

JUDICIAL CONDUCT REPORTER



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

VOLUME 39, NO. 4 • WINTER 2018

INSIDE THIS ISSUE

2017 IN REVIEW

State judicial discipline in 2017 **2**

Removal cases in 2017 **3**

Top judicial ethics and discipline stories of 2017

Sexual harassment **8**

Politicking **11**

Judicial well-being **15**

Same-sex marriage **20**

Facebook fails **22**

What they said that got them in trouble in 2017

What they said that abused the prestige of office **7**

What they said to or about court staff **10**

What they said to or about litigants **14**

What they said in the courtroom **19**

What they said to or about attorneys **21**

What they said on social media, to reporters, and in campaigns **24**

JUDICIAL CONDUCT REPORTER Winter 2018

Cynthia Gray
Director
Center for Judicial Ethics
cgray@ncsc.org

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

© 2018
National Center for State Courts
ISSN: 0193-7367

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

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



NCSC
NATIONAL CENTER FOR STATE COURTS

Center for Judicial Ethics

State judicial discipline in 2017

In 2017, as a result of state disciplinary proceedings, six judges were removed from office. (See “Removal cases in 2017,” *infra*.) In addition, 15 judges or former judges resigned or retired in lieu of discipline pursuant to public agreements with conduct commissions; one judge was ordered retired based on a finding of mental inability to perform duties; one judge’s permanent resignation was ordered based on compromised cognitive and physical abilities; and one judge was suspended without pay until the end of his term.

Seventeen judges were suspended without pay as a final sanction. The length of the suspensions ranged from two years (plus a \$15,000 fine) to three weeks (plus a public censure). Six of the other suspensions also included reprimands or censures and/or fines.

Sixty-four judges or former judges were publicly censured, reprimanded, admonished, or warned.

- There were 12 public censures. One censure was severe; one was based on the judge’s agreement to tender his irrevocable resignation and not hold judicial office in the state; one was based on a former judge’s agreement not to hold judicial office; and one included a retired judge’s agreement to resign his emergency judge commission.
- There were 31 reprimands. Two of the reprimands barred former judges from judicial office, and seven also ordered additional education.
- There were 18 public admonishments. In one case, the judge also agreed to additional training.
- There were three public warnings, all of which also ordered additional education.

Complaints against nine additional judges or former judges received other public dispositions. One judge was placed on probation for three years with conditions; one judge was ordered to reimburse the court \$10,002.58 in unauthorized benefit payments; one judge received a public caution with a dismissal without prejudice of multiple complaints; one judge received a public letter of counsel; one former judge was ordered to cease and desist from using misleading campaign material; one former judge was found to have committed misconduct but no sanction was imposed because the judge was no longer in office; and three former judges were suspended from the practice of law for misconduct while judges.

**“In 2017,
there were six
removals.”**

Removal cases in 2017

From 1980 through 2016, approximately 435 judges were removed from office as a result of state disciplinary proceedings. In 2017, there were six removals.

Based on the judge's voluntary resignation and agreement to be permanently ineligible to serve as a judge (<https://tinyurl.com/yba6jygo>), the Arkansas Judicial Discipline & Disability Commission removed a judge who had been charged by the Commission and in a criminal information with failing to file state or federal income tax returns for many years before and after becoming a judge. *Judicial Discipline & Disability Commission v. McCallister*, Resignation and removal from office by agreement (Arkansas Judicial Discipline & Disability Commission December 15, 2017).

Recorded conversations

In 2017, the Pennsylvania Supreme Court affirmed the removal of two judges for their conversations with another judge and related misconduct. The conversations had been recorded by the FBI as part of its investigation of then-judge Joseph Waters. (Waters resigned in 2014 after pleading guilty in federal court to mail fraud and honest services wire fraud and was removed in 2016.)

In June 2012, the FBI recorded Judge Angeles Roca asking Waters for advice after Judge Dawn Segal had denied her son's pro se petition to open a \$5,000 default judgment entered when he did not appear for a hearing on a complaint for failure to pay a business privilege tax. Waters offered to talk to Judge Segal. After her son filed a motion for reconsideration, Judge Roca called Waters, Waters called Judge Segal, and Judge Segal reviewed the petition, issued a rule to show cause why the relief should not be granted, and then called Waters and reported, "I figured it out and I took care of it." (The default judgment was ultimately vacated, and the case was withdrawn upon payment of \$477 in taxes.)

Judge Roca was removed for seeking Waters' advice about her son's case and acquiescing in his offer to communicate ex parte with Judge Segal. *In re Roca*, 173 A.3d 1176 (Pennsylvania 2017).

Judge Segal was also removed for listening to Waters' requests for favorable treatment for Judge Roca's son and for litigants in two other cases and then making decisions that favored those litigants. *In re Segal*, 173 A.3d 603 (Pennsylvania 2017). Rejecting her argument that she would have ruled the same even without Waters' requests, the Court emphasized that the judge "knew that she had been approached by a corrosive influence, yet she remained in her decisional role while acting as if she was acceding to the improprieties. Litigants can have little confidence that a judge proceeding in this way is rendering fair and impartial rulings; rather, they

may reasonably believe that such a jurist is doing precisely what she said she was doing by engaging in favoritism.”

Attempts to influence

Attempts to influence court proceedings also led to the removal of two additional judges.

The Virginia Supreme Court removed a judge who contacted potential witnesses prior to his wife’s trial on federal corruption charges. *Judicial Inquiry and Review Commission v. Pomrenke*, 806 S.E.2d 749 (Virginia 2017).

On October 26, 2015, the judge’s wife, Stacey Pomrenke, an executive vice president and the chief financial officer of a utilities authority, was indicted by a federal grand jury on 15 corruption charges. On November 18, the judge sent a handwritten note to his wife’s boss, the utilities authority’s president and chief executive officer, Donald Bowman. The note stated:

Hi Don,

I just wanted to sincerely thank you for your kindness and understanding support for Stacey during these horrible times. By now I am sure you would agree she is absolutely honest, truthful, ethical, and innocent! It is horrible what our government is doing to her. She will be proven innocent. Thank you for believing in her.

Kurt Pomrenke

The judge included his business card identifying himself as a judge with the note. At the time, the U.S. Attorney had indicated that Bowman would be a witness in the trial, although ultimately he did not testify.

On February 13, 2016, the judge left a voicemail message for Connie Moffatt, a utilities authority employee who was expected to testify in his wife’s trial on February 16. The message stated:

Hey Connie, this is Kurt, um, when you’re testifying in that trial there might be a couple of things that you could do that would really help Stacey. If you could kinda slip in when you have a chance just little remarks like, how Stacey did a great job, or Stacey was the one that took care of the employees, or Stacey is just an honest . . . just any, any kind of little comments you can make to support her or, Stacey was the one that always looked out for the employees or, just . . . just something like that even though it’s not directly in response to the questions, if you could figure out a way to, to do that I really think that would help and make a huge difference. I’m sorry you’re caught up in this, but we feel really good about the outcome and sure appreciate your help. Thank you, bye.

