JUDICIAL CONDUCT REPORTER

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

VOLUME 40, NO. 2 • SUMMER 2018

INSIDE THIS ISSUE

JUDICIAL CONDUCT REPORTER Summer 2018

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

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

ISSN: 0193-7367

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

NCSC
NATIONAL CENTER FOR STATE COURTS
Center for Judicial Ethics

Professional boundaries in the courthouse

by Cynthia Gray

As the judiciary reconsiders courthouse culture in light of #MeToo revelations, some best practices may be found in a California Judges Association ethics opinion that, although primarily about gift-giving, provides broader guidance by emphasizing professionalism and warning against favoritism. *California Judges Association Formal Advisory Opinion 70* (2015) (https://tinyurl.com/ybvzycgq). Noting that, "[m]any judges spend years working with the same staff," the advisory committee stated that, "[w]ithin reasonable limitations, it is proper and acceptable for judges to be friendly with their staff, give them gifts, and treat them to meals."

However, the committee added several caveats. Judges must:

- "Be careful to maintain a professional relationship with staff at all times,"
- "Remain aware of any bias or favoritism, and the appearance of bias or favoritism,"
- "Be sensitive to the possibility that the judge's gift-giving practices (e.g., only giving gifts to women) may be perceived as sexual harassment or creating a hostile workplace,"
- "Keep their generosity to a reasonable level," and
- "Be sensitive to the possibility that gift-giving may create among their staff a sense of obligation to respond in kind, even though that may constitute a financial burden."

For example, the committee stated, "if a judge always gives gifts to his/her judicial assistant or clerk but never to the court attendant, or if the judge often takes his/her court attendant to lunch but never anyone else, ethical problems may arise."

Illustrating the risks of unprofessional and overfriendly conduct, attempts by a judge to force a close personal relationship with a court staff member have been held to violate the code of judicial conduct even in the absence of a sexual element. This type of judicial misconduct often includes inappropriate gifts, discussions at work about personal matters, repeated invitations to lunch or other out-of-office activities, and attempts to interact with the staff member's family. In general, it involves singling out one staff member for attention that is not extended to others and that is repeated regardless of rebuffs.

(continued)

Inappropriate intrusion

For example, in *Inquiry Concerning Turner*, 76 So. 3d 898 (Florida 2011), the Florida Supreme Court concluded that, although there was no sexual component, the judge's "frequent unsolicited personal contact" with a female court employee, "both in and outside of the work environment," over several months, was "unwarranted and unwelcome and thus constituted an inappropriate intrusion into [the court employee's] personal and family life."

Shortly after Heather Shelby, an employee of the court clerk, began working with the judge on the domestic violence docket, the judge summoned her to his chambers, where he was in a T-shirt and gym shorts, closed the door, and had a personal discussion with her for nearly half an hour. When she told him that she needed to return to her desk, he thanked her for coming and kissed her on the cheek.

The judge telephoned Shelby constantly, including from the bench, and showed up at her desk several times a day, starting in the morning and inventing reasons to see her. Shelby was forced to hide to avoid the judge, but he would search for her, asking loudly, "Where's Heather?" The chief judge had to order the judge to stop searching for Shelby, and the clerk's office had to change her phone number and move her desk.

Despite Shelby's rebuffs, the judge, a cancer survivor, repeatedly asked to visit her 12-year-old son when the boy was in the hospital for cancer treatments. When the judge learned that Shelby and her son would be attending a performance of a musical, he suggested that he come to the theater at intermission to take photos. Shelby politely declined the offer, but the judge showed up anyway.

During the discipline proceedings, a psychologist who had evaluated the judge attributed his inappropriate behavior to a "somewhat self-centered opinion of himself and others" and a "lack of psychological insight and minimization trends." The hearing panel found that the judge's interest in Shelby was not romantic or sexual, but stemmed from his "loneliness and need to be needed."

