To promote the effective administration of justice

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18 Judges Removed in 2004 *by Cynthia Gray*

Between 1980 and the end of 2003, approximately 307 judges were removed from office as a result of state judicial discipline proceedings. In 2004, 18 state judges were removed. (In addition, one removal decision from New York is pending on appeal.)

Based on the recommendation of the Judiciary Commission, the Louisiana Supreme Court removed a judge for persistent public intoxication while performing judicial duties. *In re Doggett*, 874 So. 2d 805 (Louisiana 2004). Witnesses testified that the judge was a good judge when he was not drinking, but that on numerous occasions, he had appeared visibly intoxicated on the bench and in chambers, shaky, slurring his speech, acting disoriented, and walking unsteadily. Due to the judge's intoxication, court had to be canceled on some days and there were significant delays in several cases.

The judge admitted that he has been an alcoholic for over 30 years. He had received treatment several times, followed by significant periods of sobriety, but also relapsed several times. The judge had been sober since February 28, 2003.

The court concluded, "although we feel compassion for Judge Doggett's struggle to maintain sobriety, we must, first and foremost, consider the grave implications which this misconduct casts upon the judiciary."

No court would tolerate an attorney or a litigant appearing in court intoxicated, and certainly it is a gross violation for a judge to sit on the bench and perform judicial duties while under the influence of alcohol. This behavior violates the sacred trust placed in judges to make decisions which affect the lives of citizens and places our system of justice at risk.

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Other Discipline in 2004

In addition to the 18 removals, in 2004, 10 judges resigned in lieu of discipline pursuant to agreements with judicial commissions that were made public (two of those resignations also included public reprimands). 86 additional judges (or former judges in 15 cases) were publicly sanctioned as a result of state judicial discipline proceedings. There were 12 suspensions without pay (one of the suspensions was stayed; one also included a public reprimand) with the length of the suspensions ranging from one month to two years with the second year stayed (with conditions).

There were 22 public censures (one also included a fine), 18 public admonishments (one also included an order of additional education), 29 public reprimands (three of the reprimands also included fines, one included an order of additional education, one included a 30-day suspension deferred with conditions), four public warnings (one also included an order of additional education), and one informal adjustment. In approximately 58 of those cases, the discipline was imposed pursuant to the consent of the judge or former judge.

Misrepresentations by Judges

Misrepresentations and other deceptive conduct in campaigning and while performing judicial duties got several judges in trouble in 2004.

A judge who used his parents' address to run for office, for example, was removed by the Illinois Court Commission based on a complaint by the Judicial Inquiry Board. The judge admitted that he lived a normal family life with his wife and children in Riverside (a Chicago suburb) but put the address of his parents' home in the City of Chicago on his declaration of candidacy for a seat on the tenth judicial sub-circuit. *In re Golniewicz*, Order (Illinois Courts Commission November 14, 2004). The Commission noted that the judge had actively concealed his actual abode. For example, he had mail relating to his legal career sent to his parents' address while other mail, such as magazines and newspapers, utility bills, and mortgage correspondence, went to his home in Riverside.

The Commission concluded that the judge's actions demonstrated that his intent was not to have a permanent abode at his parents', but to run from the address that provided him the greatest chance of winning the election. The judge was also in violation of state law by residing outside the jurisdiction from which he was elected and voting in a precinct where he did not live.

The Commission also found that the judge was not a truthful witness at the hearing, noting he "could not give simple answers to questions about where he lived at various times."

He would give answers such as, "It depends what your subjective meaning of the word live is;" "You keep coming back to this word lived. There is no agreement as to what that word means because it's a vernacular subjective word;" and "as I understand it lived is not something that is quantitatively measured. It's a vernacular word that means just about anything, sir, and that is why I am having a very difficult time when you are constantly using that verb to know exactly what you mean."

Finally, the Commission concluded that the judge had used a deceptive flyer during his election campaign. In the flyer, the judge addressed voters in the tenth sub-circuit as "Dear Neighbors" and referred to himself as a "lifelong resident of St. Viators Parish on the Northwest side of Chicago" who shared their problems. Finding the flyer deceptive, the Commission concluded, "no voter in the Tenth Subcircuit who received this flyer would understand that it was sent by a person who was living with his wife and children in Riverside." (The Commission also made

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Administrative Failures by Judges

As in other years, the failure to efficiently administer courts and dockets led to numerous cases of discipline in 2004, even removal when the deficiencies were substantial and continued despite remedial efforts.

For example, a Texas judge was removed for thousands of instances of failure to perform non-discretionary ministerial acts regarding the depositing, receipting, and accounting of funds and for a backlog of over 20,000 unprocessed cases. *In re Rose*, 144 S.W.2d 661 (Texas Review Tribunal 2004). Between 1992 and 2002, the auditor found and reported to the judge numerous discrepancies in deposits, in the court's monthly activity reports, and in employees' time and attendance records. For example, an audit for 1993 through 1995 found that 72.5% of receipts reviewed contained errors in deposit coding and/or in the amount collected and that 2,610 traffic cases and 1,044 bad check cases had not been entered into the accounting system. Similar reports were made in the following years.

