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Fifteen Judges Removed in 2001

Between 1980 and the end of 2000, approximately 278 judges had been removed from office as a result of discipline proceedings. In 2001, nine judges (or in one case, a former judge) were removed, and an additional six judges resigned and agreed not to seek office again pursuant to public agreements with judicial conduct commissions.

The **Arizona Supreme Court** removed a justice of the peace from office for falling asleep during court proceedings; making inappropriate comments and circulating inappropriate materials, some of which were racist, sexist, or obscene; ex parte communications; failure to recuse and otherwise creating an appearance of bias; inappropriate use of his judicial position; failure to respect the rights

of parties; failure to adequately perform his judicial responsibilities; and misrepresenting facts to the Commission on Judicial Conduct. *In the Matter of Carpenter*, 17 P.3d 91 (2001). The court stated that the judge's claim that he suffered from narcolepsy and possible mental illness provided only minimal mitigation given his failure to seek adequate treatment, to reveal his medical condition until it was exposed in a newspaper, and to use the assistance provided by the court to help him remain awake during court proceedings. The court also concluded that the judge had not established a causal connection between his narcolepsy or any other illnesses and his misconduct.

The **California Commission on Judicial Performance** removed a

judge from office for (1) malingering by falsely claiming to be ill; (2) failing to cooperate in the administration of court business; (3) giving non-judicial activities precedence over, and allowing them to interfere with, his judicial duties; and (4) persistent failure to perform his judicial duties. *Inquiry Concerning Murphy*, No. 157, Decision and Order (May 10, 2001) (cjp.ca.gov/pressrel.htm). For more on this case, see "Discipline for Failure to Perform Duties and Cooperate with Other Judges," at page 2.


The **California Commission** removed a second judge for making misrepresentations on judicial appointment questionnaires and his ju-

(continued on page 6)

Other Judicial Discipline in 2001

In addition to 15 removals or agreements to resign, approximately 88 judges or former judges were publicly sanctioned in judicial discipline proceedings across the country in 2001. Fourteen were suspended (one suspension also included a censure), with the length of the suspensions ranging from 15 days

to one year. Sixteen judges were publicly censured, 33 were publicly admonished, 3 were publicly reprimanded and fined (the fines were for \$100, \$1500, and \$756); 16 were publicly reprimanded, and 4 were publicly warned; 1 reprimand and 1 warning also included orders of additional education. Two former judges

were suspended from the practice of law for misconduct as a judge. In addition to those two suspensions, 10 of the other cases involved former judges. In approximately 47 of the cases, the discipline was imposed pursuant to the consent of the judge or former judge or based on stipulated facts. 

Discipline for Failure to Perform Duties and Cooperate with Other Judges

Several cases in 2001 involved substantial lapses by judges in their duty to give precedence to judicial responsibilities and to cooperate with other judges.

The Rhode Island Supreme Court removed a former judge from office and imposed a monetary sanction for, among other misconduct, being regularly absent from his courtroom during normal working hours to gamble in a public casino. *In re Lallo*, 768 A.2d 921 (Rhode Island 2001). (The case was remanded to the Commission on Judicial Tenure and Discipline for a more accurate calculation of the monetary sanction.)

The judge admitted that on 66 days, at various times between 8:30 a.m. and 4 p.m., he abandoned his judicial post to gamble at a casino. The Commission conceded that the judge worked diligently, often arriving at the courthouse early and completing most of his paperwork before 8:30 a.m. The judge always completed his caseload and often sat for other judges when they were unavailable. When his calendar was completed, however, whether in the morning or afternoon, the judge departed, apparently for the day. The judge admitted he had a gambling addiction.

The court stated that the judge's "conduct, in regularly absenting himself from his courtroom during normal working hours and . . . gambling in a public casino, was unacceptable and has cast disrepute on his judicial office." Noting the judge's argument that gambling is a legal activity, the

court stated, "although he may be correct in this assertion, it is unseemly conduct for a judicial officer regularly to gamble in a public casino during the normal working hours for that particular court."

The California Commission on Judicial Performance removed a judge from office for (1) malingering by falsely claiming to be ill; (2) failing to

country, that he was planning to study medicine, or how to contact him. The judge returned home on January 14, 2000. Rejecting the judge's argument, the Commission found that the judge was obligated to keep the court informed of his whereabouts.

The Commission adopted the masters' findings that the judge was not medically unable to perform his judicial duties. When the judge did go to work, there were no observable signs of illness, and his colleagues uniformly testified that he appeared to be healthy, energetic, and positive. A number of times the judge was seen in the community, teaching evening law

school classes, or testifying at depositions, apparently healthy, when he was absent from work on sick leave. The judge also took 10-20 hours of premed classes a week with almost perfect attendance and high grades while on sick leave.

The Commission concluded that the judge's extensive absences clearly constituted a persistent failure or inability to perform judicial duties. The Commission found that the judge considered his non-judicial activities more important than his judicial duties and allowed them to interfere with his judicial duties. The Commission also found that the judge failed to cooperate with his presiding judge in the administration of court business by making false statements about his medical condition in order to obtain sick leave, by failing to provide a doctor's note for his sick leave absences, and by leaving the

school classes, or testifying at depositions, apparently healthy, when he was absent from work on sick leave. The judge also took 10-20 hours of premed classes a week with almost perfect attendance and high grades while on sick leave.