On February 26, Stacey Pomrenke was found guilty of 14 of the 15 charges.

In the discipline proceedings, the judge stated that he was truly sorry and argued that, given the context of his actions, censure was the appropriate sanction. The Court acknowledged the judge’s “family circumstances” but concluded “such considerations cannot outweigh the extraordinary harm that will be done to the judiciary if he remains on the bench.”

We cannot escape the conclusion that having a sitting judge who apparently attempted to manipulate trial testimony would tend to impair public

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

(continued)

confidence in the integrity and impartiality of not only that judge, but also that of all the other members of the judiciary, and our entire system of justice. . . .

The ultimate responsibility (apart from impeachment) for judicial discipline lies squarely with us. As for the coordinate branches of government, we expect the legislative and executive branches to do their duty. When it comes to disciplining judges, they expect the same of us.

“As a judge he had but one choice”

The New York Court of Appeals upheld the removal of a non-lawyer judge for (1) trying to influence the disposition of a traffic ticket received by his daughter and being discourteous to the prosecutor in the case, and (2) in connection with an appeal from his orders in a case, sending the reviewing court eight letters with factual and legal arguments and biased, discourteous statements. *In the Matter of Ayres*, 85 N.E.3d 1011 (New York 2017).

(1) After his daughter received a ticket for using a cell phone while operating a vehicle, the judge asked a court clerk and another town justice to transfer the case away from the assigned judge. The clerk did not comply with the request, and the other town justice refused and rebuffed the judge’s attempts to discuss the merits of the case.

Subsequently, the judge attended his daughter’s pre-trial conference with the prosecutor and inappropriately referred to his judicial office. He told the prosecutor that “if this ticket was in my courtroom, I’d dismiss it,” and that other judges shared his view. The prosecutor testified that she felt “extreme pressure” to dismiss the ticket.

(2) In connection with appeals from his restitution orders in a case, the judge mailed to the county court eight letters, five of which were ex parte. In the letters, the judge asserted, for example, that the appeal was meritless, that defense counsel’s arguments were “ludicrous” and “totally beyond any rational thought process,” and that defense counsel was attempting to “pad [his] bill” at taxpayer expense.

The Court found that the judge’s misconduct was “compounded by his failure to recognize these breaches of our ethical standards and the public trust.” It explained:

Rather than acknowledge his obligations and the implications of his conduct, petitioner asserts that he should not be removed because he acted as a father in his daughter’s case, not as a judge, and because his communications in the . . . appeals were in good faith and substantially correct. He focuses on what he perceives as a misunderstanding, stating that “[t]his experience has taught [him] how easily words and actions can be misinterpreted and to avoid any occasion or situation that could be misconstrued.” Petitioner fails to accept that this is not a question of a misunderstanding. As a judge he had but one choice: to refrain from “lend[ing] the prestige of judicial office to advance the private interests of . . . others” . . . , which included any communication on behalf of his daughter which could be “perceived as one backed by the power and prestige of judicial office” . . . , such as his opinion that the ticket should be dismissed. Judges are held to “standards of conduct more stringent than those acceptable for others” . . . , and “ ‘paternal instincts’ do not justify a departure from the standards expected of the judiciary. . . .”

“The Court found that the judge’s misconduct was ‘compounded by his failure to recognize these breaches of our ethical standards and the public trust.’”

(continued)

“Especially egregious”

Accepting the findings of fact and conclusions of law of the Judicial Standards Commission and granting its recommendation, the New Mexico Supreme Court permanently removed a non-lawyer magistrate for (1) continuing to have ex parte communications with litigants after being told multiple times to stop; (2) refusing to accept a prosecutor’s nolle prosequi; (3) abandoning her docket one day; and (4) arresting a court clerk for criminal contempt. *In the Matter of Johnston*, Order (New Mexico Supreme Court October 23, 2017) (<https://tinyurl.com/y72e2pbq>). (The Court’s order does not describe the misconduct; this summary is based on the Commission’s findings.)

The Commission concluded that the judge’s “premeditated” arrest of “an innocent court clerk for direct criminal contempt was especially egregious” The arrested clerk had been complying with a court policy that required two clerks to always be present in the judge’s courtroom. The Commission found that the court had adopted the “two-clerk” rule to have “a buffer between Respondent and clerks who were uncomfortable in her courtroom,” to corroborate reports of problems, and to help clerks prepare documents correctly, not, as the judge believed, to monitor her, harass her, and pressure her into resigning.

When court began on December 1, 2015, clerk Rebecca Eldridge sat immediately to the judge’s right while Amy Verhulst sat to the right of Eldridge. Contrary to the judge’s claims, the Commission found that Verhulst did not sit behind the judge or look over her shoulder and was not disruptive. Almost immediately, however, the judge told Verhulst: “So, Amy, you need to leave. You’re interfering with my duty as a judge, and I’m going to ask you to leave.” Verhulst walked out with Eldridge following. The court manager sent a different clerk in with Eldridge, but the judge would not allow her to remain. Both clerks left.

The presiding judge sent Verhulst and Eldridge back into Judge Johnston’s courtroom. The judge then told Verhulst, sternly and loudly, that she had to leave or she would be held in contempt. A sheriff’s deputy escorted Verhulst out of the courtroom. Verhulst was dumbfounded, shocked, and upset and was crying.

The judge remained on the bench calling cases without a clerk. She made errors that the assistant district attorney noticed but did not correct because he was afraid she would hold him in contempt. Before Verhulst was taken to jail, the New Mexico Supreme Court vacated the contempt order and immediately suspended Judge Johnston.

The Commission concluded that the judge failed to follow the lawful directive of the presiding judge and held Verhulst in contempt for performing her clerical duties without “any semblance of a proper hearing,” intentionally violating the clerk’s constitutional rights to “dramatiz[e] her own misguided position in disputes with her presiding judge and other court authorities.” Noting the judge’s history of ignoring guidance from mentors, presiding judges, and the administrative office of the courts, the

Follow the
Center for Judicial
Ethics blog.

New posts every
Tuesday plus
Throwback
Thursdays.