Beginning in June 2000, the judge's court was closed to the public on Friday afternoons to allow the staff additional time to process the week's cases and the court's backlog; nonetheless, the court made no progress. On February 14, 2001, the auditor's staff found undeposited funds from as far back as September 2000 totaling $231,219.21. In March 2001, the county created a special project team that removed a backlog of 20,373 unprocessed citations issued as far back as 1998. The court immediately began to accumulate another backlog of unprocessed citations.

Rejecting the judge's argument that an elected judge cannot be removed for "the insufficiencies of his court staff, who are not his employees," the Review Tribunal stated that a judge may be disciplined for the conduct of those under his or her direction and control, and "a judge, who necessarily delegates some of the court's responsibilities to staff, retains the obligation to see to it that the staff fulfills the responsibilities delegated." Accepting the recommendation of the State

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Developments Following *Republican Party of Minnesota v. White* by Cynthia Gray

In *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), the United States Supreme Court held that states, in light of voters' need for information, could not prohibit judicial candidates from announcing their views on disputed legal or political issues. This article up-dates the information on the response to the decision contained in the summer 2002 issue of the *Judicial Conduct Reporter*.

ABA Amendments

In 2003, the American Bar Association amended portions of the model code of judicial conduct to reflect the decision in *White*. The amended canon regarding campaign speech prohibits a judicial candidate from making "with respect to cases, controversies, or issues that are likely to come before the court . . . pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office." The restriction also applies to sitting judges. The amendments eliminated the prohibition on judicial candidates making statements that "appear to commit" the candidate because the ABA considered the restriction too vague to withstand strict scrutiny analysis.

The 2003 ABA amendments also added a new section requiring disqualification if the "judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to (i) an issue in the proceeding; or (ii) the controversy in the proceeding."

Six states — **Arizona, Maryland, Minnesota, Nevada, New Mexico,** and **Wisconsin** – have adopted the 2003 ABA amendments regarding campaign speech. In addition, in December 2003, the **California** Supreme Court amended its code of judicial ethics to delete the phrase "appear to commit" because, commentary explains, it could have made the prohibition against judicial candidates making commitments "overinclusive."

In January 2004, the **Georgia** Supreme Court deleted provisions in its code requiring candidates to maintain the dignity appropriate to judicial office and prohibiting pledges or promises of conduct in office and added a provision stating that judicial candidates "shall not make statements that commit the candidate with respect to issues likely to come before the court." New commentary states:

> This Canon does not prohibit a judge or candidate from publicly stating his or her personal views on disputed issues . . . . To ensure that voters understand a judge's duty to uphold the constitution and laws of Georgia where the law differs from his or her personal belief, however, judges and candidates are encouraged to emphasize in any public statement their duty to uphold the law regardless of their personal views.

Rejecting arguments that the pledges and commit clauses violate the First Amendment, both the **New York** Court of Appeals and the **Florida** Supreme Court disciplined judges for pro-prosecution rhetoric in their campaign statements. *In the Matter of Watson*, 794 N.E.2d 1 (New York 2003); *Inquiry Concerning Kinsey*, 842 So. 2d 77 (Florida), *cert. denied*, 540 U.S. 825 (2003). The New York Court explained:

> A judicial candidate should not be encouraged to believe that the candidate can be elected to office by promising to act in a partisan manner by favoring a discrete group or class of citizens. Likewise, it would be inconsistent with our system of government if a judicial candidate could campaign on a platform that he or she would automatically give more credence to the testimony of certain witnesses or rule in a predetermined manner in a case which was heading to court.

Similarly, the Florida Court held that the pledges provision "furthers the State's interest in preventing party bias and promoting openmindedness, and the appearance of either, because it prohibits a judicial candidate from making promises that compromise the candidate's ability to behave impartially, or to be perceived as unbiased and openminded by the public, once on the bench."

In contrast, in April 2003, the **North Carolina** Supreme Court eliminated any restriction on campaign speech except the prohibition on a candidate "intentionally and knowingly" misrepresenting the candidate's identity or qualifications.

Questionnaires

Federal lawsuits challenging the pledges and commit clauses were filed in September 2004 by pro-life groups in **Alaska**, **Indiana**, **Kentucky**, and **North Dakota** after judicial candidates cited the code of judicial conduct in refusing to answer the groups' questionnaires. The Indiana questionnaire, for example, gave candidates the option of indicating "agree," "disagree," "undecided," or "decline" to the statement "while recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of the case, I believe that *Roe v. Wade* was wrongly decided." The questionnaire explained that the

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Significant administrative malfeasance was the basis for removal in several cases. *See In the Matter of Kouros*, 816 N.E.2d 21 (Indiana 2004) (failure to timely document decisions; inaccurate representations about remedial measures); *In the Matter of Singleton*, 605 S.E.2d 518 (South Carolina 2004) (failure to comply with financial record-keeping requirements; adjudication of tickets issued to family and friend); *In re Rose*, 144 S.W.2d 661 (Texas Review Tribunal 2004) (failure to timely and properly receipt, deposit, and account for monies; failure to file required reports; failure to timely execute court business); *In re Anderson*, 82 P.3d 1134 (Utah 2004) (failure to comply with statutory time limits in deciding child welfare cases; creating circumstances that prevented performance of duties). For a longer discussion of several of these cases, *see* the article "Administrative Failures by Judges" on page 2.