The Commission also noted an unwillingness to take corrective action or accept assistance to improve case management.

cooperate in the administration of court business; (3) giving non-judicial activities precedence over, and allowing them to interfere with, his judicial duties; and (4) persistent failure to perform his judicial duties. *Inquiry Concerning Murphy*, No. 157, Decision and Order (May 10, 2001) (cjp.ca.gov/pressrel.htm).

In 1996, the judge was absent from the court for 77 days; in 1997, he missed 66 work days; in 1998, the judge was absent for 96 days. In 1999, the judge was absent 159 days of which 157 days were listed on the court records as "sick" or "sick/personal" days. The judge ceased working on June 8, 2000, and never returned to the court.

On January 1, 2000, the judge went to the island of Dominica in the West Indies to attend medical school. The judge did not resign or inform the chief judge or any other judge or court employee that he was leaving the

(continued on page 8)

Discipline for Misrepresentations

Several cases in 2001 arose from false statements made by judges. For example, echoing the California Supreme Court's statement (in *Kloepfer v. Commission on Judicial Performance*, 782 P.2d 239 (California 1989)), that "honesty" is one of the "minimum qualifications which are expected of every judge," the California Commission on Judicial Performance sanctioned two judges for misconduct reflecting a lack of integrity.

The Commission removed one judge for making misrepresentations about his education, legal experience, affiliations, and military service on his judicial appointment questionnaires and judicial data questionnaire, and to other judges, attorneys, a newspaper reporter, and the Commission. *Inquiry Concerning Couwenberg*, No. 158, Decision and Order (August 15, 2001) (<http://cjp.ca.gov/pressrel.htm>).

When the judge applied for a judgeship in 1993 and 1996, he gave false answers to some of the questions on the personal data questionnaires submitted to the governor and the judicial nominating commission. For example, the judge stated that he attended Loyola Law School, when he never went to Loyola, and that he had attended La Verne Law School from 1973 to 1976 when he actually attended from 1970 to 1973 (which disguised that he passed the bar only after five failed attempts between 1973 and 1976).

After becoming a judge, Judge Couwenberg submitted a judicial data questionnaire, which is used as a record for public announcements. In

addition to repeating many of the misrepresentations he had made on the application questionnaire, he checked the box next to "Veterans of Foreign Wars" although he was never a member; entered "US Navy," instead of "US Navy Reserves;" and under "Private Practice Experience," noted, "1976 Gibson, Dunn," although he never worked for that law firm.

At a public enrobing ceremony, a retired judge introduced Judge Couwenberg based on his judicial data questionnaire and discussions in which

Honesty is one of the "minimum qualifications which are expected of every judge."

he gave or affirmed false information, including that he had served in the Army for two years, had been in Vietnam for 16 months, and had received a Purple Heart. Judge Couwenberg also told attorneys and a reporter writing a profile of him that he was in combat in Vietnam.

When his misrepresentation that he was in the Army in Vietnam was exposed, Judge Couwenberg told the Commission that he had been employed by the CIA in Laos. The CIA voluntarily agreed to allow a records validation officer to testify that the judge, by any name, does not appear in the CIA records.

The Commission rejected the judge's psychological defense that he had a condition known as "pseudologia fantastica," described by his expert as "story telling that often has sort of a matrix of fantasy interwoven with some facts," noting there was

no evidence that the expert's contentions were accepted in the psychiatric community.

The Commission stated "[a]ny discipline other than removal would leave the public paying Judge Couwenberg for a judgeship he apparently procured through misrepresentations" and "might well encourage others who are investigated by the commission to prevaricate and develop faulty memories." The Commission also stated that the judge's "persistent misrepresentations might well require his removal from

the bench," even if they had not been critical to his bid for a judicial appointment and had not been made to the Commission.

The California Commission also publicly censured a former judge for altering a court record and ordered that he be barred from receiving any assignments. *Inquiry Concerning Former Judge Hermo*, No. 160, Decision and Order (February 20, 2001) (cjp.ca.gov/pressrel.htm). A prisoner for whom the judge had ordered \$35,000 bail escaped from custody in the judge's courtroom. After the sheriff's deputy, who had been the judge's bailiff for 24 years, advised the judge that he would be suspended for three weeks without pay for allowing the escape, the judge marked a line through the handwritten notation for \$35,000 bail and wrote the shorthand for "own recognizance" on the court record. The Commission found that the judge's "orders for manufactured, after-the-fact own recognizance releases were without legal authority, creating a misleading record, and were done for the improper purpose of doing a personal

(continued on page 11)

Discipline for Misconduct Arising from Sexual Relationship

Numerous judicial discipline cases in 2001 resulted from the judge's sexual conduct, including inappropriate comments and touching, having sexual intercourse in chambers, presiding over cases involving an attorney with whom the judge has a sexual relationship, and public behavior following a break-up that detracted from the dignity of the office.

The Illinois Courts Commission removed a judge who had sexual intercourse in his chambers and engaged in "intimidating and sexually inappropriate behavior" in the courtroom and chambers toward four assistant state's attorneys. *In re Spurlock*, No. 98-CC, Order (December 3, 2001). On two occasions, the judge had sexual intercourse in his chambers with a court reporter, once in the late afternoon on a Friday or day before a holiday and once on a Sunday evening, without affecting court business or other personnel. The Commission held the judge's "use of chambers as a venue to satisfy his sexual desires was more than ill-advised, and embarrassing. It calls into question and undermines his judgment." The judge's conduct toward the four assistant state's attorneys included commenting suggestively on their bodies and clothing, seeking their company for drinks or dinner, giving out his phone number and seeking theirs, demonstrating his appreciation for their appearance by kissing his fingers, persistently inviting them to chambers to be alone with him and ignoring their refusals, and touching and kissing them.