(continued)

What they said that abused the prestige of office

- “So we need to call her today.” Judge to another judge about a third judge who was presiding over her son’s case. *Roca* (Pennsylvania 2017) (<https://tinyurl.com/yc6t4q6k>) (removal).
- “Hi, I figured it out and I took care of it.” Judge to another judge reporting that she had provided favorable treatment to a third judge’s son. *Segal* (Pennsylvania 2017) (<https://tinyurl.com/yd2r279b>) (removal for this and other misconduct).
- “Give this to Judge Hawthorne and have him dismiss it for me.” Judge to office assistant at another court about a ticket received by an acquaintance. *Aluzzi* (New York Commission 2017) (<https://tinyurl.com/ybvenjqp>) (censure).
- “If this ticket was in my courtroom, I’d dismiss it.” Judge to prosecutor about a ticket issued to his daughter. *Ayres*, 85 N.E.3d 1011 (New York 2017) (removal for this and other misconduct).
- “Part of my family.” Judge in a character letter on judicial stationery in support of a motion to vacate her former babysitter’s gambling conviction. *Ramirez* (New York Commission 2017) (<https://tinyurl.com/y7sve9mo>) (admonishment for this and other misconduct)
- “Well, does she just need a ride or something?” Judge to a police officer at the scene of an accident involving his intern. *Simpson*, 902 N.W.2d 383 (Michigan 2017) (9-month suspension without pay).
- “Please! I’m a judge. Don’t do this to me. I did not flunk this. I didn’t flunk it!” Judge to a trooper during a traffic stop after a field sobriety test. *Williams* (Ohio 2017) (<https://tinyurl.com/y9cta9wz>).
- “Bring it Angleton, Texas, County Court Number Three . . . you s**k!” Judge to an umpire at his son’s baseball game. *Warren* (Texas Commission 2017) (<https://tinyurl.com/yckmye2w>) (warning).
- “Hey Connie, this is Kurt, um, when you’re testifying in that trial there might be a couple of things that you could do that would really help Stacey.” Judge in a voicemail message to a witness prior to his wife’s trial on federal charges. *Pomrenke*, 806 S.E.2d 749 (Virginia 2017) (removal for this and related misconduct).

Sexual harassment

Top judicial ethics and discipline stories of 2017

In his *2017 Year-End Report on the Federal Judiciary* (<https://tinyurl.com/yax-gx4gp>), Chief Justice John Roberts noted that, “[e]vents in recent months have illuminated the depth of the problem of sexual harassment in the workplace,” and he acknowledged that, “events in the past few weeks have made clear that the judicial branch is not immune.” The Chief Justice announced a working group that will evaluate whether the federal judiciary’s “standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate to ensure an exemplary workplace for every judge and every court employee” and will “consider whether changes are needed in our codes of conduct, our guidance to employees—including law clerks—on issues of confidentiality and reporting of instances of misconduct, our educational programs, and our rules for investigating and processing misconduct complaints.”

The Chief Justice’s action followed the retirement of Judge Alex Kozinski after a misconduct investigation had begun based on a *Washington Post* article entitled, “Prominent 9th Circuit Judge Accused of Sexual Misconduct” and subsequent stories. The judge’s retirement resulted in the dismissal of the complaints against him.

As several discipline cases from 2017 demonstrate, state court judges engage in sexual harassment as well. *See, e.g., In the Matter of Walker*, Order (Colorado Supreme Court February 9, 2017) (based on his agreement to retire, disciplinary proceedings against a judge were terminated; a statement of charges alleged that the judge had engaged in undignified and disrespectful conduct, including harassment, toward three female judicial employees, in addition to other misconduct).

“Hostile working environment”

In *In re Iddings*, 897 N.W.2d 169 (Michigan 2017), based on a settlement agreement, the Michigan Supreme Court suspended a judge for six months without pay and publicly censured him for sexual harassment of his judicial secretary between 2012 and 2015.

The judge made comments that, he admits, Ms. [*****] could have reasonably interpreted as an invitation to have an affair with him. (The Court redacted the victim’s name to protect her privacy.) In addition, he:

- Sent her after-hour text messages discussing his marital problems and personal feelings;
- Offered to purchase expensive items for her as Christmas gifts;
- Invited her to Rihanna/Eminem and other high-priced concerts;
- Suggested that she accompany him to exotic locations for court-related conferences where they could share a hotel room;

(continued)

- Showed her a sexually suggestive YouTube video of a high-priced lingerie web-site;
- Told her that the outfits she wore to work were “too sexy;”
- Told her that she “owed him” for allowing her to leave work early to attend her son’s after-school activities;
- Reached over her to edit documents, putting him in physical contact with her;
- Stared down the front of her blouse; and
- While discussing his triathlon training, sat and laid on her desk while she was sitting at it.

In a letter of recommendation, while referring to Ms. [*****]’s professionalism and dependability, the judge wrote “besides, she is sexy as hell;” the judge deleted the language at her request. The judge wrote, “Seduce [*****]” on the court computerized calendar and then directed Ms. [*****] to look at that particular date; the judge deleted the entry at her request.

Ms. [*****] filed an Equal Employment Opportunity complaint based on the judge’s harassment. A EEO report found that the judge’s behavior toward Ms. [*****] constituted “harassment” as prohibited by the county policy and “an offensive, and more probably a hostile working environment.” The judge self-reported the EEO complaint to the Commission.

Improper sexual relationship

Affirming the determination of the State Commission on Judicial Conduct, a Special Court of Review Appointed by the Texas Supreme Court publicly reprimanded a judge for his improper sexual relationship with his chief clerk/court manager. *In re Casey* (Texas Special Court of Review May 9, 2017) (<https://tinyurl.com/ybyhzuph>).

Martha Kibler served as the judge’s chief clerk and court manager. After the judge initiated termination proceedings against her, Kibler alleged, in a report to the county human resources department and in a federal lawsuit, that the judge had sexually harassed her. The federal lawsuit was dismissed after the parties entered into a settlement agreement. In a report to the district attorney’s office, Kibler also alleged that the judge had sexually assaulted her, but a grand jury decided not to indict the judge.

During the Commission hearing, the judge testified that he and Kibler were in a consensual sexual relationship, that he did not have sexual intercourse with her but received oral sex from her approximately 10 times over several years, that Kibler usually initiated it, that the sexual activity occurred in court offices, after hours and during business hours. The judge denied that he attempted to fire Kibler after she refused his sexual advances. The judge asserted that he placed Kibler on administrative leave for claiming mileage she was not entitled to and that a court audit revealed the mishandling of deposits, which was Kibler’s responsibility.

In her deposition in the federal lawsuit, Kibler explained that, in 2009, the judge closed and locked the door to her office and made sexual

“As several discipline cases from 2017 demonstrate, state court judges engage in sexual harassment as well.”

(continued)

comments and initiated sexual conduct. The judge clearly told her that he was the only reason she had her job. She testified that, after the first incident, the judge regularly initiated similar conduct at the office and made statements about keeping her job if she did what he asked. She related that, when she told the judge that she would no longer have sexual interactions with him, the judge continued to ask her to perform sexual acts and tried to fire her a few days after she bolted out of the office in 2014.