A juvenile judge's failure to manage her court competently was only one of the grounds for removal in *In re Hughes*, 874 So. 2d 746 (Louisiana 2004). The judge's administrative faults included failing to assure timely preparation of judgments, failing to observe regular hours, conducting court by phone or without a court reporter, employing unqualified staff, and allowing individuals with extensive criminal backgrounds to frequent her courtroom, access the court's computer system and confidential juvenile records, and supervise juveniles. The judge also abused her parole authority by releasing at least 900 adult detainees.

Other violations related to the judge's pre-bench failure to file timely finance disclosure reports during 15 election campaigns and holding herself out as a notary public after her commission had been suspended. Finally, the court found that the judge while an attorney "time and time again took money from people who could ill afford to pay it, did minimal or no work to earn it, and then refused to refund monies she clearly had not earned . . . preying upon her clients' lack of education and lack of sophistication in legal matters."

"In some instances contrition may be insincere, and in others no amount of it will override inexcusable conduct."

Misconduct in their law practice led to the removal of two part-time judges in Nevada and New York. In Nevada, a part-time judge took money from a client to retrieve her granddaughter from the child's mother in Mexico by extra-legal means (bribing officials or others). The judge had accepted some of the money on court premises wearing "a majestic purple robe he had procured for himself." The judge did not effectuate the extraction, keeping the money. *In the Matter of LaPorta*, Findings of Fact, Conclusions of Law, and Imposition of Discipline (Nevada Commission on Judicial Discipline July 13, 2004) (www.judicial.state.nv.us/decision%20index.htm). The Commission concluded that this conduct alone warranted removal although it also found that he had served as a judge while his law license was suspended or on inactive status and had accrued over $8,000 in parking tickets. The Commission also imposed a $10,000 fine and censure. The Commission decision is final because the judge did not appeal.

A part-time town court judge who had been suspended from the practice of law for a year for converting client funds was removed in New York. *In the Matter of Cerbone*, 812 N.E.2d 932 (New York 2004). While the judge was representing the executrix of an estate, he deposited a tax refund check made out to the executrix in his escrow account and, without his client's knowledge or consent, wrote a check to himself on that account for his attorney's fee. In addition, because the judge blamed the district attorney for complaining about him to the State Commission on Judicial Conduct, he made negative comments in open court, stating, for example, "that his office telephone was 'tapped,' the district attorney was keeping 'dossiers' on him, and he was 'being watched.'"

The court noted this was the judge's sixth encounter with the Commission, and several of the prior proceedings involved more than one incident. The court concluded:

> While the facts of the cases differ greatly, many of them involve a common theme: petitioner seems incapable of understanding, despite repeated warnings, that a Judge performing judicial duties must both act and appear to act as an impartial arbiter serving the public interest, not someone with an axe to grind. A Judge who does not know this, and is not capable of learning it, should not be on the bench.

Legal error

The New York Court of Appeals removed a judge for failing to inform defendants of the right to counsel guaranteed by a state statute and coercing guilty pleas by abusing his discretion in setting bail. *In the Matter of*

Bauer, 818 N.E.2d 1113 (New York 2004). The court found "a pattern of abuse by which petitioner on numerous occasions not only failed to advise defendants of their rights but perverted [the statute] by telling defendants that they must engage their own attorneys — concealing from them that the statute requires the court to assign counsel when warranted and to see to it that the right to counsel is protected."

The court also found 26 instances in which, without regard to the statutory criteria, the judge set bails ranging from $10,000 to $50,000 for defendants who were charged with petty crimes or violations. For example, the judge set bail at $25,000 for a defendant charged with riding a bicycle at night on a sidewalk and without appropriate lights. Although the maximum penalty for the violations was a $100 fine and no incarceration, the defendant spent seven days in jail because he could not afford to satisfy the bail. The defendant then pled guilty without any appearance by defense counsel.

The court concluded that coupled with a failure to advise these defendants of their right to assigned counsel, the judge's "imposition of punitive bail all but guaranteed that defendants would be coerced into pleading guilty: it was the only way to get out of jail." The court acknowledged that bail is discretionary and that there may be a wide range in the amounts set by reasonable judges but concluded that the judge's conduct was not "an isolated instance of high or injudicious bail-setting, but a pattern of exorbitant bail so extraordinary that we must characterize it as abusive and coercive in the extreme . . . ."

The court also found that the judge had imposed illegally excessive sentences in four marijuana possession cases and twice convicted defendants without pleas of guilty or findings of guilt.

In explaining its decision to remove the judge, the court noted his lack of contrition.