The New York Court of Appeals held that a judge's "inappropriate and demeaning" conduct toward his secretary warranted censure. *In the Matter of Shaw*, 747 N.E.2d 1272 (New York

2001). On numerous occasions, the judge remarked about his secretary's physical appearance, focusing on certain physical attributes and the way her clothing fit; asked her about her sex life and, after her divorce, told her she "should be having sex with him;" and inappropriately touched her without her consent. *See also In the Matter of Nance*, CJD 2000-90 and 2000-117 (Maryland Commission on Judicial Disabilities June 30, 2001) (public reprimand based on stipulation for conduct that was or reasonably could be perceived as inappropriate toward women who appeared before the judge, among other misconduct).

Presiding over cases involving attorney with whom judge has sexual relationship

Based on an agreed statement of facts and joint recommendation, the New York State Commission on Judicial Conduct censured a judge who, among other misconduct, presided over ten matters involving an attorney with whom he had a romantic relationship and called the attorney's employer to complain about her supervisor. *In the Matter of DiBlasi*, Determination (November 19, 2001) (www.scjc.state.ny.us/diblasi.htm). For more on this case, *see* "Discipline for Failure to Perform Duties and Cooperate with Other Judges," at page 8. Sometime in February 2000, the judge developed a romantic relationship with Dana Stricker, an attorney for the state legal services agency for mentally disabled, institutionalized patients. The judge conducted ten contested hearings in which Stricker appeared, and his decision in each was contrary to her position.

In March 2000, the judge telephoned Sidney Hirschfeld, director of

the agency, to complain that Marita McMahon, the agency's principal attorney, was spreading rumors about the judge's personal life and his relationship with Stricker and that he did not want Stricker to be harassed by McMahon as a repercussion of his telephone call. McMahon spoke to Stricker that day about her work habits. The judge then called Hirschfeld and complained that McMahon had been vindictive towards Stricker prior to their telephone conversation; that he had unrelated objections to McMahon; that he did not want her in his courtroom; and that she should be transferred.

The Commission concluded, when a judge is involved in a romantic relationship with an attorney who is appearing before him, the judge's impartiality is certainly suspect, even without evidence that his rulings were influenced by the relationship. The Commission stated that the judge's "self-serving efforts to have the supervisor barred from his court and transferred from the county — at least partly in retaliation for her conduct towards an attorney with whom [the judge] was romantically involved — were reprehensible." *See also In the Matter of Gerard*, 631 N.W.2d 271 (Iowa 2001) (60-day suspension without pay for judge who, among other misconduct, had an intimate relationship with assistant county attorney who regularly appeared before him without recusing or disclosing the relationship; for more on this case, *see* "Affair with Assistant Prosecutor: Recent Case," *Judicial Conduct Reporter* (Summer 2001)).

The Michigan Supreme Court suspended a judge for one year without pay for appointing an attorney with

(continued on page 10)

Part-time Lawyer Judges Disciplined

Part-time lawyer judges who failed to maintain a strict separation between the practice of law and the performance of judicial duties were disciplined in several cases in 2001.


The Mississippi Supreme Court publicly reprimanded a municipal court judge and fined him \$1500 for, among other misconduct, his conduct while representing a client charged with assaulting his wife and in a child custody hearing. *Commission on Judicial Performance v. Gunter*, 797 So. 2d 988 (Mississippi 2001). While the judge was representing Ernest Bazor in a divorce action against Steffani Bazor, an altercation occurred between Ernest and Steffani. The judge contacted the municipal court clerk's office and directed that the officer who had responded to the altercation call him, stating that it was a domestic matter and the police should not be involved. When Steffani went to the police department to file charges with the municipal court, she was not allowed to do so, being advised that Gunter had already contacted the court clerk regarding the case. After Steffani filed an assault charge in the county justice court, the judge created a disturbance at the courthouse, cursed the court clerks for allowing Steffani to sign an affidavit, and screamed at Steffani that she did not know who ran the city. Subsequently, the judge again berated the clerks in the justice court office. Over a year later, the judge used his official capacity to have the National Crime Information Center run a criminal history on Steffani's new husband to use in favor of Ernest in a child custody hearing, which violated state and federal law.

The Arkansas Commission on Judicial Discipline & Disability publicly admonished a part-time judge

who had represented criminal defendants in cases in which the opposing counsel was the county prosecuting attorney while also presiding as a municipal judge over criminal cases in which the state was represented by the same county prosecuting attorney. *Letter of Admonishment to Batton* (September 21, 2001) (www.state.ar.us/jddc). The Commission noted an advisory opinion (*Arkansas Advisory Opinion 98-2*) that stated: "[A] municipal judge who is engaged in an adversarial role opposing a prosecuting attorney in a criminal case brought by the State and who presides over proceedings involving that same prosecuting attorney is in an untenable position, however principled that individual may be."

