinion.”

Your actions offended and, even worse, gave rise to legitimate concerns that bias would overcome fairness and due process for a large number of potential litigants and their attorneys. Even the cases that you decided based purely on the facts and the law are now suspect by parties who look at the kind of statement you made. Whether it is race, gender, sexual orientation or specific subject matter, your comments made it impossible for you to be taken seriously as a judge who would be fair and impartial. You essentially disqualified yourself from the bench.

In October, the Pennsylvania Supreme Court relieved Justice Seamus McCaffery with pay “on an interim basis of any and all judicial and administrative responsibilities” based on circumstances that “have been the subject of intense media attention and, individually and cumulatively, impact greatly upon the integrity of the judicial system.” (<http://www.pacourts.us/assets/files/newsrelease-1/file-3975.pdf?cb=75e495>). The justice had “publicly accepted responsibility for exchanging hundreds of sexually explicit emails with a member or members of the Office of Attorney General.” Shortly thereafter, the justice resigned and agreed not to seek senior judge status or election to judicial office, and the Judicial Conduct Board dismissed its investigation (<http://judicialconductboardofpa.org/resources/press-releases/>).

Hundreds of e-mails were also the basis of the reprimand of retired judge Richard Cebull by the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States, adopting and publishing an order of the 9th Circuit Judicial Council. *In re Complaint of Judicial Misconduct (Cebull)*, 751 F.3d 611 (U.S. Judicial Conference Committee on Judicial Conduct and Disability 2014). Cebull had sat on the U.S. District Court for the District of Montana. The judge had retired effective approximately six weeks after the Judicial Council’s order, before it became public. One of the complainants petitioned for review when the Council issued a revised order omitting some of its factual findings.

In February 2012, the judge, using his court e-mail account, forwarded to six friends a message under the subject line, “A MOM’S MEMORY.” The message was:

Normally I don’t send or forward a lot of these, but even by my standards, it was a bit touching. Hope it touches your heart like it did mine. A little boy said to his mother, Mommy, how come I’m black and you’re white? His mother replied, “Don’t even go there Barack! From what I can remember about that party, you’re lucky you don’t bark!”

At least one of his friends forwarded the judge’s e-mail to other people, and it reached a newspaper reporter. The judge told the reporter that he sent the e-mail because it was “anti-Obama” and “the only reason I can explain it to you is I am not a fan of our president, but this goes beyond not being a fan.” The Judicial Council noted the “nationwide media coverage” of the e-mail.

An investigation uncovered hundreds of inappropriate e-mails sent by the judge from his federal court account. The Council found:

The majority of the emails were political in nature. Whether they were cast as jokes or serious commentary, the emails showed disdain and disrespect for liberal political leaders. A significant number of emails were race related. Whether cast as jokes or serious commentary, the emails showed disdain and disrespect for African Americans, Native Americans and Hispanics, especially those who are not in the United States legally. A similarly significant number of emails related to religion and showed disdain for certain faiths. Approximately the same number of emails concerned women and/or sexual topics and were disparaging of women. A few emails contained inappropriate jokes relating to sexual orientation. Finally, a large number of emails related to pending legislation or an issue that could come before the court, such as immigration, gun control, civil rights, health care or environmental matters.

The investigation found no evidence of bias in the judge’s decisions.

The Judicial Council concluded that the “racist and political February 2012 email, particularly when coupled with the hundreds of other emails regularly sent from Judge Cebull’s court email account,” “reflects negatively on Judge Cebull and on the judiciary and undermines the public trust and confidence in the judiciary.” Stating “even if Judge Cebull intended his emails to remain private, he was indifferent to their potential negative impact,” the Judicial Council “strongly” condemned the judge’s e-mail practices and found that he had “violated his pledge ‘to uphold the integrity and independence of the judiciary.’”

Finding that the judge had also violated Canon 5, the Council stated that, although a judge may have political opinions and share those opinions in private among friends, “disseminating political opinions via a court email account to court staff and to individuals outside the judiciary

continued on page 8

contravenes this Canon.” The Council noted that the judge had “compounded his mistake . . . by making anti-Obama statements to reporters . . .”

Sex in chambers

Four judges were disciplined in 2014 for having sex in their chambers. As the California Commission on Judicial Performance explained (twice): “Engaging in sexual intercourse in the courthouse is the height of irresponsible and improper behavior by a judge. It reflects an utter disrespect for the dignity and decorum of the court and is seriously at odds with a judge’s duty to avoid conduct that tarnishes the esteem of the judicial office in the public’s eye.” The Commission also noted that judges who engage in sexual intercourse in the courthouse may expose court staff to a hostile work environment.