The Court concluded that the judge's "protracted interactions" with Shelby exploited his position "for his own purposes in a grossly insensitive manner." It noted that his conduct was uninvited and pervasive, he refused to take no for an answer, and his interest in Shelby was well known throughout the court, causing her "extreme embarrassment and requiring changes to her professional life." The Court removed the judge for this and other misconduct.

"Amicable working relationship"

In *In the Matter of Corwin*, 843 N.W.2d 830 (North Dakota 2014), the North Dakota Supreme Court held that a court reporter reasonably perceived a judge's conduct as sexual harassment even if the judge was simply seeking an "amicable working relationship" as he claimed.

The court reporter had driven the judge to the emergency room one day after he injured his hands while at work. According to the judge, he and the

"This type of judicial misconduct often includes inappropriate gifts, discussions at work about personal matters, repeated invitations to lunch or other out-of-office activities, and attempts to interact with the staff member's family."

(continued)

court reporter came out of the emergency room incident "with a connection we didn't have before."

A couple weeks later, the judge invited the court reporter to join him on a bicycle ride following an after-work gathering with other courthouse personnel at a restaurant and bar. After their ride, the judge invited the court reporter into his home where they each had a glass of wine. The court reporter reasonably construed the judge's conversation during her visit as a proposition for a sexual relationship. She rejected the offer, telling him she had read that "it was a mistake to get involved with your boss." The judge responded that not all office romances end badly, noting his 20-plus-year marriage to his former secretary. As the court reporter was leaving, the judge hugged and kissed her.

After the court reporter declined his subsequent invitations and reiterated that it was a bad idea for them to become intimate, the judge "became angry," according to the findings of the Judicial Qualifications Commission.

Several weeks after the bike ride, the court reporter returned from lunch to find the judge sitting with his feet on her desk, reading a transcript, which he had never done before. The court reporter felt intimidated by the incident.

Several days after that, the court reporter refused to go shopping with the judge for fixtures for a courthouse bathroom, and he said, "Stop being so f***ing difficult."

The judge frequently asked the court reporter into his office, closed the door, and discussed personal topics, including "their relationship." To extricate herself, the court reporter would have a co-worker interrupt after a specified amount of time. The co-worker would also accompany the court reporter out of the courthouse at the end of the workday so she would not be alone with the judge. The judge repeatedly asked the court reporter to have lunch with him, but she consistently made excuses why she could not.

One day in December, the judge confronted the court reporter at a grocery store and said, "You know what I want for Christmas? I want us to stop treating each other like sh*t."

Eventually, the judge suggested that the court reporter should switch to a different team. When she objected, the judge told her, "[i]f this were still the law firm, I'd have taken care of the problem a long time ago, but since you work for the state it's going to be a little tougher."

In an e-mail, the court reporter told the judge: "DROP IT!" Among other things, she wrote:

- "I am not required to be your 'friend' to work here."
- "I do not see you harassing [a coworker] to HAVE to be your 'friend' to work on this team. I am doing my job. I am in court when I'm supposed to be and I do clerical duties as they are assigned — just like [the coworker] does and that doesn't seem to be a problem w[ith] her. I avoid you because you won't stop trying to have 'conversations' w[ith] me about something that I clearly have told you more than once to just leave alone. We are COWORKERS. Start acting like it!"

(continued)

- "Get over yourself and quit being such a jerk cuz you didn't get your way."

The judge began to complain to the court administrator about the court reporter's work performance. The court reporter said that the judge's conduct made her feel harassed, caused her to be sick with diarrhea and panic attacks, and ultimately caused her to look for other employment.

The judge argued that his conduct was not sexual harassment because it was not "sexual in nature:" there was no touching or other physical contact and "no sexually suggestive written communications, displays or gestures of any kind." The judge contended that all of his communications with the court reporter after the bike ride "were nothing more than 'a persistent attempt to maintain or restore an amicable working relationship,' and 'what happened in this case was the result of misunderstandings, not deliberate misconduct on [his part].'"