The New York State Commission on Judicial Conduct determined that admonition was the appropriate sanction for a part-time lawyer judge who had presided over a small claims action brought by a client. *In the Matter of Hayden*, Determination (June 27, 2001) (www.scjc.state.ny.us/hayden.htm). The judge and Edward Ide were close friends, and Ide sometimes volunteered as the judge's court assistant. Ide's daughter, Lindsey, was issued traffic tickets following an accident involving her car. The judge represented Lindsey, entering a plea of not guilty and requesting a trial date. Thereafter, Lindsey acknowledged to her father that Jerry Lamphere had been driving at the time of the accident, and Ide informed the judge. Following the judge's advice, Lindsey disclosed this information to the police, and the tickets were dismissed. Lindsey filed a small claims action against Lamphere in the judge's court, and the judge prepared a notice of small

claim for \$3000. On the return date, Lamphere did not appear. The judge took testimony from Lindsey and granted a default judgment for \$1950 plus \$15 disbursements.

The Washington Commission on Judicial Conduct admonished a part-time commissioner for serving as a lawyer and a judge in the same or a related proceeding. *In re Fuller*, Stipulation, Agreement, and Order of Admonishment (June 1, 2001). Prior to the spring of 1999, the commissioner had met with a client to discuss an action to modify child support but did not hear anything more from him. In September 1999, pursuant to the client's former wife's motion, the commissioner entered a judgement against the client for back child support and found the client in contempt when the client failed to appear. The client thereafter contacted the commissioner in his law office, and the commissioner prepared a response to the former wife's petition for modification of child support. During a hearing in November 1999, the former wife and the commissioner appeared before another court commissioner who stopped the proceeding after noting that the commissioner had signed the judgement and contempt order. 

The Center for Judicial Ethics has published An Ethics Guide for Part-Time Lawyer Judges. This self-study guide discusses discipline cases and ethics advisory opinions interpreting the rules for part-time lawyer judges, and includes a self-test and questions designed to help readers determine how the rules affect their practice and judicial service. The Guide costs \$25 plus postage and handling. It can be purchased on the AJS web-site at www.ajs.org or by calling 312-357-8821.

Fifteen Judges Removed in 2001 *(continued from page 1)*

dicial data questionnaire, making false statements to the judge who was to introduce him at the public enrobing ceremony, to attorneys, and to a newspaper reporter, and making false statements in letters and testimony to the Commission. *Inquiry Concerning Couwenberg*, No. 158, Decision and Order (August 15, 2001) (<http://cjp.ca.gov/pressrel.htm>). For more on this case, see “Discipline for Misrepresentations,” at page 3.

The **Florida Supreme Court** removed a judge for promising in his campaign to favor the state and police and to side against the defense, making unfounded attacks on his incumbent opponent, the local court system, and local officials, and presiding over a case despite a conflict of interest. *Inquiry Concerning McMillan*, 797 So. 2d 449 (Florida 2001). See “Judges Sanctioned for Campaign Speech Violations,” *Judicial Conduct Reporter* (Fall 2001).

The **Illinois Courts Commission** removed a judge who had engaged in “intimidating and sexually inappropriate behavior” in the courtroom and chambers toward four assistant state’s attorneys and twice had sexual intercourse in his chambers with a court reporter. *In re Spurlock*, No. 98-CC, Order (December 3, 2001). For more on this case, see “Judicial Misconduct Arising from Sexual Relationship,” at page 4.

The **Mississippi Supreme Court** removed a justice court judge from office for at least 30 counts of misconduct, including conducting court business at his tire and pawn shop, 20

examples of ex parte communications, holding the court clerk in contempt three times without due process, and twice contacting a local police chief regarding the testimony he would be giving at the Commission on Judicial Performance hearing. *Commission on Judicial Performance v. Willard*, 788 So. 2d 736 (Mississippi 2001). The court held that the judge’s “conduct seems to have resulted from both ignorance of the law and a steadfast refusal to become more knowledgeable

“[The judge] has demonstrated that he has no compunction about being less than credible in support of his position.”

of the law and of the office to which he had been entrusted.” The court had previously granted the Commission’s motion for an interim suspension.

The **New Jersey Supreme Court** removed a municipal court judge who had (1) signed a personal letter “JMC” (meaning Judge Municipal Court); (2) failed to recuse from a case arising from questionable domestic violence complaints filed by a councilman with whom the judge had a close relationship; and (3) filed false accusations against his son’s teacher and then arraigned the teacher. *In the Matter of Samay*, 764 A.2d 398 (New Jersey 2001). Noting more cases are processed annually through the municipal courts than any other branch of the judicial system, the court stated “the large number of litigants who appear in those courts daily make it all the more important for the judges who

serve in those courts to act responsibly and be sensitive to the public perception of their actions.” The court continued, “It is also disturbing that [the judge] minimizes his misconduct and has demonstrated that he has no compunction about being less than credible in support of his position.”

The **New York Court of Appeals** held that removal was warranted for a judge who (1) engaged in a course of conduct, arising out of a personal relationship with his law clerk that detracted from the dignity of his office, seriously disrupted the operations of the court, and constituted an abuse of his judicial and administrative power, and (2) issued an ex parte order terminating the suspension of the driver’s license of a long-time acquaintance.

In the Matter of Going 761 N.E.2d 585 (New York 2001). For more on this case, see “Discipline for Misconduct Arising from Sexual Relationship,” at page 11.