Thus, in unrelated cases, the Commission censured two judges for engaging in sexual activity in the courthouse and related misconduct. *In the Matter Concerning Steiner*, Decision and order (California Commission on Judicial Performance September 2, 2014) (http://cjp.ca.gov/res/docs/censures/Steiner_DO_Censure_09-02-14.pdf); *In the Matter Concerning Woodward*, Decision and order (California Commission on Judicial Performance September 2, 2014) (http://cjp.ca.gov/res/docs/censures/Woodward_DO_Censure_09-02-14.pdf).

In the other two cases involving sex in chambers, it was not only where the judge was engaging in sexual intercourse but with whom that constituted misconduct.

The West Virginia Supreme Court of Appeals suspended a judge without pay until the end of her term and censured her for her extra-marital affair with the director of the community corrections program while he and/or his subordinate staff were appearing in cases before her, and related misconduct. *In the Matter of Wilfong*, 765 S.E.2d 283 (West Virginia 2014). The judge conceded that she performed sexual acts with William Carter in her judicial chambers. At times when the judge and Carter were alone in chambers, court personnel found it necessary to knock on the door and interrupt so the judge could continue with court proceedings.

The Court acknowledged that the judge “probably, initially, intended her conduct with Mr. Carter to be nothing more than a private relationship between consenting adults,” but that she “carelessly and deliberately intertwined her affair with her judicial office, and in so doing seriously damaged public confidence in the integrity and impartiality of the judiciary.”

In *In re McCree*, 845 N.W.2d 458 (Michigan 2014), the Michigan Supreme Court removed a judge for engaging in a sexual relationship with a complaining witness in a case pending before him and related misconduct — including

having intercourse with her in his chambers. For a longer discussion of the case, see “State judicial discipline in 2014.”

Inappropriate relationships

Inappropriate relationship between judges and litigants, attorneys, or court staff featured in many judicial discipline cases in 2014.

- The Florida Supreme Court disbarred a former judge for a significant personal and emotional relationship with the lead prosecutor in a death penalty case that she failed to disclose in the case or during the Judicial Qualifications Commission investigation. *The Florida Bar v. Gardiner* (Florida Supreme Court June 5, 2014) (<http://www.floridasupremecourt.org/decisions/2014/sc11-2311.pdf>).

- The Nevada Commission on Judicial Discipline suspended a judge for three months without pay and censured him for maintaining a close social and personal relationship with a deputy district attorney while she actively litigated cases in his court, and related misconduct. *In the Matter of Jones*, Findings of fact, conclusions of law, and imposition of discipline (Nevada Commission on Judicial Discipline February 3, 2014) (<http://judicial.state.nv.us/Jones%20-%20Findings%20Conclusions%20Imposition%201206-218.pdf>).

- The Louisiana Supreme Court suspended a judge for 30 days without pay for taking an all-expenses-paid trip on a private jet to a hunting ranch with an attorney in a case shortly after the case was concluded, in addition to other misconduct. *In re Free* (Louisiana Supreme Court December 9, 2014) (<http://www.lasc.org/opinions/2014/1401828.opn.pdf>).

- The New Jersey Supreme Court publicly censured a judge for pursuing a personal relationship with the victim in a domestic violence matter pending before him after meeting her at a men’s club. *In the Matter of Montes*, Order (New Jersey Supreme Court May 22, 2014) (<http://www.judiciary.state.nj.us/pressrel/2014/pr140522a.pdf>).

- The West Virginia Judicial Investigation Commission publicly admonished a former magistrate for exchanging sexually explicit Facebook messages with a woman who had appeared before him in court. *In the Matter of Fowler*, Public admonishment (West Virginia Judicial Investigation Commission March 14, 2014).

- The Florida Supreme Court reprimanded a judge for an “inappropriate relationship” with her bailiff. *Inquiry Concerning Flood*, 150 So. 3d 1097 (Florida 2014).

- The South Carolina Supreme Court publicly reprimanded a former judge who had been convicted on charges that, in return for sexual contact, he gave two women money and/or other benefits for the handling and disposition of matters involving them. *In the Matter of Ferguson*, 762 S.E.2d 385 (South Carolina 2014).