The Court found “established, repeated, long-standing, and intentional actions on the part of Judge Casey that amounted to ‘misuse[s] of’ his ‘judicial office, involving more than an error of judgment or lack of diligence’” and “paint[ing] a negative image of the judiciary and on the administration of justice.” In resolving conflicts in the evidence, the Court stated, it had considered the judge’s admission that he had lied about the sexual relationship when questioned by human resources, his recognition that an employee might not be able to fully state her feelings regarding her desire to engage in sexual activity requested by her boss, and inconsistencies between the judge’s testimony in the federal lawsuit and in the Commission hearing.

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

- “Besides, she is sexy as hell.” Judge in letter of recommendation for secretary. *In re Iddings*, 897 N.W.2d 169 (Michigan 2017) (6-month suspension without pay and censure for this and related misconduct).
- “That c**t! That f*****g b***h!” Court commissioner after learning an interpreter had reported to her supervisor that he had spoken harshly to her in the courtroom. *Kliszewski* (California Commission 2017) (<https://tinyurl.com/yd9sqcjs>) (admonishment for this and other misconduct).
- “Sperm donors.” Judge about men in general and a bailiff specifically. *Haviland* (Nevada Commission 2017) (<http://tinyurl.com/yc4syg4e>) (one-year suspension without pay for this and other misconduct).
- “I’m not appointing them right now, I’m waiting 60 days to – so the public defender cannot disqualify me.” Judge to a clerk regarding appointment of counsel for a defendant during a dispute with the public defender. *Mennemeyer*, 505 S.W.3d 282 (Missouri 2017) (6-month suspension without pay for this and other misconduct).
- “Colored.” Judge referring to black people around the courthouse. *DeLaPaz* (Texas Commission 2017) (<https://tinyurl.com/y9jmra3d>) (reprimand).

Politicking

Top judicial ethics and discipline stories of 2017

Several judicial ethics advisory committees recently answered inquiries from judges about whether they could participate in marches, contact their elected representatives, engage in similar political activities as private citizens, or join as judges in the public debate about the rule of law. See, e.g., *Connecticut Informal Advisory Opinion 2017-8* (<https://tinyurl.com/y83zkcrv>) (to determine whether to unsubscribe from e-mails about political issues on her personal account, a judicial official should consider whether the sending organization is concerned with the law, the legal system, or the administration of justice; whether the organization is a “political organization;” the extent to which her identity is revealed to other recipients; and whether the e-mails concern a matter pending or impending in any court).

The New York committee advised that a judge may not participate in the March for Science if the march is co-sponsored by or affiliated with a political organization, if the march is in support of or in opposition to a political party or candidate, or if marching will insert the judge unnecessarily into a public controversy or involve impermissible political activity. *New York Advisory Opinion 2017-38*. (<https://tinyurl.com/y98hxtww>). The committee noted that the New York code of judicial conduct has a blanket prohibition on direct or indirect political activity with exceptions for voting, identifying as a member of a political party, measures to improve the law, the legal system or the administration of justice, the judge’s own campaign, and when a judge’s clear and direct personal interest is at stake. The committee emphasized that the exceptions are narrow “to preserve the preeminent principle that the breadth of the prohibition against political activity must remain robust.”

The committee cautioned that, although the march “purports to be a non-partisan gathering advocating for a recognition of the importance of scientific endeavors and rational thought in society,” it could become “more of a platform for political protest against the perceived preference” of some individuals and groups for “‘junk’ science, disconnected from critical thinking and fact-based solutions” and could “be seen as related primarily to highly controversial environmental issues such as global warming and resource depletion, matters that do not clearly and directly implicate the law, the legal system or the administration of justice” The committee directed the judge to carefully “monitor the agenda and positions taken by organizers” and not to join if marching means associating with “matters that are the subject of litigation or public controversy” or involvement with “political organizations,” that is, any “group whose principal purpose is to further the election or appointment of candidates to political office” The committee also stated that, if the judge decides to participate but “finds that political signs unexpectedly dominate the occasion,” the judge should leave.

(continued)

In the same opinion, the New York committee also advised that a judge may not participate, even without speaking, in a local rally, march, or demonstration sponsored by a grassroots organization unless one of the exceptions applies. Specifically, the committee disapproved of a judge participating in a rally “in opposition to the so-called Trump Muslim Ban,” noting the event clearly “involves great public controversy, which is also the subject of litigation.”

Similarly, the Massachusetts committee advised that a judge could not participate in the Women’s March on Washington scheduled for the day after the presidential inauguration. *Massachusetts Advisory Opinion 2016-10* (<https://tinyurl.com/y86n27pg>). Although the march was “intended to be inclusive and welcoming to everyone who supports women’s rights,” the committee stated that “the political overtones are unmistakable,” noting the organizers’ references to “the ‘rhetoric of the past election cycle’ that has “insulted, demonized, and threatened . . . immigrants of all statuses, Muslims and those of diverse religious faiths, people who identify as LGBTQIA, Native people, Black and Brown people, people with disabilities, [and] survivors of sexual assault.” The committee acknowledged that the judge wanted to participate “to stand up against misogyny, racism, and other biases and bigotries that threaten the rule of law,” but emphasized that the public and the media are “likely to focus on the timing of the event and the organizers’ announced desire to ‘send a message’ to the new President on his first day in office.” The committee concluded that a “reasonable person would perceive the Women’s March as a political protest” and, therefore, participation by judges was prohibited by the code.

Contacts

The New York committee advised that a judge may not call a Senate committee to express an opinion on a pending federal executive branch appointment or sign a MoveOn.org petition concerning such an appointment, even as a private citizen. *New York Advisory Opinion 2017-38* (<https://tinyurl.com/y98hxtww>). Similarly, the Colorado committee stated that a judge may not contact his congressional representatives to express approval of or dissatisfaction with federal legislation or cabinet appointments. *Colorado Advisory Opinion 2017-1* (<https://tinyurl.com/ybck8cvy>). The committee did identify an exception for matters concerning the law, the legal system, or the administration of justice but cautioned the judge to be mindful even in those “narrowest” of circumstances to avoid impropriety and maintain independence, integrity, and impartiality.

The Colorado committee explained that contact by a judge about a cabinet appointment would constitute an improper endorsement. The opinion recognized that “[c]abinet nominees and appointees do not hold a public office per se” but noted that “they are chosen based upon their executive experience, policy expertise, partisan credentials and loyalty to the President,” “[t]heir confirmation is often contentious and politically charged,” and “[o]nce in office, they are seen as advocates for political policy.” Thus, the committee stated, expressing support or opposition

Samples of recent
judicial ethics
advisory opinions
are summarized
bi-monthly
on the
[Center for Judicial
Ethics blog](#)

(continued)

creates the appearance of political partisanship and, even if “a private telephone call may not constitute a public statement, a judge should refrain from expressing views because it would be contrary to a judge’s independence and impartiality.”