> In some instances contrition may be insincere, and in others no amount of it will override inexcusable conduct. Here, while petitioner's conduct was far from uniformly foul, his utter failure to recognize and admit wrongdoing strongly suggests that, if he is allowed to continue on the bench, we may expect more of the same.

"This case illustrates that at times there is a dire need for the Commission to step in and protect the public."

A non-lawyer judge in Texas was removed for incompetence evidenced by her issuance of defective citations, failure to follow the law of contempt, and exercising jurisdiction in a case in which her court had no jurisdiction. The judge had also attempted to use her status to influence the handling of a probationer's status and allowed her relationship with a county commissioner to influence her bail decision for his relative. *In re Chacon*, 136 S.W.3d 86 (Texas Review Tribunal 2004).

Misrepresentations formed the basis for removal of a judge in Georgia and one in Illinois. *See In the Matter of Robertson*, 596 S.E.2d 2 (Georgia 2004) (false statement on declaration of candidacy); *In re Golniewicz*, Order (Illinois Courts Commission November 14, 2004) (use of parents' address to run for office; improper demeanor in three cases). For longer discussion of these cases, *see* the article "Misrepresentations by Judges" on page 2.

Demeanor

Affirming the recommendation of the State Commission on Judicial Conduct, a Texas Review Tribunal removed a former judge, and prohibited him from holding judicial office in the future, for repeatedly using extremely obscene language in his courtroom. *In re Bartie*, 136 S.W.3d 81 (Texas Review Tribunal 2004). The court's opinion did not repeat the judge's language due to its offensiveness but noted that the judge, "while sitting in his judicial capacity, used some of the most vulgar and offensive language imaginable." The court concluded:

> This Tribunal is mindful that the primary purpose of the Texas Code of Judicial Conduct is to protect the citizens of this State, not to punish or discipline judges. . . . This case illustrates that at times there is a dire need for the Commission to step in and protect the public. Through his use of abusive and obscene language, Respondent was able to intimidate juvenile litigants and their parents, criminal defendants, and civil litigants, a newspaper reporter, and even his staff. As Respondent's court clerk stated, she knew "with this judge that we needed help, that Judge Bartie had gotten out of control. I hoped that the Judicial Conduct [Commission] would come to my aid. I hoped that the Judicial Conduct [Commission] would do what needs to be done." The Judicial Conduct Commission has done what needed to be done, and we affirm their recommendation in all regards.

The Minnesota Supreme Court removed a judge for several incidents in which he lost his temper; the court also ordered the judge's disability retirement due to mental illness and suspended his law license for one year. *Inquiry Into Ginsberg*, 690 N.W.2d 539 (Minnesota 2004). In an animal cruelty case, the judge urged the defendant to

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pick a sheriff's deputy with whom to fight. The judge also dismissed charges in three criminal cases without hearing from the prosecution and then retaliated against the prosecutors who filed complaints against him.

The court stated that the violations related to his judicial duties standing alone would probably not warrant removal. But, the court continued, "these actions do not stand alone." The judge had pled guilty to assault for grabbing, pushing, and striking a juvenile who had hidden his son's bike. The judge had also been convicted of criminal damage to property after he scratched the hood of a car with his keys in a confrontation with the driver in a parking lot.

Criminal conduct affects not only the public's perception of Judge Ginsberg, but also undermines the public's confidence and respect for the judiciary as a whole. That Judge Ginsberg must serve the criminal sentences imposed for his crimes is not sufficient to ensure the public's confidence in the judicial branch.

Criminal conduct led to the removal of three former judges in 2004 by the Pennsylvania Court of Judicial Discipline, making them ineligible to hold judicial office in the future. *In re Jaffe*, 839 A.2d 491 (2004) (pled guilty to federal charges of soliciting money in the performance of judicial duties, soliciting money from a partner in a law firm that had a substantial number of cases before him, and soliciting financial support for his family and employment for himself after incarceration in exchange for concealing attorney's role in the payment to the judge); *In re Amati*, 849 A.2d 320 (2004) (convicted of operating illegal gambling business, conspiracy to defraud U.S., obstruction of state or local law enforcement, all felonies); *In re Pazuhanich*, 858 A.2d 2341 (2004) (pled nolo contendere to public drunkenness, indecent assault, endangering the welfare of children, corrupting the morals of a minor).

Finally, his failure to comply with a federal court order to remove a monument displaying the Ten Commandments from the rotunda of the State Judicial Building led to the removal of the Chief Justice of the Alabama Supreme Court by a special supreme court comprised of seven retired justices and judges chosen at random when the other justices of the court recused. *Moore v. Judicial Inquiry Commission* (Alabama Supreme Court April 30, 2004).

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Commission on Judicial Conduct, the Review Tribunal concluded that the incidents of misconduct overwhelmed the witnesses who testified of their favorable dealings in the judge's court and held that character evidence "cannot justify a less severe sanction if removal or at least suspension are otherwise justified."