The **Rhode Island Supreme Court** removed from office and imposed a monetary sanction on a retired judge who (1) had pled guilty to a federal felony offense for knowingly making a false statement under oath in connection with a personal bankruptcy petition, and (2) had been regularly absent from his courtroom during normal working hours to gamble in a public casino. *In re Lallo*, 768 A.2d 921 (Rhode Island 2001). (The court has already disbarred the former judge for the conviction. *In the Matter of Lallo*, 768 A.2d 420 (Rhode Island 2001)). For more on this case, see “Discipline for Failure to Perform Duties and Cooperate with Other Judges,” at page 2. The Commission

on Judicial Tenure and Discipline had recommended that the judge reimburse the state \$28,000, representing his entire salary for those days on which he left the court to gamble. Rejecting the judge's argument that there was no authority to impose a civil sanction in a disciplinary action, the court concluded the Commission's recommendation amounted to a civil sanction in the nature of restitution that was consistent with its "authority to recommend remedial measures necessary to effectuate the statute." Noting that the Commission acknowledged that \$28,000 was a "rough calculation," the court remanded the matter for a more accurate calculation of the amount of restitution.

Agreements to resign and not seek office

The Wyoming Commission on Judicial Conduct and Ethics submitted to the Governor and the

Chief Justice a letter of resignation from Justice Richard V. Thomas of the Supreme Court. The justice had prepared the letter as part of a conditional settlement agreement in 1999 in which the Commission agreed not to submit the letter as long as the justice remained current in the circulation of opinions. In late January 2001, the Commission determined that the justice was not circulating opinions and voted to impose the sanction of immediate removal. *News Release (Thomas)* (February 5, 2001). See "Recent Cases: Delay in circulating opinions by supreme court justice," *Judicial Conduct Reporter* (Winter 2001).

The Texas State Commission on Judicial Conduct entered into voluntary agreements to resign in lieu of disciplinary action with five judges, noting that the parties wanted to resolve the matters without the time and

expense of further proceedings. In all of the agreements, the judges agreed that the Commission may enforce the agreements through any legal process necessary, including injunctive relief.

One agreement related to charges a retired justice of the peace had inappropriately touched and made sexually suggestive comments to one of his clerks and made racial slurs referring to African American court employees and African Americans in general. The justice of the peace had retired less than two months after the notice of formal charges was filed. The justice of the peace did not admit the charges (there is also a civil case by the clerk pender

Six judges resigned and agreed not to seek office again pursuant to public agreements with judicial conduct commissions.


ing). *In re McElroy*, CJC Nos. 00-0454-JP & 00-0640-JP (November 5, 2001).

A second agreement related to charges a judge (1) had engaged in inappropriate speech and conduct toward a court employee, who filed an EEOC complaint, had attempted to bring criminal charges against the employee's husband, had a consensual sexual relationship with a subordinate at his office after hours, had given \$100 to his clerk and other employees who had been called as witnesses during an EEOC hearing on a complaint against the judge (purportedly to pay for lunches), had attempted to communicate with the EEOC administrative law judge that the employee's husband had allegedly retaliated against one of the judge's witnesses, had submitted a false affidavit to the Commission, and had given inconsistent testimony concerning his sexual

relationship with the subordinate, and (2) during his campaign for judicial office in which his opponent was a county deputy sheriff, had filed a complaint written on court stationery with the sheriff alleging that his opponent had accepted a bribe to perform personal services for a prisoner and stating that the judge would withdraw his complaint if the deputy withdrew from the race. The judge denied the charges. *In re Christian*, Nos. 00-0452-JP and 00-0567-JP (December 7, 2001).

In a third case, the Commission accepted a voluntary agreement from a judge who had pleaded guilty/nolo contendere to a felony information alleging theft of over \$20,000 but less than \$100,000. *In re McCully*, CJC No. 02-0097-MU (December 6, 2001).

In the fourth case, the judge had been charged with (1) presiding in a case in which one of the attorneys was a personal friend, making decisions that were inconsistent with the law because of the relationship, and having the attorney represent the judge at no charge in a custody modification matter while the case was pending; (2) meeting with the attorney and others at the judge's home and discussing the case, a pending sanctions motion, and the judge's probable ruling; (3) appointing a local attorney/mediator with whom he had a personal relationship to a case pending in his court and refusing to substitute another mediator; and (4) refusing to accept service of a lawful subpoena. The judge denied the charges. *In re Gibson*, No. 83 (December 6, 2001).

A fifth agreement to resign notes that the Commission had received a complaint against the judge without specifying the misconduct alleged. *In re Pyle*, CJC #01-0066-JP (November 5, 2001). 

Discipline for Failure to Perform Duties and Cooperate with Other Judges

(continued from page 2)

country and failing to keep the court informed of his whereabouts.

Approving an agreed statement of facts and joint recommendation, the New York State Commission on Judicial Conduct determined that censure was the appropriate sanction for a judge, among other misconduct, who failed to advise his administrative judge of his plan to be absent from the court for the better part of 31 consecutive days to attend a broadcasting course and who attended the classes without approval for eight days. *In the Matter of DiBlasi*, Determination (November 19, 2001) (www.scjc.state.ny.us/diblasi.htm). For more on this case, see “Discipline for Misconduct Arising from Sexual Relationship,” at page 4.