The opinion also suggested that, “[e]ven if a judge withholds his or her judicial title and is identified in name only, the judge’s status may eventually be revealed.” The committee added that even anonymous contact would be impermissible because anonymity “does not cure the concerns of impartiality or questionable integrity.”

Similarly, the New York committee stated that a judge may not engage anonymously in otherwise prohibited political activity, such as publishing partisan political literature. *New York Advisory Opinion 2016-85* (<https://tinyurl.com/y734dquc>). It explained:

Concealing one’s name and judicial status does not ordinarily render prohibited conduct permissible Even assuming the judge could operate in perfect secrecy, anonymously printing and mailing partisan political literature would violate the rule against “directly or indirectly” engaging in partisan political activity, which contains no exception for anonymous conduct And if, as is quite likely in modern politics, the public learned that a judge was attempting to conceal his/her impermissible political activity, that would only exacerbate the resulting appearance of impropriety.

Outreach

In response to an inquiry, the Massachusetts committee advised that “judges may reach out to individuals, and associations of individuals, who may feel vulnerable due to their race, religion, national origin, citizenship status, or other attribute(s), and remind them that the Massachusetts courts are and will remain committed to upholding the right of every person to obtain equal justice before an independent and impartial judge.” *Massachusetts Advisory Opinion 2017-1* (<https://tinyurl.com/yd74fsh3>). The opinion also stated that, “in prepared or extemporaneous remarks,” judges may respond to comments by public officials or others that appear to reflect misconceptions about the role of an independent judiciary or manifest disrespect for the rule of law. The committee explained:

It is proper for a judge to dispel misconceptions about the role of an independent judiciary and to emphasize the importance of respect for the rule of law, so long as the judge’s remarks preserve the dignity of judicial office, would not lead a reasonable person to question the judge’s ability to impartially administer the law, and avoid the implication the judge is influenced by, or appears to be influenced by, partisan or political interests.

The committee noted that the code “places parameters around judges’ remarks, even on permitted subjects” and cautioned that, when deciding whether “to accept any particular speaking engagement, judges must consider the overall context in which the remarks would be made.” The committee also emphasized that, “[a]n underlying premise of the Code is that a

“Anonymity
‘does not cure
the concerns
of impartiality
or questionable
integrity.’”

(continued)

judge's fair and impartial decisions are the most important defense against threats to judicial independence and the rule of law."

A judge asked the New York committee if, at a court-sponsored Law Day event, she could "address comments made by public officials, particularly the sitting president of the United States, that are critical of the role of an independent judiciary." *New York Advisory Opinion 2017-54* (<https://tinyurl.com/y9uprawz>). The committee advised that a judge could discuss judicial independence but strongly cautioned the judge to craft her speech in a way that "does not personally criticize, attack, or comment on any public official or his/her statements." The committee explained that "self-restraint will help maintain public confidence in the judge's ability to 'perform judicial functions in an appropriate manner consistent with [her] legal and ethical obligations', help minimize 'the danger of a public perception of entanglement of the judiciary itself in the political process', and avoid any possible appearance that the judge is inserting [herself] unnecessarily into public controversy." Thus, the committee emphasized, "the focus of the judge's speech, especially in the context of a Law Day ceremony, should be on the law and not on comments made by public officials that he/she believes are critical of the judiciary."

What they said to or about litigants that got them in trouble

- "I'm aware there's been multiple violations of the order of protection." Judge relying on ex parte information from two sources. *Curran* (New York Commission 2017) (<https://tinyurl.com/y97o9puv>) (admonishment).
- "[You need] to do a research program on Charlie Manson and the cult that he has. Your behavior in the hall with me months ago, your behavior in this courtroom, your behavior back there, is unlike any I've ever seen in any 46,000 cases. You, young man, are the worst one. So you have bought yourself living in Children's Village, going to the bathroom in public, and maybe Summer school, I don't know . . ." Judge to 13-year-old boy in custody proceeding. *Gorcycya*, 902 N.W.2d 828 (Michigan 2017) (censure for this and similar comments).
- "To some extent I think 'dumb-a**' should be engraved on his forehead." Judge about defendant during sentencing hearing. *Ditsworth* (Arizona Commission 2017) (<https://tinyurl.com/yblusuwf>) (reprimand).
- "Is it you like the money? Or you just like the action?" Judge taking the plea of a defendant charged with prostitution. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- "Gift for the day." Judge when sentencing criminal defendants. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).

Sign up to receive notice when the next issue of the *Judicial Conduct Reporter* is available.

(continued)

- “Just so you know, ma’am, I grew up in a relationship where I used to get the crap beat out of me on a regular basis by a stepfather So I have some understanding of what you’re going through, okay? From a child’s perspective.” Judge after a defense attorney said that a defendant was in an abusive relationship. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- “Slap him upside the head a few times, make sure he stays off the drugs.” Judge to a defendant’s mother. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- “No cerveza. No tequila. No alcohol. Nada.” Judge to a defendant with a Spanish surname. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).

Judicial well-being

Top judicial ethics and discipline stories of 2017

In August 2017, the National Task Force on Lawyer Well-Being released *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, a report with 44 recommendations “for minimizing lawyer dysfunction, boosting well-being, and reinforcing the importance of well-being to competence and excellence in practicing law” (<https://tinyurl.com/y9etefcz>). (The task force was established by the American Bar Association Commission on Lawyer Assistance Programs, the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers.) The recommendations have five themes: (1) identifying stakeholders and the role each can play in “reducing the level of toxicity” in the legal profession, (2) “eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer’s duty of competence, (4) educating lawyers, judges, and law students on lawyer well-being issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.”

The report includes several recommendations for the judiciary:

- Communicate that well-being is a priority,
- Develop policies for impaired judges,
- Reduce the stigma of mental health and substance use disorders,
- Conduct judicial well-being surveys,
- Provide well-being programming for judges and staff, and
- Monitor lawyers’ performance for signs of impairment and partner with lawyer assistance programs.

(continued)

For example, the report recommends that state supreme courts, commissions on judicial conduct, and administrative and chief judges should implement policies and procedures for intervening with impaired members of the judiciary and “should feel comfortable referring members to judicial or lawyer assistance programs.”

Several cases in 2017 demonstrate the adverse effect of judicial impairments on individual judges and the judiciary.

The Illinois Courts Commission ordered the retirement of a judge it found mentally unable to perform her duties; the Judicial Inquiry Board had begun investigating the judge based on news reports she had allowed a person who was not elected or sworn in as a judge to preside over matters that could only be resolved by a judicial officer. *In re Turner*, Order (Illinois Courts Commission December 1, 2017) (<https://tinyurl.com/y8wn3k89>).