"Real-Life Consequences"

Based on the recommendation of the Commission on Judicial Qualifications, the Indiana Supreme Court removed a judge who, over a substantial period, "proved either unable or unwilling" to issue timely and documented decisions "causing real-life consequences for those whose matters are in her hands" and who made unreliable representations to the court about measures taken to conform to acceptable administrative standards. *In the Matter of Kouros*, 816 N.E.2d 21 (Indiana 2004).

On October 21, 2002, in response to reports of a backlog, the supreme court instructed the division of state court administration to monitor the judge's case processing. On a visit to the judge's court, court administration staff found over 200 cases in which no orders had been entered after hearings or trials had been held. Desks were covered with the case files, which were covered with "post-it" notes documenting the court's decisions.

On January 17, 2003, the court ordered the judge not to keep more than 80 files out of the clerk's office at one time and to prepare, sign, and return orders to the clerk's office within 48 hours, in addition to other measures. On March 4, 2003, the judge certified to the court that "each and every minimum standard" had been followed and "every effort" would be made to continue to process cases as outlined in the order.

On another visit to the judge's court on April 21, 2003, the division of court administration found approximately 171 case files checked out and learned that the judge had not been in compliance with the administrative order even on the date on which she had filed her certification. The division of court administration also found 13 cases in which the judge had signed orders but not returned the files to the clerk's office within 48 hours and several cases in which sentencing orders were not timely issued.

On June 27, 2003, the court appointed a judge pro tempore until the judge's term ended or she became able

to perform her duties. On September 29, 2003, in a petition requesting permission to resume her office, the judge represented that she had conferred with fellow judges to learn more about operating a busy urban court, attended conferences on time and case management, and worked with the division of state court administration to learn how to manage her court. The judge represented that, if reinstated, she would transmit written orders to the clerk's office and return the files to the clerk within 48 hours of a decisions and would have no more than 80 files checked out at one time. On December 12, 2003, the supreme court allowed the judge to resume her duties.

However, evidence presented at the discipline hearing showed that by March 29, 2004, the judge's office and bench were in substantial disorder. For example, in 40 cases in which sentencing hearings had been held after her reinstatement, the judge failed to return files and sentencing orders to the clerk's office within 48 hours, the delays ranging from seven days to over two months, with at least half the delays of two weeks or more. The judge's office contained other orders signed weeks earlier with no file stamp and orders dated weeks earlier with no signature. The clerk's records indicated that the judge had at least 137 files and as many as 163 checked out at any one time.

The court noted the "real-life consequences" of the judge's failure to promptly return files with signed orders to the clerk's office. For example, defendants who remained in the county jail during the delays became the subject of incident reports involving fighting and other rule violations. One prisoner whose hearing had been continued was unnecessarily transferred, and one defendant posted bond although the judge had orally ordered that he be held without bond. Arrest warrants were transmitted to the clerk's office for issuance months after they were ordered. Motions for psychiatric examinations were granted in one case, but the orders remained in the file with the judge for weeks.

The court concluded:

> The facts reflect not only Respondent's failure to manage her caseload in accordance with the minimum standards that we provided, but also an inability even to provide accurate information that would allow us to monitor her performance with confidence to ensure that justice is being administered fairly and promptly in her court. . . . Balancing all the circumstances, we conclude that protecting the integrity of the judicial system and ensuring the fair and timely administration of justice require that Respondent be removed from office

The Review Tribunal stated that a judge may be disciplined for the conduct of those under his or her direction and control.

Inability to Perform Duties

What began as a complaint about delay in deciding child welfare cases became a removal decision when the judge's actions in response prevented him from performing his duties as a juvenile court judge. *In re Anderson*, 82 P.3d 1134 (Utah 2004).

During 1999-2000, the judge had significant difficulty managing his child welfare cases in compliance with statutory deadlines for hearings and action. The court of appeals repeatedly ordered the judge to comply, but "for whatever reasons," he did not fully do so. Both the office of the guardian ad litem and the attorney general participated in efforts to resolve the difficulty, but no solution was reached, in part because the judge refused to accept responsibility.

In June 2000, the director of the office of the guardian ad litem requested that the Judicial Conduct Commission investigate the judge's delays, and attorneys from the attorney general's office gave statements. On November 8, 2000, the judge, on his own motion, disqualified himself from cases in which attorneys from the guardian's office or the attorney general appeared. In addition, the judge filed a federal complaint charging deprivations of his rights by the Commission proceedings and making accusations about the competence and motivation of the director of the guardian's office.

The court found that Judge Anderson's voluntary disqualification and demonstrated personal animus for the attorneys of the guardian's office and the attorney general prevented him from hearing child welfare cases, a substantial portion of his caseload as a juvenile court judge. Therefore, the court concluded, there was no alternative but to remove the judge from office, stating that the judge had "created, principally of his own making, a quagmire from which he cannot extract himself, while simultaneously bringing disrepute on himself as a judge and on the judiciary as a whole."

> Judge Anderson's inability to perform his duties places an undue burden on the children and families whose matters would

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have been assigned to him, as well as upon the Third District Juvenile Court. It reduces the capacity of the judiciary to hear and timely resolve the critically important matters that would otherwise be assigned to Judge Anderson . . . and creates a "horrendous and appalling impact on the ability of the Third District Juvenile Court to meet its statutory obligations," . . . . More significantly, however, his actions have denied Utah's citizens a neutral, effective, law-abiding judicial officer, thereby diminishing the overall effectiveness and reputation of the judiciary.