However, the Court concluded that, "[e]ven if we accept Judge Corwin's claim that he was simply seeking to reestablish an 'amicable working relationship,' his attempts to do so . . . were at best naïve" and reasonably interpreted as "seeking much more . . . ." The Court emphasized that the judge "treated the court reporter differently than her coworker" and that his frequent requests for meetings outside the workplace setting were "abnormal for judges and their coworkers." Most significant, the Court stated, was that the judge "persisted in his unsuccessful efforts to meet the court reporter in non-work settings" despite being "made well aware of how the court reporter interpreted his attempts to reestablish their 'relationship' . . . ." The Court suspended the judge for one month without pay.

"The Court emphasized that the judge 'treated the court reporter differently than her coworker' . . . ."

Not mentoring

The California Commission on Judicial Performance removed a judge for a course of conduct, including numerous texts and gifts, intended to promote a closer personal relationship with his courtroom clerk and related misconduct. *Inquiry Concerning Saucedo*, Decision and order (California Commission on Judicial Performance December 1, 2015) (https://tinyurl.com/y8rlugxd).

Over a two-month period, the judge sent the clerk about 445 texts and notes. For example, he texted her, "It's silly but still feeling under appreciated," and gave her a note that said, "I, too, am human and have an ego. Feel free, if you wish, to compliment me if you like things I do or wear." The judge also repeatedly stated that he wanted a closer relationship with the clerk, texting, for example, "If you want me to be an ordinary friend like I was before September, I will provide only moral support. But if you want me for a special friend, everything is on line with full financial and moral support going forward. Special friend means you want to make time and effort to share thoughts and experiences with me."

He also gave her gifts, including flowers, $9,200 in cash, a car worth $15,000, a trip to Disneyland for her and her family worth $3,202, and payment of a $533 car repair bill.

(continued)

The Commission rejected the judge's claim that he intended only to "mentor" the clerk. Mentoring, the Commission explained, "involves advice, direction, referrals and encouragement," not thousands of dollars in gifts, an offer to pay for "body sculpting" or "expecting a 'special' friendship in exchange," for example. The Commission also stated that the judge's "overly personal and emotional language" was "far from the type of supportive but professional communication one would expect in a mentoring relationship."

Irregular attentions

The Pennsylvania Court of Judicial Discipline suspended a judge for 60 days without pay for displaying inappropriate attention toward four female lawyers and a 17-year-old girl who had appeared in his court. *In re Alonge*, 3 A.3d 771 (Pennsylvania Court of Judicial Discipline 2010). Although blaming his "crashing lack of any social fluency," the Court concluded that the judge's conduct was not only "extremely irregular, extremely out of the ordinary, bizarre and even 'weird,'" but also "akin to 'stalking.'" The Court described his conduct:

> He made repeated phone calls to these women, mostly at night. He made the calls even after repeatedly being told not to call. He appeared uninvited and unannounced at the offices and homes of these women. In some cases he had obtained information about their personal lives and affairs which could only have come from a personal investigation conducted by Respondent. This is beyond unsettling – this is scary.

Promotional campaigns for alma maters and other organizations

Universities and law schools often undertake campaigns to recruit students and promote their image, using videos, billboards, web-sites, and print and broadcast advertisements. The schools ask their alumni — including judges — to appear in the campaigns, and the judges then ask judicial ethics committees if they may participate.