Not all of the inappropriate relationships were social. The New Jersey Supreme Court suspended a judge for one month without pay for creating a conflict by soliciting an attorney to be her legal counsel in a personal matter even though she knew he was counsel in two matrimonial matters over which she was presiding; the judge also failed to immediately recuse herself from the attorney's matters and aided or passively complied with his concealment of the conflict. *In the Matter of Appleby*, Order (New Jersey Supreme Court November 5, 2014) (<http://www.judiciary.state.nj.us/pressrel/2014/pr141105a.pdf>).

Not all of the inappropriate relationships were congenial.

- The Texas State Commission on Judicial Conduct publicly reprimanded a judge for an adversarial relationship with the director of the community supervision and corrections department that improperly influenced his conduct and judgment, in addition to other misconduct. *Public Reprimand of Tittle* (Texas State Commission on Judicial Conduct May 21, 2014) (<http://www.scjc.state.tx.us/pdf/actions/FY2014-PUBSANC.pdf>).

- The Texas Commission publicly reprimanded a former judge for, in addition to other misconduct, using his position and authority to bully, retaliate against, and punish four attorneys for filing motions to recuse, grievances, criminal complaints, and removal actions against him and for their representation of his ex-wife or involvement in litigation involving his girlfriend. *Public Reprimand of Dupuy* (Texas State Commission on Judicial Conduct October 23, 2014) (<http://www.scjc.state.tx.us/pdf/actions/FY2015-PUBSANC.pdf>).

- The North Dakota Supreme Court suspended a judge for one month without pay for persisting in his unsuccessful efforts to meet a court reporter in non-work settings that she reasonably interpreted as seeking much more than an "amicable working relationship." *In the Matter of Corwin*, 843 N.W.2d 830 (North Dakota 2014).

Not all of the inappropriate relationships were with individuals. The Arizona Commission on Judicial Conduct publicly reprimanded a judge for serving on the board of directors of an organization to which her court referred litigants for services. *Lorono*, Disposition of complaint (Arizona Commission on Judicial Conduct May 19, 2014) (<http://www.azcourts.gov/portals/137/reports/2014/14-096.pdf>).

Changing names

Jaleesa Martin filed a petition to establish the paternity of her son, naming Jawaan McCullough as the respondent. On the birth certificate, the mother listed the child's name as "Messiah Deshawn Martin." The mother requested that the court determine the child's surname.

A hearing was held before Child Support Magistrate Lu Ann Ballew on August 8, 2013. At the beginning of the hearing, the father requested that the child's name be

changed to "Jawaan Paxton McCullough, Jr." Later in the hearing, however, both parents agreed to "Messiah" remaining the child's first name.

Contrary to the agreement of the parties, however, the magistrate ordered that the child's first name be changed to "Martin." In a statement of facts and reasons, the magistrate found that "Messiah means Savior, Deliverer, the One who will restore God's kingdom. 'Messiah is a title that is held only by Jesus Christ' and that 'labeling this child 'Messiah' places an undue burden on him that as a human being, he cannot fulfill.'" The father requested re-hearing before a chancellor.

On August 9th, during an interview broadcast on a TV station, the magistrate again stated 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 "it 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."

On September 18th, a chancellor vacated the magistrate's order and ordered that the child's first name remain "Messiah." In January 2014, the judicial district terminated Ballew's employment as a child support magistrate.

The Tennessee Board on Judicial Conduct subsequently censured the now-former child support magistrate. *In re Ballew*, Opinion (Tennessee Board on Judicial Conduct April 25, 2014) (<http://www.tsc.state.tn.us/boards-commissions/court-judiciary/disciplinary-actions>). The hearing panel concluded:

In ruling that the child's given name be changed and basing her decision as noted in the Statement supporting her decision, Magistrate Ballew inappropriately injected and applied her own religious beliefs in her decision, thus violating the Code of Judicial Conduct. We emphasize that Magistrate Ballew has every right to hold the very religious beliefs at issue in the case. However, the imposition of those beliefs by Magistrate Ballew upon the litigants is the inappropriate conduct involved in this case.

The hearing panel also found that the magistrate's statements during her TV interview violated the prohibition on judges publicly commenting on pending cases.

Chronological age

In 2008, the state of Montana charged Stacey Rambold, a high school teacher, with sexual intercourse without consent with a 14-year-old freshman girl. The victim committed suicide in early 2010. Later that year, the state agreed to defer prosecution if Rambold admitted to one count of sexual intercourse without consent and agreed to enter sex offender treatment. The state reinstated Rambold's prosecution after he was terminated from the treatment program.

continued on page 10

In April 2013, Rambold agreed to plead guilty to one count of sexual intercourse without consent. The state sought a sentence of 20 years in prison with 10 years suspended. Rambold asked that all but 30 days be suspended.