In 2000, the judge enrolled in a 31-day broadcasting class to be held Monday through Friday, from 9:15 AM to 1:00 PM. The judge did not appear in court until 2:00 PM on six days in July because he was attending the class. On two days, he remained after class and did not appear in court. The judge did not advise the administrative judge that he was attending the class although he had sought approval to change the starting time of the weekly motion calendar to accommodate his class schedule. The judge withdrew from the course after the eighth day when a newspaper reported his absences. The judge asserted that he intended to account for the 31 days that he would have been in class as 31 half-days, or 16 days, of vacation time.

The Commission found that “the judge’s position that it would be feasible to charge 31 ‘half-days’ to vacation time does not withstand close scrutiny,” noting “the most productive time in a court day, especially in summer months, is early in the day.”

Failing to disclose the reason he wanted a change in schedule, the Commission noted, avoided “having to face the possible consequence of having his request denied.” The Commission concluded that the judge failed to cooperate with other judges and court officials, allowed his extra-judicial activities to interfere with the proper performance of judicial duties, and failed to give his judicial duties precedence over his other activities.

The Michigan Supreme Court suspended for six months without pay a judge who had displayed an overall lack of industry, among other misconduct. *In re Hathaway*, 630 N.W.2d 850 (Michigan 2001). The Commission found a remarkable pattern of adjourning cases and failing to timely attend to court business, constant and repeated adjournments without good cause, repeated unnecessary and unexcused absences during normal court hours, and a lack of proper management of her docket. The Commission also noted an unwillingness to take corrective action or accept assistance to improve case management. A 1996 report by the state court administrative office stated that for many days during the summer, the judge adjourned all proceedings without taking leave for vacation or illness. The court concluded:

Judge Hathaway’s protracted refusal to attend to her judicial duties has worked an injustice, not only upon the defendants charged with crimes who had every legitimate expectation that their cases would be handled expeditiously by the court, but also the witnesses in those matters, the very people on whom our system of justice depends. The repeated unexplained adjournments of matters pending before Judge Hathaway have worked an injury upon the public and po-

tentially contributed to the increasing cynicism about our judicial system, its efficacy and fairness. . . . A judge’s whimsical decision whether to work on a particular day, or during particular months, cannot take precedence over the affairs brought to the courthouse by the people for resolution.

The Iowa Supreme Court suspended for 60 days without pay a judge who, among other misconduct, had been dilatory in filing rulings and in making reports on unfinished rulings as required by a supreme court rule. *In the Matter of Gerard*, 631 N.W.2d 271 (Iowa 2001). For a discussion of the other misconduct, see “Affair with Assistant Prosecutor: Recent Case,” *Judicial Conduct Reporter* (Summer 2001). The county attorney testified that some pretrial rulings were delayed so long that criminal cases had to be dismissed. The court noted delayed rulings in juvenile cases resulted in delayed adoption proceedings. A pattern of late filings continued even after the Commission on Judicial Qualifications had privately admonished the judge in 1999 for delayed filings and reports, admonishing the judge that, until he became current in his workload, he should forego quasi-judicial activities, including teaching at judges’ school and appearing as a speaker at various legal and civic functions. The court found that the judge continued to engage in considerable quasi-judicial activities and remained dilatory in completing assigned work.

Disagreements between judges

The Wisconsin Supreme Court suspended for 75 days without pay a judge who had threatened to make public his allegations against the county’s chief


judge unless the chief judge dropped his attempts to regulate the judge's court hours. *In the Matter of Crawford*, 629 N.W.2d 1 (Wisconsin 2001). Because the judge regularly remained on the bench into the lunch hour and after regular business hours, two successive chief judges directed the judge to give the staff various breaks and to consult with the chief judge before proceeding with extended hours. In two meetings with the chief judge, in a memorandum, and in an e-mail to all circuit judges, Judge Crawford threatened that, if the chief judge did not drop the criticism of his hours, he would "go public" with allegations of "influence peddling" and other misconduct by the chief judge and with his criticisms of the chief judge's daughter, an assistant district attorney, and of the district court administrator. The judge also filed a petition with the supreme court, asking it to vacate the order regarding his hours, remove the chief judge, and fire the district court administrator.

The court concluded that Judge Crawford tried to coerce the chief judge to change an administrative order by threatening "public disclosure of extraneous, unfounded, but nevertheless potentially embarrassing professional and personal matters." The court held that the judge's "attempt to intimidate a judge in the performance of his official duties is a direct assault on the independence and integrity of the judiciary."

The court stated it was not seeking "to stifle criticism by judges regarding matters of concern to the administration of justice and to the public," but that "the right to voice criticism does not exist in a vacuum," and must be exercised in a fashion that comports with the code of judicial conduct. The court held that the judge's assertion that his conduct was protected by his rights to freedom of speech and to petition the government was irrelevant because it had not ruled on the factual basis for the judge's allegations and was not sanctioning the judge for having petitioned the court.

The Louisiana Supreme Court suspended for thirty days a judge who had failed to restrain his temper, which culminated in a physical fight with another judge. *In re Jones*, 800 So. 2d 828 (Louisiana 2001). On January 31, 2001, Judge Charles Jones and Judge Steven Plotkin of the Fourth Circuit Court of Appeal had a verbal disagreement about several matters that led to a physical altercation in the court's conference room. The Judiciary Commission concluded that Judge Jones' failure to restrain his temper put into play events that "ended with the two judges pushing/showing each other and Judge Jones picking up Judge Plotkin, their grappling with each other, and Judge Plotkin lying on the floor in a dazed or semi-conscious condition, having sustained a head injury."