On August 11, 2016, Rhonda Crawford was an unopposed candidate for a judicial position in the November election and a clerk/staff attorney at the courthouse where Judge Turner was assigned. On August 11, Crawford observed the judge’s morning calendar from the witness box. During a recess, the judge introduced Crawford to the prosecutor as “Judge Crawford,” and Crawford did not correct her. At some point during the afternoon court call, the judge said, “We’re going to switch judges,” stood up, and gave her robe to Crawford. Crawford put on the robe, sat behind the bench while the judge stood behind her, and “purported to preside” over three traffic tickets.

Shortly after the afternoon court call, the prosecutor learned that Crawford was not a judge and informed the presiding judge what had happened. When the presiding judge asked, “Val, is it true you gave Rhonda your robe and let her preside over tickets?” Judge Turner replied, “I thought she was a judge.” The presiding judge reheard the three cases, dismissing each *nunc pro tunc* to August 11.

The judge has been diagnosed with Alzheimer’s disease and did not dispute in the discipline proceedings that she was not able to serve as a judge. She had applied for and was receiving temporary disability benefits but had not officially retired. The Commission stated that it was sympathetic to the judge’s mental health issues and did not intend to punish or penalize her because she suffers from Alzheimer’s. The Commission concluded, however, that it could not ignore that the judge’s conduct that prompted the Board’s investigation was “prejudicial to the administration of justice, brought the judicial office into disrepute, and diminished the public’s confidence in the integrity of Illinois’s judges.”

The Judicial Council for the U.S. Court of Appeals for the 5th Circuit noted uncontroverted medical evidence of a judge’s permanent disability when it concluded its investigation after she retired. *In re Complaint Regarding Minaldi*, Order and memorandum of reasons (5th Circuit Judicial Council August 23, 2017) (<https://tinyurl.com/y823sfvx>). According to news reports, the judge had been treated for alcoholism, had been diagnosed with severe Wernicke-Korsakoff syndrome, a degenerative brain disorder

“Several cases in 2017 demonstrate the adverse effect of judicial impairments on individual judges and the judiciary.”

linked to alcohol abuse, and had engaged in a pattern of unusual behavior on the bench.

Mental health examinations

Two judges were ordered to undergo mental health examinations as part of discipline investigations in 2017. See “Physical or mental examinations in judicial discipline proceedings,” *Judicial Conduct Reporter* (Fall 2014) (<https://tinyurl.com/yb98j2v7>).

The Nevada Commission on Judicial Discipline suspended a judge for 60 days without pay and ordered him to pay a \$5,000 fine to an anti-bullying organization and to submit to a psychiatric exam for (1) making comments to a reporter about two pending cases to protect his re-election bid; (2) refusing to vacate a hearing in a case in which a motion for recusal was pending and advising a party to file a complaint against opposing counsel; and (3) failing to accord plaintiff’s counsel the right to be heard during a hearing, repeatedly using intemperate language and yelling at her, directing that she be handcuffed, and holding her in contempt. *In the Matter of Potter*, Findings of fact, conclusions of law, and imposition of discipline (Nevada Commission on Judicial Discipline November 22, 2017) (<https://tinyurl.com/y9sx7vbh>).

The Commission stated that the “most troubling aspect” of the case was when the judge’s “temper exploded during the Commission hearing itself,” allowing the Commission to witness first-hand the behavior that the judge had exhibited during one of the underlying incidents. “Such a visceral and emotional display of rage,” the Commission explained, “caused the Commission to seriously question Respondent’s mental stability and capacity to control his anger, thereby necessitating a psychiatric evaluation.”

Reviewing a decision of the Judicial Council of the 6th Circuit, the Judicial Conduct and Disability Committee of the U.S. Judicial Conference publicly reprimanded a judge for ordering a magistrate judge to show cause why a filing deadline had not been met and for refusing to cooperate with the special investigating committee’s request that he undergo a mental health examination. *In re Adams*, Memorandum of decision (Judicial Conduct and Disability Committee of the U.S. Judicial Conference August 14, 2017) (<https://tinyurl.com/yac5mp76>). Although the Committee “anticipate[d]” that the judge would expeditiously comply with the order that he submit to a mental health examination, the judge has filed a federal lawsuit challenging the order.

The judge had ordered a magistrate judge to show cause why the magistrate judge should not be held in contempt or otherwise sanctioned for failing to comply with an order requiring that a report and recommendation be filed in social security cases within 270 days. In an e-mail to the judge, the magistrate judge took responsibility for the mistake, which was due to a clerical error; the magistrate judge also began arranging legal representation for a hearing and spent the weekend completing the

(continued)

report and recommendation. Judge Adams found the show cause order to be “satisfied.”

Four other judges filed a complaint about Judge Adams based on the show cause order and “ongoing disruptive behavior directed at other judges in the Northern District of Ohio.” The special investigating committee asked Judge Adams to provide records of any mental or emotional health testing or treatment he had undergone and to submit to psychological testing, but the judge refused. The forensic psychiatrist retained by the special committee concluded that the available data suggested, not a mental state of psychotic proportions, but “significant personality traits that may have contributed to the current concerns.”

The Judicial Conference Committee found that the special committee was justified in requiring the judge to undergo an examination and that his refusal constituted misconduct. The Committee held that the request was authorized by “the Judiciary’s inherent authority to regulate its affairs, . . . including the conduct and fitness for duty of federal judges, and from its broad investigatory powers and decisional discretion” under the Judicial Conduct and Disability Act of 1980 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Committee concluded that the judge’s failure to cooperate “impeded the Judicial Council’s ability to conduct a thorough and conclusive investigation” and was, therefore, “prejudicial to the effective and expeditious administration of the business of the courts.” The Committee acknowledged the judge’s “indisputable privacy interest” but emphasized that “a federal judge’s sound mental health is essential to his or her fulfillment of all judicial duties.”

The Committee rejected the judge’s argument that the evidence was not sufficient to warrant the examination. The Committee noted that, after the court did not select Judge Adams’s preferred candidate for a magistrate judge position in 2008, he had “repeatedly expressed hostility and contempt toward the court’s magistrate judges” and developed “an increasingly strained relationship” with his colleagues, “withdraw[ing] from relations” with the other district judges and “routinely attempt[ing] to undermine” their administration of the court’s business. The Committee stated that it shared the Judicial Council’s view that “input from an independent medical expert is necessary to fully and fairly assess Judge Adams’s mental condition and fitness to continue to serve as a judge.”