Some advisory committees have given judges permission to take part in such campaigns, as long as the participation does not involve the judges in fund-raising. For example, the New York committee advised that a judge may allow the university from which the judge graduated to use her picture in judicial robes in advertisements to recruit students to its colleges and law school. *New York Advisory Opinion 2002-21* (https://tinyurl.com/y7lgs77t). The judge would be one of six graduates highlighted in advertisements describing their college and law school experiences and current careers. The ads would appear in the subway, in newspapers, on the university's

(continued)

television channel and web-site, in college newspapers, and in high schools. The committee concluded that barring a judge from allowing her alma mater to point to her achievements as a reason to consider enrolling in the school would "contravene the mandate that the Rules Governing Judicial Conduct are to be regarded as rules of reason." *See also Alabama Advisory Opinion 2006-873* (a judge may permit her alma mater to use a photograph of the judge in her judicial robe without identifying elements such as name or title with pictures of 20-25 other graduates as part of a brief opening collage in a television advertisement); *Florida Advisory Opinion 1997-28.* (https://tinyurl.com/ydbmnr4f) (a judge may authorize his college alma mater to feature him in a marketing campaign designed to heighten the public's awareness of the accessibility and value of higher education); *Minnesota Advisory Opinion 2016-1* (https://tinyurl.com/ot2ao3v) (a judge's picture and success story may be used in promotional materials to attract students to a private college but not in a fund-raising brochure); *New York Advisory Opinion 1996-75* (https://tinyurl.com/yd78k48n) (a judge may be featured as a "high achieving alumna" with a photograph of her in her courtroom on a promotional postcard for a university); *New York Advisory Opinion 1988-79* (https://tinyurl.com/yc4wxdz4) (a judge's background and photograph may be included in a university brochure advertising to the public and prospective employers the high caliber and career achievements of its graduates); *Pennsylvania Informal Advisory Opinion 11/7/2011* (https://tinyurl.com/jgqecme) (a judge may allow her law school to interview her and place her picture in an advertisement in the alumni magazine).

Similarly, the Arizona judicial ethics committee advised, with some caveats, that a judge may participate in a recorded interview about the role his college played in his professional development and career achievements. *Arizona Advisory Opinion 2018-1* (https://tinyurl.com/ybf3yadu). The committee explained that the issue highlighted the tension between the code of judicial conduct's "exhortation that judges remain active members of and contributors to their communities" and its "sometimes-rigorous restrictions on extra-judicial activities."

Analyzing whether a judge's participation in such an interview would, contrary to Rule 1.3, abuse the prestige of judicial office to advance the interests of the educational institution, the committee considered whether the judge was "being singled out for participation based on his or her judicial position or whether other graduates who are not members of the judiciary will be included." The committee explained that, "[i]f a judge is one of several graduates interviewed, the risk that the school is attempting to capitalize on the prestige of judicial office or that the judge's interview will be perceived in that fashion is minimal." Whether the judge would wear a judicial robe and whether the interview would occur at the courthouse are also relevant factors, the committee stated, advising that, "[u]nless other participants are interviewed at their workplaces or wearing their professional garb — be it a construction hard-hat, medical scrubs, or a police uniform — a judge should not, through attire or location, be depicted as having any different or special status from other featured graduates."

"[T]he issue highlighted the tension between the code of judicial conduct's 'exhortation that judges remain active members of and contributors to their communities' and its 'sometimes-rigorous restrictions on extra-judicial activities.'"

(continued)

The Arizona opinion emphasized that Rule 1.3 prohibits "'abuse' of the prestige of judicial office, not simply 'use.'" Noting the code "does not define 'abuse,'" the committee cited the *Black's Law Dictionary* definition of "abuse" as "a departure from legal or reasonable use" and the Merriam-Webster's on-line dictionary definition as "a corrupt practice or custom; improper or excessive use or treatment." The opinion also identified several contexts in which the code permits judges to "use" the prestige of judicial office in extra-judicial activities: writing letters of recommendation using judicial letterhead in certain circumstances; using judicial titles at fund-raising events concerning the law, the legal system, and the administration of justice; endorsing projects and programs related to the law, the legal system, and the administration of justice; and including a judge's title and judicial office on letterhead for educational, religious, charitable, fraternal, or civic organizations "if comparable designations are used for other persons." Stating that the code "implicitly deems such extra-judicial activities proper 'uses' of the prestige of judicial office, as opposed to 'abuses,'" the opinion concluded that, similarly, allowing judges to participate in recorded interviews with not-for-profit educational institutions they attended interprets "Rule 1.3 as a 'rule of reason,' focusing on 'abuse" of the prestige of judicial office, and giving meaning to the Code's encouragement of community involvement . . . ."