The court concluded that, regardless who instigated the encounter, Judge Jones "could have, and should have walked away." The court stated "such behavior is particularly disturbing because it potentially creates a public perception that it is acceptable to allow verbal disputes to escalate into physical contests." The court concluded that "widespread knowledge of the incident could only serve to stigmatize the Fourth Circuit and erode any public confidence in the integrity and impartiality of the judiciary in the minds of the persons waiting to be interviewed [outside the conference room], employees who witnessed the aftermath, as well as citizens who read about it in the newspaper or saw it on the television."

The Nebraska Commission on Judicial Qualifications publicly reprimanded a judge for criticizing a fellow judge during courtroom proceedings, among other misconduct. *In the Matter of Prochaska*, Reprimand (May 17, 2001). During sentencing, a prosecutor advised the judge that a specific fellow judge had taken action with respect to the case on the previous day. The judge remarked in open court: "Would you please pass the word? This is the second one of my show cause sentences that [the fellow judge] has set aside and rescheduled for hearing in front of me, and I don't like it and I don't want [that judge] touching [my cases]. . . . [The other judge] had no authority to touch this case." The Commission noted it was making no findings about whether the other judge's action was proper, but acknowledged that Judge Prochaska believed the other judge had taken inappropriate action. The Commission found that no one "in the courtroom should have been asked to 'pass the word,' or have been subjected to Judge Prochaska's public criticisms of that fellow judge." 

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Discipline for Misconduct Arising from Sexual Relationship *(continued from page 4)*

whom she had an intimate relationship to represent indigent defendants, presiding over cases involving the attorney without disclosing the relationship, and making false statements to police officers investigating the murder of the attorney's wife. *In re Chrzanowski*, 636 N.W.2d 758 (Michigan 2001). However, the court gave the judge partial credit for the seventeen-month interim suspension with pay that she had already served and imposed a six-month suspension.

In July 1998, the judge and Michael Fletcher began an intimate relationship. Throughout their relationship, the judge assigned Fletcher to 56 cases. Fifty-five of the cases, without a city attorney being present, resulted in guilty pleas accepted by the judge. The appointments generated over \$16,000 in income for Fletcher. A master found that Fletcher had received "a disproportionate number" of appointments in comparison with other attorneys who practiced before the judge. In addition, the judge presided over a criminal case in which Fletcher was retained counsel and entered an order dismissing the case against Fletcher's client. The judge failed to disclose her relationship with Fletcher in any of these cases.

Rejecting the judge's arguments that the "non-adversarial" nature of the proceedings over which she presided lessened her duty to disclose their relationship, the court noted that, despite the judge's apparently fair disposition of the cases, her conduct had a negative effect on the appearance of propriety in judicial decision-making and the appearance of integrity of the judicial office in general.

On August 16, 1999, Fletcher shot and killed his wife. Fletcher telephoned the judge and told her that he could not talk, but that something "horrible" had happened. On August 17, the police interviewed the judge. When questioned about the length of the relationship, the judge indicated that it had begun in February of 1999 and had lasted only until March of 1999. The detective also asked the judge if she had spoken to Fletcher

tions of the media upon particular judicial misconduct are placed in an appropriate perspective."

Conduct following break-up

The New Jersey Supreme Court suspended for three months without pay a judge who publicly confronted a man with whom she had had a romantic relationship and gave misleading information to the police. The court also ordered the judge to continue psychological counseling until further order of the court. *In the Matter of Williams*, 777 A.2d 323 (New Jersey 2001).

The judge and Alfred Bridges became romantically involved in April 1998, but by April 14, 2000, the relationship had apparently ended, and for

at least a year prior to that date, the judge and Bridges had been abusive and confrontational toward one another. On April 14, while the judge was having dinner with an assistant deputy public defender, she noticed Bridges enter the restaurant accompanied by Tami DeVitis, a woman the judge did not know. The judge believed that Bridges knew she was in the restaurant, because her car was parked directly in front and Bridges would have recognized it, and that he knew she would be upset.

The judge accosted Bridges and DeVitis at the restaurant and in the parking lot in a confrontational and angry manner, wanting them to leave. The court stated that the restaurant was a public place and whether Bridges knew the judge was there was irrelevant because there was no order restraining him from contact with the judge. The judge admitted that she attempted to follow Bridges and, provoked by him, chose to follow him in-

When a judge is involved in a romantic relationship with an attorney who is appearing before him, the judge's impartiality is certainly suspect.

since the death of his wife, and the judge stated that she had not. On August 19, the judge went to the police station and indicated that her relationship with Fletcher had actually begun in August of 1998 and continued sporadically until August 15, 1999. The judge also acknowledged that she had spoken to Fletcher following his wife's death. The court concluded that the judge's statements in the initial interview were "false" and "deliberately made, and with a full understanding of their implication," and held that such statements were not mere "inaccuracies" that did not rise to the level of judicial misconduct.