In a hearing in August 2013, the judge sentenced Rambold to 15 years in prison with all but 31 days suspended and credit for one day served. Speaking from the bench, the judge stated, among other things, that Rambold's victim was "a troubled youth, but a youth that was probably as much in control of the situation as [Rambold], one that was seemingly, though troubled, older than her chronological age."

The judge later explained to the press that "it was horrible enough as it is just given her age, but it wasn't this forcible beat-up rape."

As later noted by the Montana Supreme Court, the judge's sentence and rationale "sparked immediate public outcry," and the Judge Standards Commission received hundreds of complaints.

Shortly after sentencing, the judge sought to modify Rambold's sentence, apparently having concluded that the statute required a minimum of two years in prison. The Court blocked the judge's attempt because he lacked authority to revise a sentence he had already issued, but the judge "nevertheless held a hearing, at which he made additional public remarks on the case and his actions." Subsequently, finding the judge had lacked statutory authority to suspend all but 31 days of the teacher's sentence, the Court vacated the sentence and ordered that Rambold be re-sentenced by a different judge.

In disciplinary proceedings, the Court censured the judge and suspended him for 31 days without pay. *Inquiry Concerning Baugh*, 334 P.3d 352 (Montana 2014). The judge had waived formal proceedings, admitted that he violated the code of judicial conduct, and consented to a public reprimand or censure. The judge had earlier announced that he would not run for re-election; his term ended December 31, 2014.

The Court found that the judge's comments and his attempt to retract his sentence and rationale were inconsistent with Montana law and that his public statements attempting to justify his actions were inappropriate. The Court held:

Through his unlawful sentence, inappropriate rationale, and subsequent public comments, Judge Baugh has eroded public confidence in the judiciary and created an appearance of impropriety, therefore violating the Montana Code of Judicial Conduct. He has caused Montana citizens, as well as others, to question the fairness of our justice system and whether prejudice or bias affected the outcome of the Rambold case. There is no place in the Montana judiciary

for perpetuating the stereotype that women and girls are responsible for sexual crimes committed against them.

The other side of the bench

Every year, there are judges or former judges convicted of and/or disciplined for criminal conduct, both the types of crimes anyone can commit and the types unique to judges. See, e.g., *Inquiry Concerning Sheehan*, 139 So. 3d 290 (Florida 2014) (reprimand of a judge for driving under the influence); *Ohio State Bar Association v. McCafferty*, 17 N.E.3d 521 (Ohio 2014) (indefinite suspension of the law license of a former judge convicted of lying to the FBI during an investigation of corruption among public officials and employees); *Office of Disciplinary Counsel v. Ballentine* (Pennsylvania Supreme Court June 16, 2014) (<http://www.pacourts.us/assets/opinions/DisciplinaryBoard/out/142DB2013-Ballentine.pdf>) (one-year suspension of a judge's law license following her guilty plea to three misdemeanor charges of tampering with public records for dismissing her own parking tickets); *In re Carney*, Order (Pennsylvania Court of Judicial Discipline January 29, 2014) (<http://www.pacourts.us/assets/files/setting-3459/file-3511.pdf?cb=a38e3b>) (reprimand of a judge for a road rage incident for which he had pled guilty to disorderly conduct); *In re Ciavarella*, Opinion (Pennsylvania Court of Judicial Discipline October 7, 2014) (<http://www.pacourts.us/courts/court-of-judicial-discipline/court-cases/court-case-archive/fmr-judge-mark-a-ciavarella-no-7-jd-11>) (removal of a former judge who had been convicted of 12 federal felonies, including racketeering, honest services mail fraud, money laundering conspiracy, conspiracy to defraud the U.S., and filing a false tax return); *In the Matter of Ferguson*, 762 S.E.2d 385 (South Carolina 2014) (reprimand of a former judge convicted on charges that, in return for sexual contact, he gave two women money and/or benefits in the disposition of their cases); *Public Reprimand of Terrazas* (Texas State Commission on Judicial Conduct August 21, 2014) (<http://www.scjc.state.tx.us/pdf/actions/FY2014-PUBSANC.pdf>) (reprimand of a former judge who had pled guilty to deadly conduct, been arrested for public intoxication and driving while intoxicated, repeatedly failed to complete his judicial education hours, and failed to cooperate with the Commission investigation).

In 2014, a former judge was convicted of murder and sentenced to death. The murder was committed while he was still a judge, albeit suspended following his indictment on other charges.