Abuse and lend

In contrast, based on its analysis of the meaning of "abuse," the Massachusetts advisory committee concluded that a judge may not participate in a university's video profile series featuring prominent alumni discussing how their undergraduate education helped them identify goals, aspire to a career, and achieve success. *Massachusetts Advisory Opinion 2017-2* (https://tinyurl.com/ycnzp46r). On the video, each alumnus would announce "I stand with" the school as a "tag line." The series would be published on the school's web-site and social media.

The committee noted that the Massachusetts code of judicial conduct had previously prohibited a judge from "lending" the prestige of judicial office, based on the 1990 American Bar Association *Model Code of Judicial Conduct*, but that both the ABA and Massachusetts had "substituted 'abuse' for 'lend'" in code revisions. According to the ABA reporter's explanation of the changes to the model code in 2007 (https://tinyurl.com/yc8orazg), "the term 'lend' created unnecessary confusion," causing some judges to decline to write letters of recommendation for their clerks and suggesting judges should not identify themselves as judges on the covers of their books to bolster credibility and increase sales. The ABA did not consider either of these uses to be problematic and concluded "abuse" rather than "lend" more accurately characterized the inappropriate conduct being addressed.

The Massachusetts committee concluded that "abuse" does not require "a bad purpose or bad effect" but only that the use be in any way "incompatible with the judicial role" because any collateral misuse of the judicial

(continued)

office to advance personal or economic interests undermines public confidence in the integrity and impartiality of the judiciary. Applying that construction to the video series, the Massachusetts committee concluded that the university clearly wished "to benefit from [the judge's] esteemed position in the legal profession," constituting an abuse of the prestige of judicial office even for an interest "as worthy as promoting the value of a university's education." The opinion noted that, in each video, the participating alumni or alumna personally vouched for the "transformative effect" of the university's educational experience and that the tag line "reinforces that the video is intended to serve as an endorsement."

The committee distinguished between merely "plac[ing] facts before the public in a context that invites inferences favorable to the University," which is permissible, and an impermissble endorsement that derives its impact from the judicial office "in a way that cannot fairly be viewed as a manifestation of the ordinary pride all institutions of higher learning take in the accomplishments of their highly successful graduates." "That the video would not be used in a fundraising campaign is not dispositive," the opinion explained, because the university intends the series to enhance its reputation, "promote the school to prospective students," and "reinforce its import to alumni and others."

Interpreting the term "lend" (still the language in some state codes), the California committee advised that a judge may not participate in a university's video entitled "Our Successful Graduates" that would be posted on the university's web-page to be viewed by potential students. *California Judges Association Advisory Opinion 72* (2016) (https://tinyurl.com/y9vuwvjr). The committee explained that being featured in a video discussing the value of the education the judge received at a particular school would be a violation "as the school's purpose is to encourage students to attend that school using the prestige of the judicial office and title." In general, the committee directed a judge to "consider why he has been asked to be part of the video" and whether it appears that the judge's position or title is significant to the sponsor of the video. *See also Kansas Advisory Opinion JE 159* (2007) (https://tinyurl.com/yd9hamjp) (a judge may not allow the university the judge attended to use a picture of the judge in a newspaper advertisement); *Wisconsin Advisory Opinion 2005-1* (https://tinyurl.com/y8wnakac) (a judge's image, name, and title may not be featured on a billboard as part of an advertising campaign by one of the University of Wisconsin System campuses).