**The Center for
Judicial Ethics
has links to
judicial conduct
commissions
and judicial
ethics advisory
committees at
www.ncsc.org/cje.**

What they said in the courtroom that got them in trouble

JUDICIAL CONDUCT REPORTER

WINTER 2018

- “\$4,000,000,000.” Judge imposing bond on a murder suspect. *Brown* (Texas Commission 2017) (<https://tinyurl.com/y7u9deux>) (reprimand for this and other misconduct).
- “Brief appearance for the hat. P***ed off the rest of the judges because they all voted for Hillary, so [sic]. I was the only Trump supporter up there, but that’s okay.” Judge explaining why he wore “MAKE AMERICA GREAT AGAIN” baseball cap in the courtroom the day after the U.S. presidential election. *Zabel* (Ontario Judicial Council September 11, 2017) (<https://tinyurl.com/yagqokw7>) (30-day suspension).
- “We’re going to switch judges.” Judge before giving her robe to a clerk/staff attorney and allowing her to sit behind the bench and preside over cases. *Turner* (Illinois Commission 2017) (<https://tinyurl.com/y8wn3k89>) (retirement for being mentally unable to perform duties).
- “We don’t know whether he’s some white guy like me making a threat or somebody who’s, you know, more likely to be a gangster.” Judge during a murder trial about a person who sent texts. *North* (Washington Commission 2017) (<https://tinyurl.com/yakgbav5>) (admonishment).
- “I’m not an expert, I’m not a developer, I’m not a contractor, but I’ve been involved in real estate a little bit” and “the truth gets left out when people are trying to cover their butts.” Judge in a small claims action. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- “And I had a Filipino teacher who always used to ask for a s**t of paper.” Judge during trial about misunderstanding what someone said. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- “I am disturbed by the way you came back with such a harsh verdict and sentence for this man’s life in such a short time. Did you even discuss the details of the case at all?” Judge to jury following guilty verdict. *Hawthorne* (Texas Commission 2017) (<https://tinyurl.com/ybcc7aul>) (reprimand for this and other misconduct).
- “This is one of the few things this country asks our citizens to do, come up here and pass judgment. And in return, we send you disability checks. And you turn around and come up to me and tell me, I don’t want to serve because I do not understand. You understand perfectly. Your English is no problem.” Judge to prospective juror. *Aguilar* (Texas Commission 2017) (<https://tinyurl.com/yan9wf4a>) (reprimand for this and other misconduct).

(continued)

Same-sex marriage

Top judicial ethics and discipline stories of 2017

In 2017, there were several judicial discipline cases arising from the judicial officer's opposition to same-sex relationships.

- A special Alabama Supreme Court affirmed the decision of the Court of the Judiciary suspending Chief Justice Roy Moore from office without pay for the remainder of his term for entering an administrative order that directed all probate judges to follow the state's laws banning same-sex marriage in disregard of a federal court injunction. *Moore v. Judicial Inquiry Commission* (Alabama Supreme Court April 19, 2017) (<https://tinyurl.com/yayk5vos>). The Court found that the administrative order "served no purpose, other than to create confusion among the probate judges," most of whom are not lawyers. The Court of the Judiciary had found that the Chief Justice's description of caselaw in the order was "incomplete, misleading, and manipulative."
- The Wyoming Supreme Court censured a judge for her refusal to perform same-sex marriages and ordered her either to perform no marriage ceremonies or to perform all marriage ceremonies regardless of the couple's sexual orientation. *Inquiry Concerning Neely*, 390 P.3d 728 (Wyoming 2017). The Court emphasized that the case was not about same-sex marriage, the reasonableness of religious beliefs, or imposing a religious test on judges but "about maintaining the public's faith in an independent and impartial judiciary that conducts its judicial functions according to the rule of law, independent of outside influences, including religion, and without regard to whether a law is popular or unpopular."
- The Kentucky Judicial Conduct Commission publicly reprimanded a judge for entering a general order declaring that "under no circumstance" would the adoption of a child by a homosexual be in the child's best interest. *In re the Matter of Nance*, Findings of fact, conclusions of law, and final order (Kentucky Judicial Conduct Commission December 19, 2017) (<https://tinyurl.com/y7y46a29>). Acknowledging that this declaration constitutes a "personal bias or prejudice" against homosexuals seeking to adopt children, the judge also ordered that any attorney filing a motion for adoption on behalf of a homosexual party notify court staff so that he could disqualify himself. The Commission found that the order was contrary to prevailing law and effectively created a local rule without the approval of the Chief Justice of the Kentucky Supreme Court required under state rules.

What they said to or about attorneys that got them in trouble

JUDICIAL CONDUCT REPORTER

WINTER 2018

- “So our district attorney’s failure to do the job with which he was being paid to do has created a lot of problems for everybody: the citizens, the defendants.” Judge in habeas corpus hearing. *Schildknecht* (Texas Commission 2017) (<https://tinyurl.com/y9emgqsk>) (reprimand).
- “If they’re coming for me, they are likely coming for you.” Judge ex parte to public defenders after the city attorney’s office filed a blanket challenge against him. *Kreep* (California 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- “I love her accent,” and “I wasn’t planning on having you deported.” Judge about and to a public defender. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- “Star Parker,” “Bun Head,” “Ms. Dimples,” and “Shorty.” Judge referring in court to a deputy city attorney and interns for the public defender. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- “The lovely attorney next to you went over the form, correct?” Judge to a defendant about a public defender. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- “If you’re good during your argument, I’ll give you some cookies, little boy.” Judge to a law student intern with the city attorney’s office who appeared for an arraignment. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).
- “Does the 30-day notice require the abandonment of property wording?” Judge asking an attorney for advice about a case the attorney was not handling. *Kreep* (California Commission 2017) (<https://tinyurl.com/yc979yo9>) (censure for this and other misconduct).

(continued)

Facebook fails

Top judicial ethics and discipline stories of 2017

As in recent years, several judges were disciplined in 2017 for using social media without exercising the extreme caution recommended for judges who decide to join the millions of others on Facebook and other platforms.

The California Commission on Judicial Performance publicly admonished a judge for (1) posting a statement about a judicial candidate on Facebook with knowing or reckless disregard for its truth and (2) being Facebook friends with attorneys who were appearing regularly before him in court. *In the Matter Concerning Ferguson*, Public admonishment (California Commission on Judicial Performance May 31, 2017) (<https://tinyurl.com/yc99mwbo>).

(1) Deputy District Attorney Karen Schatzle was a candidate for judicial office in 2016. Judge Ferguson supported her opponent, Judge Scott Steiner, who had been publicly censured for sexual activity in the courthouse. Schatzle posted on the North Orange County Bar Association Facebook page: “Scott Steiner uses his office for sex and yet so many aren’t concerned, crazy politics!” Judge Ferguson posted in response: “Karen Shatzle [sic] has sex with defense lawyer whike [sic] shw [sic] is a DA on his cases and nobody cares. Interesting politics.” In response, Schatzle posted, “I’m sure The Judicial Commission of Performance [sic] would love to know about your blogging!!” The judge then removed his post.