See also In re Hughes, 874 So. 2d 746 (Louisiana 2004) (removal for, among other misconduct, failing to competently administer court); *In re Doggett*, 874 So. 2d 805 (Louisiana 2004) (removal for persistent public intoxication while performing judicial duties and failure to timely perform duties).

There were also sanctions short of removal imposed for administrative malfeasance or nonfeasance in 2004. *See Letter of Admonishment to Finch* (Arkansas Judicial Discipline and Disability Commission May 24, 2004) (www.state.ar.us/jddc/) (frequent absences from work; injudicious temperament towards litigants, witnesses, attorneys, and court staff); *Inquiry Concerning McGuire*, Stipulation (Kansas Commission on Judicial Qualifications February 19, 2004) (stipulated resignation following charges of neglecting duties and falsifying expenses vouchers); *In re Combs*, Order of Public Reprimand (Kentucky Judicial Conduct Commission April 15, 2004) (agreed resignation; absence from scheduled court sessions; chronic and excessive lateness); *In re Clark*, 866 So. 2d 782 (Louisiana 2004) (30-day suspension for failing to rule within 30 days in 19 cases; failing to report timely or accurately 14 cases); *Commission on Judicial Performance v. McPhail*, 874 So. 2d 441 (Mississippi 2004) (reprimand and 30-day suspension for failing to ensure that judgment was dated on date he actually signed it; taking criminal case under advisement for over nine months; habitually failing to render timely decisions in civil cases; ex parte communications); *Commission on Judicial Performance v. Former Judge UU*, 875 So. 2d 1083 (Mississippi 2004) (private reprimand for 6-15 month delays in six cases) ; *In the Matter of Freitag*, Consent Order (Nevada Commission on Judicial Discipline October 7, 2004) (www.judicial.state.nv.usdecision%20index.htm) (censure and fine for failing to decide 48 cases over prolonged period); *In the Matter of Chapman*, Determination (New York State Commission on Judicial Conduct October 6, 2004) (www.scjc.state.ny.us/Determinations/2004_decisions. htm) (censure for delays in depositing bail checks); *In the Matter of Rearden*, 596 S.E.2d 915 (South Carolina 2004) (6-month suspension for poor record-keeping and failure to timely deposit bond funds).

Misrepresentations by Judges *(continued from page 2)*

findings of misconduct based on the judge's inappropriate courtroom demeanor in three incidents.)

A misrepresentation on a declaration of candidacy also resulted in removal of a judge pursuant to the recommendation of the Georgia Judicial Qualifications Commission. *In the Matter of Robertson*, 596 S.E.2d 2 (Georgia 2004). In qualifying to run for the office, the judge had sworn that he had never been convicted of a felony involving moral turpitude even though he had been convicted of larceny and drug possession under the Uniform Code of Military Justice while in the U.S. Army. (In 1979, following a general court martial proceeding, the judge had been convicted for wrongfully selling an infrared guided missile tracker and a guided missile remote control test. In 1980, the judge had pled guilty before a Court of General Court Martial to possession of drugs.) The court rejected the judge's argument that convictions under the military code were not contemplated by the state's constitutional and statutory scheme governing eligibility to hold public office and agreed with the Commission's finding that the crimes constituted felonies involving moral turpitude.

The court acknowledged that there was no evidence that the judge had discredited the court while performing judicial duties. However, the court concluded:

> By taking the position that his military crimes were not in the nature of crimes that involved moral turpitude and in failing to disclose his actions or make an expression of contrition for them prior to being elected to the judiciary, and by his "steadfast unwillingness to accept moral accountability," Judge Robertson's continued presence on the bench erodes the public's confidence in the judiciary and puts at risk the integrity of the judicial system of which he is a member.

Misrepresentations in court proceedings

Misleading statements in court orders or proceedings resulted in sanctions

against two judges. In *In the Matter of Dusen*, Determination (New York State Commission on Judicial Conduct November 16, 2004) (www.scjc.state.ny.us/Determinations/ 2004_decisions.htm), a non-lawyer judge had prepared an order stating that a defendant had been convicted of trespass and sentenced to time served so the defendant could be released as requested by federal immigration agents who were waiting at the jail to arrest him. Pressured for immediate action, the judge issued the order even though he knew that the charge against the defendant was still pending and the defendant had pled not guilty. After being contacted by the defendant's attorney in the deportation proceeding, the judge sent a letter acknowledging that the defendant had not been convicted and subsequently dismissed the charge against the defendant in the interest of justice.

The Commission found that issuing an order under a pretext that the judge knew to be false was misconduct. The Commission concluded that removal was not appropriate because the judge attempted to correct his error, had acknowledged his misconduct, and had served as judge for 16 years.