In March 2012, a jury convicted Justice of the Peace Eric Williams for taking computer monitors from a county facility. The case was prosecuted by Chief Assistant District Attorney Mark Hasse. Williams had been suspended with pay since he was charged in May 2011. He was sentenced

to probation and the loss of his office and law license. His sentence was stayed after he appealed.

On January 31, 2013, Hasse was shot and killed while walking from his car to the courthouse. On March 30, District Attorney Michael McClelland and his wife Cynthia were shot and killed in their home.

In June, Williams and his wife Kim were charged then indicted for capital murder in the deaths of Hasse and the McLellands. The apparent motive was revenge for the theft and burglary prosecution of Williams by Hasse and McLelland. Subsequently, an appellate court upheld Williams' theft and burglary convictions, and the sentencing court permanently removed him from office.

In December 2014, a jury convicted Williams for the murder of Cynthia McLelland, and he was sentenced to death. He has asked for a new trial.

* * *

Another major judicial crime story continued in 2014 with the trial of six current or former judges on federal charges related to ticket-fixing on the Philadelphia Traffic Court. In late 2012, a report commissioned by the Chief Justice of the

Pennsylvania Supreme Court (and leaked to the *Philadelphia Inquirer*) found that ticket-fixing on the traffic court was routine, with “two tracks of justice — one for the connected and another for the unwitting general public.” The report noted federal authorities had been investigating since at least 2011.

In January 2013, the six judges, a traffic court administrator, and two businessmen were indicted on federal wire and mail fraud charges for ticket-fixing and favoritism. Three other judges were charged separately by information and pled guilty in early 2013.

During their jury trial in May through July 2014, the defendants did not deny fixing tickets but claimed the practice was not a crime because no money changed hands. The jury apparently accepted that argument and acquitted all defendants of the wire and mail fraud charges, although it convicted most of them of perjury before the grand jury or lying to federal investigators.

In January 2015, the Judicial Conduct Board filed charges against the defendant who was still a judge based on ticket-fixing (<http://judicialconductboardofpa.org/resources/press-releases/>). ★

Quotable quotes

The fact that a judge thinks that there was no harm caused by his or her actions is irrelevant, because a “no harm, no foul” rule does not exist in the Code of Judicial Conduct.... The Code of Judicial Conduct is founded on the principle that a judge is a leader whether she wants to be or not.

In the Matter of Wilfong,
765 S.E.2d 283 (West Virginia 2014)

Given that the foundation of the justice system in a modern democratic society rests on the guarantee of an independent and impartial judiciary, a judge who disposes of cases out of fear that those in power will terminate him, or to satisfy the political or financial interests of an entirely separate branch of government, cannot be — nor can he be seen to be — independent.

Public Reprimand of Romo
(Texas State Commission on Judicial Conduct 2014)
(<http://tinyurl.com/nk6ehkk>)

[The judge] argued that blunt and evocative language is sometimes necessary to compel litigants to gain awareness of their circumstances, the harm that they are causing their children, and the importance of respect and cooperation. The commission disagrees. Referring to litigants as “rotten,” “stupid and thuggish,” and a “total human disaster,” and telling litigants their child “might as well start walking the streets as a hooker,” is the antithesis of imparting the importance of respect.

In the Matter of Healy, Decision
(California Commission on Judicial Performance
2014) (<http://tinyurl.com/onlxs6g>)

Lying to the [Judicial Tenure Commission] is judicial misconduct regardless of whether the JTC knows that you are lying or not.

In re McCree, 845 N.W.2d 458 (Michigan 2014)

SAVE THE DATE

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The College provides a forum for judicial conduct commission members and staff, judges, judicial ethics advisory committees, and anyone interested in judicial conduct to discuss professional standards for judges and current issues in judicial discipline. The specific topics to be covered are still being planned, but **topics under consideration** include problem-solving courts, the constitutionality of canons following the U.S. Supreme Court decision in *Williams-Yulee v. Florida Bar*, ex parte communications, judicial temperament, eight years of the 2007 American Bar Association Model Code of Judicial Conduct, determining the appropriate sanction, an introduction to the canons for new members of judicial conduct commissions, and issues for public members.

The College will begin Wednesday October 28 with registration (beginning at 2) and a reception (from 5:30 to 7). Thursday morning there will be a plenary session, followed by concurrent break-out sessions through Friday noon. **The registration fee is \$375 through August 23, but \$400 beginning August 24.** Room rates at the hotel begin at \$219 a night, plus tax, single occupancy.