The court rejected the judge's argument that the inordinate amount of publicity about her case influenced the Judicial Tenure Commission to recommend a harsher sanction than deserved. However, the court observed that "caution must invariably be exercised by the JTC (as well as by this Court) to ensure that the atten-

side a saloon and confront him and then DeVitis publicly, and that she pulled on Bridges' arm in her vehemence. The judge also admitted that she knew the owner of the saloon had called the police at Bridges' request and chose, by calling 911 herself, to divert the officers to the court complex where she could tell her own story.

The court found that on the night of April 14, 2000, the judge "did not conform her behavior to the social norms expected of ordinary citizens in our society and certainly not to the heightened standard we expect of judges." The court held:

Although her actions were related only to her private life, they took place in public where others, knowing of her status as a judge, could lose confidence in the integrity and impartiality of the judiciary. Moreover, . . . when the judge misled the police, she subordinated her responsibility to act in conformance with the law to her own personal concerns and needs. . . .

Rejecting the judge's argument, the court concluded that the expert reports she submitted did not make a sufficient connection between battered woman's syndrome and her behavior. The court stated "censure does not reassure the public that judges will be deterred from 'acting out' in public and that such behavior will not reoccur." The court concluded that removal was too harsh because the judge's conduct did not in-


volve the misuse of judicial office or criminal acts that corrupt judicial decision-making or are incompatible with continued judicial service. The court also found that, despite her personal problems, the judge performed well on the bench and has a reputation as a solid and fair judge. Noting that although she was reappointed, her reappointment was without tenure due to a break in service, the court concluded that the "judge has already paid a heavy price for her intemperate behavior."

The New York Court of Appeals held that removal was warranted for a judge who, among other misconduct, engaged in a course of conduct, arising out of a personal relationship with his law clerk that detracted from the dignity of his office and seriously disrupted the operations of the court. *In the Matter of Going* 761 N.E.2d 585 (New York 2001), *accepting*, Determination (New York State Commission on Judicial Conduct December 29, 2000) (www.scjc.state.ny.us/going.htm).

During their two-month relationship, the judge and his law clerk openly displayed their affection for each other in view of the court staff, and the judge discussed the relationship with court staff and attorneys who appeared before him. After their romantic relationship had ended, they became increasingly hostile, arguing

frequently about work-related matters and derogating each other in private discussions with members of the court staff. After the law clerk had been transferred to a different court, the judge, in a letter to the administrative judge, asserted that the law clerk "continues to serve at my discretion" and intimated that he would terminate her if requested.

After the break-up, the judge's behavior became increasingly erratic. Following two panic attacks in one day, he instructed his clerk to adjourn all cases for the following week, seriously disrupting the work of the court. After the administrative judge instructed the judge not to go back on the bench until they met, the judge questioned staff members about their conversations with the administrative judge. The administrative judge told him to leave immediately and then barred him from the building until further notice.


The court noted that, as the situation involving the judge and his law clerk escalated, "tension and divisiveness pervaded the courthouse work environment and [the judge's] relationship with the Chief Clerk soured." In one incident, the judge followed the chief clerk to her office, pounded on her closed door, and yelled at her as she called the deputy administrative judge. 

Discipline for Misrepresentations *(continued from page 3)*

favor for his long-time bailiff rather than for the faithful discharge of his judicial duties." *See also In re Krepela*, 628 N.E.2d 262 (Nebraska 2001) (six-months suspension for judge who while serving as county attorney altered copy of police report, provided altered report to defense counsel, and asked police officer to alter original report or testimony; *see*

"Judicial Discipline for Pre-Bench Attorney Misconduct," *Judicial Conduct Reporter* (Fall 2001)); *In the Matter of Samay*, 764 A.2d 398 (New Jersey 2001) (removal for, among other misconduct, filing false accusations against son's teacher); *In the Matter of Thompson*, 553 S.E.2d 449 (South Carolina 2001) (public reprimand of former magistrate for, among other

misconduct, personally serving documents on parties to actions in his court and falsifying the affidavit of service).

Several of the cases arising from a judge's sexual relationship also involved misrepresentations to police. *See* discussion of *In re Chrzanowski* and *In the Matter of Williams*, in "Discipline for Misconduct Arising from Sexual Relationship," at pages 10-11. 



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JUDICIAL CONDUCT REPORTER

The 18th National College on Judicial Conduct and Ethics

Chicago, Illinois October 24–26, 2002

The Center for Judicial Ethics will hold its 18th National College on Judicial Conduct and Ethics on October 24–26, 2002, at the Embassy Suites Downtown Lakefront, 511 N. Columbus, Chicago, Illinois. Registration for the College will be \$250. The rate for rooms will be \$169 a night (for single occupancy; \$189 a night for double occupancy), plus tax.

The National College provides a forum for judicial conduct commission members, staff, judges, and judicial educators to learn about and discuss professional standards for judges and current issues in judicial discipline. The College will begin Thursday afternoon with registration. Friday through Saturday morning, there will be six sessions with three concur-

rent workshops offered during each session. Topics under consideration include: sanctions; issues for new members of conduct commissions; issues for public members; conduct commissions and the media; misuse of office; disqualification; rural judges; how to write discipline decisions; ethical guidelines for commission members; the relationship between attorney discipline and judicial discipline; judicial speech; settlement of discipline cases; ex parte communications; and judicial ethics on the Internet.

More information will be provided in subsequent issues of the *Judicial Conduct Reporter*. If you want to be on the mailing list for information about the College, contact Clara Wells at cwells@ajs.org or 312-357-8813.