A judge who repeatedly made misleading statements about an order to the parties was publicly admonished by the California Commission on Judicial Performance. *In the Matter Concerning Tisher*, Decision and Order (California Commission on Judicial Performance April 8, 2004) (cjp.ca.gov/pubdisc.htm). A court commissioner had promised a New Jersey court to prepare an order declining California's jurisdiction in a child custody dispute. However, the commissioner forgot to enter the order, and the father removed one of the children from school in California and took him back to New Jersey without notifying the mother. On October 3, 2002, Judge Tisher received e-mail messages from the court commissioner explaining what had happened and sending a draft order declining jurisdiction, which the judge approved. Although the commissioner signed the order on October 4, it was dated and stamped "September 30, 2002."

In a hearing later on October 4, Judge Tisher stated, "I also have the file in front of me, which indicates that there was an order filed by Commissioner Boyd on September 30th, 2002. I don't know if you both have copies of that, but it is an order where she declined jurisdiction." Later in the hearing, the judge twice described the order as having been entered on September 30.

The Commission found that issuing an order under a pretext that the judge knew to be false was misconduct.

The Commission found that when the judge repeatedly indicated to the parties that the order had been filed on September 30, she knew that the order had in fact been signed and filed on October 4. The Commission concluded that "the making of these misleading statements was contrary to canon 2A of the Code of Judicial Conduct, which provides that judges should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Reimbursement requests

Finally, duplicity involving reimbursement of expenses led to discipline proceedings against two judges. A Kansas judge resigned to terminate proceedings charging that he falsified expense vouchers and neglected his duties. *Inquiry Concerning McGuire*, Stipulation (Kansas Commission on Judicial Qualifications February 19, 2004). The judge also agreed to submit a letter of apology to be published in a newspaper, to pay restitution to the Office of Judicial Administration, and not to serve as a judge in the future. The notice of formal proceedings had charged that the judge had submitted more than 19 false or padded vouchers and accepted reimbursement for expenses that were not justified or for activities not undertaken. The notice also charged that the judge failed to regularly perform his assigned duties for three months and occasionally failed to appear for work or to be available to conduct the business of the court.

A former judge who had sought reimbursement for bills that he never paid and deposited the funds into his personal bank account instead of paying the vendors was publicly reprimanded by the Mississippi Supreme Court. *Commission on Judicial Performance v. Teel*, 863 So. 2d 973 (Mississippi 2004). In 18 incidents from July 1999 to November 2000, the judge sought reimbursement for a total of $3,218.48 in office purchases that he had charged to the court. After receiving the reimbursement, he did not pay either the chancery court administrator or the vendors but instead deposited the reimbursements in his personal bank account, until he was notified of an investigation by the state auditor and attorney general.

Developments Following *White* *(continued from page 3)*

"decline" response indicated the candidate "believed in good faith that under a reasonable construction of applicable Canons of Judicial Conduct or because my recusal would be subsequently required, I must decline to respond to this particular question." The questionnaire also assured candidates "your responses indicate your current view on the legal issues and do not constitute any pledge, promise, or commitment to rule in any particular way if the legal issue involved comes before you for decision."

The U.S. District Court for the Eastern District of **Kentucky** noted that the Kentucky Supreme Court had previously sanctioned a judicial candidate who had merely promised "not to let anyone walk away before justice is served" (*Summe v. Judicial Retirement and Removal Commission*, 947 S.W.2d 42 (Kentucky 1997)), and a candidate who had simply announced that he was "pro-life" (*Deters v. Judicial Retirement and Removal Commission*, 873 S.W.2d 200 (Kentucky 1994)). Thus, the court concluded that "Kentucky is simply using the promises and commit clauses as a *de facto* announce clause" and entered a preliminary injunction prohibiting enforcement of the canon. *Family Trust Foundation of Kentucky v. Wolnitzek* (October 19, 2004). (The preliminary injunction was upheld by the 6th Circuit.)

However, the court also stated that "to the extent that the promises and commit clauses attempt to prevent judicial candidates from promising to rule a certain way on cases, controversies or issues likely to come before the court, the state has a compelling interest in such a restriction."

There is a significant distinction between a *predisposition* to rule a certain way and a *commitment* to do so. A commitment to rule a certain way displays an unacceptable closed-mindedness, indicating that the candidate would not faithfully consider the arguments presented to him once an actual case is before him. A judge who has committed himself seriously erodes the public's confidence in the judiciary.

The court did note that "nothing in this opinion compels any sitting judge or candidate for judicial office to answer any question concerning his or her opinion on any issue presented by the Family Foundation or any other entity or individual."

"A judge who has committed himself seriously erodes the public's confidence in the judiciary."

Misleading statements

In *Weaver v. Bonner*, 309 F.3d 1312 (11th Circuit 2002), the U.S. Court of Appeals for the 11th Circuit held unconstitutional a provision in the **Georgia** code prohibiting judicial candidates from using "any form of public communication which the candidate knows or reasonably should know is false, fraudulent, misleading, deceptive, or which contains a material misrepresentation of fact or law or omits a fact necessary to make the communication considered as a whole not materially misleading or which is likely to create an unjustified expectation about results the candidate can achieve."