The Commission found that the judge’s post was made with knowing or reckless disregard for the truth. The judge could provide no factual support for his statement but referred only to “commonly known information” and a declaration from an attorney who admitted having no evidence. The judge acknowledged that he was wrong to write the post, recognized that it fell outside the bounds of professionalism and the decorum expected of a bench officer, and apologized.

(2) For a time after becoming a judge, the judge was Facebook friends with three criminal defense attorneys without disclosing the relationship when they appeared regularly before him in court. The Commission noted that *California Judges Association Ethics Opinion 66* (2010) (<http://tinyurl.com/kgk4hgo>) advises that, “[w]hen a judge learns that an attorney who is a member of that judge’s online social networking community has a case pending before the judge the online interaction with that attorney must cease (i.e. the attorney should be ‘unfriended’) and the fact this was done should be disclosed”

Racial insensitivity

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for posting, “Time for a tree and a rope . . .” on Facebook in response to the arrest of an African-American man for the killing of a police officer. *Amended Public Reprimand of Oakley and Order of Additional Education*

(continued)

(Texas State Commission on Judicial Conduct May 8, 2017) (<https://tinyurl.com/ydy5xyx3>).

On November 21, 2016, the San Antonio Police Department posted to its Facebook page a mugshot of an African-American man arrested and charged with capital murder in the killing of a police officer. In response, the judge posted on the department's page the comment, "Time for a tree and a rope . . ." His comment, with the post, also appeared on his own Facebook page. The former editor of a local newspaper took a screen shot of the post and disseminated it to the news media. The judge removed the post and apologized, describing his comment as "harsh," "off-the-cuff," and "curt," but denying it had anything to do with race. The judge and his post became the subject of negative media attention, locally, nationally, and internationally, and the Commission received 18 written complaints about the post's racial insensitivity, call for vigilante justice, and apparent disregard for due process, the influence it could have on the potential jury pool, and the judge's impartiality.

In response to the Commission's inquiry, the judge stated, "[m]y comment was intended to reflect my personal feelings that this senseless murder of a police officer should qualify for the death penalty. In my mind the race/gender of the admitted cop killer was not relevant." The judge explained that a "tree and a rope" was a reference to a humorous advertising campaign for Pace Picante Sauce salsa from the 1980s. The judge argued that his post did not discredit the judiciary because the "media stories were promoted as a political attack" and his words were twisted into "phrases [and] headlines that were not accurate."

"Designed to elicit responses"

The West Virginia Judicial Investigation Commission publicly admonished a judge for posting on his Facebook page a photo showing him conducting an initial appearance. *Public Admonishment of Hall* (West Virginia Judicial Investigation Commission October 31, 2017) (<https://tinyurl.com/yc3x8aly>).

The judge arraigned a woman on felony charges of financial exploitation of the elderly, obtaining money by false pretenses, conspiracy, forgery, and computer fraud for allegedly forging her dying mother's will to receive more than \$1,000,000. WSAZ-TV filmed the arraignment and ran a story in which the judge prominently appeared.

That evening, the judge posted on his Facebook page a still photo of the video from that story showing him seated in court conducting the initial appearance. The caption underneath the photo read, "Police: Woman Exploits over One Million Dollars from Dying Mom." The judge's post elicited several responses from members of the public, including "[d]isgusting," "[h]ang 'em high Brent," "[h]opefully you set a high bond," and "I didn't think anything could be lower than rescinding DACA. I was wrong." The comments also included statements of support for the judge's handling of the arraignment, such as "[g]o Brent" and "[g]et 'em Brent," and "[t]hat face! Good one."

"As in recent years, several judges were disciplined in 2017 for using social media without exercising the extreme caution recommended for judges who decide to join the millions of others on Facebook and other platforms."

(continued)

The Commission strongly disagreed with the judge's argument that he did not comment on any pending or impending case.

There is an old maxim that "a picture is worth a thousand words." The saying is deigned to convey the concept that a single image often expresses an intricate idea better than any written description. By placing that still photo on his Facebook page, Respondent expressed to his Facebook friends the woman's perceived guilt in a louder voice and in a more certain tone than if he had actually written the words himself. The post was also designed to elicit responses from his friends because that's what Facebook is meant to be — an alternate public means of communication. The fact that the friends' comments were largely negative is no surprise, and Respondent's failure to remove them constituted a tacit endorsement of the same. By engaging in such conduct, Respondent also clearly called into question the integrity and independence of the judiciary. Instead, Respondent adopted a position that was certainly contrary to the neutral and detached demeanor of all judges but was undoubtedly popular with his friends.

What they said on social media, to reporters, and in campaigns that got them in trouble

- "Time for a tree and a rope . . ." Judge in a comment on the sheriff's Facebook post about the arrest of an African-American man for the killing of a police officer. *Oakley* (Texas Commission 2017) (<https://tinyurl.com/yb2lht96>) (reprimand).
- "Karen Shatzle [sic] has sex with defense lawyer whike [sic] shw [sic] is a DA on his cases and nobody cares. Interesting politics." Judge about a judicial candidate on the bar association Facebook page. *Ferguson* (California Commission 2017) (<https://tinyurl.com/y8yztthr>) (admonishment for this and other misconduct).
- "I stand behind what we did. I have no qualms about what happened and how we prosecuted the matter. I believe it was completely justice done." Judge to reporter about a pending case he had tried as a prosecutor. *Kephart* (Nevada Commission 2017) (<https://tinyurl.com/y9rpnfqz>) (reprimand).
- "[T]here's no way" it was in the child's best interest to stay with his stepmother. Judge to a reporter explaining a custody decision. *Potter* (Nevada Commission 2017) (<https://tinyurl.com/y9sx7vbh>) (60-day suspension without pay and \$5,000 fine for this and other misconduct).
- "I'm not sure, Cody, that I can recall, in recent times, somebody being that sympathetic a figure." Judge to a reporter about the defendant in a high profile murder case during one of three interviews he gave the same day

(continued)

he declared a mistrial. *Piampiano* (New York Commission 2017) (<https://tinyurl.com/yc5wm2eo>) (censure for this and other misconduct).

- “Barack Obama & Gary Johnson Party at the White House” False and misleading caption to a photo-shopped picture in a judicial candidate’s campaign flyer attacking an incumbent judge. *Callaghan*, 796 S.E.2d 604 (West Virginia 2017) (2-year suspension without pay and \$15,000 fine).
- “Ms. Shepard has done well. She has kept her promises. She has worked hard. She has maintained her integrity.’ —*The Orlando Sentinel*.” Judicial candidate’s mailer using an edited version of a newspaper endorsement for her 1994 legislative re-election campaign in her 2014 judicial campaign. *Shepard*, 217 So. 3d 71 (Florida 2017) (90-day suspension without pay).