In January 2004, the **Georgia** Supreme Court adopted a new provision stating that judicial candidates "shall not use or participate in the publication of a false statement of fact concerning themselves or their candidacies, or concerning any opposing candidate or candidacy, with knowledge of the statement's falsity or with reckless disregard for the statement's truth or falsity." Commentary states: "The determination of whether a candidate knows of falsity or recklessly disregards the truth or falsity of his or her public communication is an objective one, from the viewpoint of a 'reasonable attorney,' using the standard of 'objective malice.'"

Similarly, in September 2004, the **Alabama** Supreme Court deleted a clause prohibiting a candidate from distributing "true information about a judicial candidate or an opponent that would be deceiving or misleading to a reasonable person." The Alabama and Georgia courts have both added the word "knowingly" to the prohibition on misrepresentations so that the codes in both states now prohibit judicial candidates from "knowingly misrepresent[ing] his or her identity, qualification, present position, or other fact."

The **California, Minnesota,** and **Wisconsin** supreme courts have added the phrase "with reckless disregard for the truth" to the provision on misrepresentations so that in those states judicial candidates are prohibited from "knowingly or with reckless disregard for the truth, misrepresent[ing] the identity, qualifications, present position or any other facts concerning the candidate or his or her opponent." (In Minnesota, the provision refers to an "expressed position" rather than a "present position.") New commentary in the California code clarifies that "making knowing misrepresentations, including false statements or misleading statements, during an election cam-

paign" is prohibited.

In January 2005, as part of a revision of the entire model code, the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct proposed draft amendments to the model code that would prohibit a candidate from "knowingly mak[ing] any false or misleading statement regarding any candidate for judicial office."

Campaign fund-raising

Also in *Weaver v. Bonner*, 309 F.3d 1312 (11th Circuit 2002), the court held unconstitutional a prohibition on judicial candidates personally soliciting campaign funds. Thus, the **Georgia** code was amended to provide that candidates "may personally solicit campaign contributions and publicly stated support." Commentary, however, explains:

> Although judges and judicial candidates are free to personally solicit campaign contributions and publicly stated support, see *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002), they are encouraged to establish campaign committees of responsible persons to secure and manage the expenditure of funds for their campaigns and to obtain public statements of support of their candidacies. The use of campaign committees is encouraged because they may better maintain campaign decorum and reduce campaign activity that may cause requests for recusal or the appearance of partisanship with respect to issues or the parties which require recusal.

Moreover, the Georgia Supreme Court added the following language to the preamble to the code:

> The mandatory provisions of the Canons and Sections describe the basic minimal ethical requirements of judicial conduct. Judges and candidates should strive to achieve the highest ethical standards, even if not required by this Code. As an example, a judge or candidate is permitted under Canon 7, Section B, to solicit campaign funds directly from potential donors. The Commentary, however, makes clear that the judge or candidate who wishes to exceed the minimal ethical requirements would choose to set up a campaign committee to raise and solicit contributions.

Similarly, the **Alabama** Supreme Court changed that state's clause on campaign solicitations from a strict prohibition to language "strongly discourag[ing]" candidates from personally soliciting campaign contributions, noting "it is highly recommended that a candidate establish committees of responsible persons to solicit and accept campaign contributions . . . ."

In April 2003, the **North Carolina** Supreme Court eliminated the restriction on personal solicitation of campaign contributions, and the state's canon expressly allows candidates to personally solicit campaign funds and request public support.

The model code draft proposed by the ABA Joint Commission in January 2005 retains the prohibition on a candidate "personally solicit[ing] or accept[ing] campaign contributions," but eliminates the prohibition on personally soliciting "publicly stated support."

And, in the remand of the case that started it all, the U.S. Court of Appeals for the 8th Circuit has granted re-hearing en banc on the question of the constitutionality of the prohibition in the **Minnesota** code on judicial candidates personally soliciting campaign contributions. *Republican Party of Minnesota v. White*, 361 F.3d 1035 (8th Circuit 2004), *vacated, rehearing en banc granted*. Oral arguments were heard in October 2004.

Partisan conduct

The Eighth Circuit also granted rehearing en banc on the constitutionality of provisions in the **Minnesota** code designed to preserve the non-partisan nature of judicial election campaigns as required by the state constitution. In the meantime, the Minnesota Supreme Court rejected a recommendation that it delete clauses prohibiting judges or candidates from "identify[ing] themselves as members of a political organization," from "attend[ing] political gatherings," and from "purchas[ing] tickets for political party dinners or other functions." The court stated it was "not convinced the recommended changes are either necessary or desirable on their merits."

The **New York** Court of Appeals rejected constitutional challenges to the prohibition on judges engaging in political activity. *In the Matter of Raab*, 793 N.E.2d 1287 (New York 2003).

The Center for Judicial Ethics tracks developments following White*, as well as other decisions regarding judicial conduct, in the Judicial Ethics News portion of its web-site, a weekly feature at www.ajs.org/ethics/index.asp.*

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