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

Fund-raising

Even the committees that allow judges to participate in promotional campaigns in general emphasize that involvement is prohibited if the specific use would constitute fund-raising. Thus, a judge cannot personally ask for or encourage donations to an organization during a videotaped interview. Further, the organization cannot add a plea for funds to a video in which a judge appears even if it is not the judge making the appeal. For example, the California committee advised, a judge may not participate in a video for a youth mentoring program when the introduction on the video

(continued)

states: 'We need your financial support to continue this worthy program in our community.'" *California Judges Association Advisory Opinion 72* (2016) (https://tinyurl.com/y9vuwvjr). In addition, it stated, any video featuring the judge should be posted on a part of the organization's web-site that does not solicit funds and is separate from the part that does.

Several committees have advised that the fund-raising restriction does not necessarily prohibit the showing of a videotape of a judge at a fund-raising event. (Note, however, that the rules for when a judge may participate in a fund-raising event often depend on the type of organization and vary from state-to-state.) The California committee explained that, if it would not violate the code for a judge to speak at a particular fund-raiser as long as the judge does not solicit funds, then the judge may participate in a video to be shown at the fund-raiser as long as the video does not solicit funds. *California Judges Association Advisory Opinion 72* (2016) (https://tinyurl.com/y9vuwvjr). Thus, the committee advised, a judge may be interviewed as part of a video discussing the judge's long history with an organization and community when there would be no solicitation on the video even if the video would be played at a fund-raising event honoring the judge. The committee concluded that this "would be no different than the judge simply attending the event and receiving the award."

Similarly, the New York committee stated that a judge who attended a private middle school and high school with the assistance of a not-for-profit program may be interviewed on video as part of the program's recruitment efforts and may permit the video to be played at a fund-raiser, provided advertising for the event does not refer to the judge or the video in soliciting attendance or contributions. *New York Advisory Opinion 2018-61* (https://tinyurl.com/y9mz3x8n). *But see New York Advisory Opinion 2016-152* (https://tinyurl.com/yakn3svx) (a judge may not on behalf of a non-profit re-entry agency appear in a videotaped interview that will be shown at the agency's fund-raising event).

To ensure compliance with the fund-raising restriction, before agreeing to an organization's request for a videotaped interview, a judge must "know what the video is going to be used for, what the full video contains, whether it will be edited in the future and whether its use will change in the future." *California Judges Association Advisory Opinion 72* (2016) (https://tinyurl.com/y9vuwvjr). Thus, the California committee advised that a judge who is being honored by a youth mentoring program may not participate in a video biography to be played at a dinner/fund-raiser being held in her honor if the program has not decided whether the video will be linked to fund-raising efforts on its web-site and if the video may be edited in the future. The committee also stated that a judge who participated in a video about the judge's work on juvenile cases that was used at a fund-raising event must take steps to prevent the video from being linked on-line to a plea for funds for the organization.

Similarly, the Arizona committee directed a judge to determine the purpose of an interview and its contemplated uses before agreeing to participate and to instruct a school that it may not use his interview as part of

(continued)

any fund-raising effort. *Arizona Advisory Opinion 2018-1* (https://tinyurl.com/ybf3yadu). "If the judge learns that this admonition has not been heeded," the committee added, he "should direct the school to cease using the recorded interview." *See also New York Advisory Opinion 2002-21* (https://tinyurl.com/y7lgs77t) (when he agrees to participate in a university advertising campaign, a judge must "exercise oversight over the manner the institution communicates such materials to the public"); *Pennsylvania Informal Advisory Opinion 4/8b/2009* (https://tinyurl.com/jgqecme) (a judge may appear in an advertisement about a non-profit program that trains volunteers to advocate for persons involved in court proceedings if the advertisement does not refer to fund-raising or solicit funds and the judge seeks assurance that his name will not appear on the program's web-site, which does refer to donations).

That donations may be prompted by a promotional campaign does not necessarily rule out a judicial role. For example, the Utah committee stated that a judge may allow his picture and title to be used in a national magazine advertising campaign for the American Indian College Fund even though the organization hoped that readers would make a donation, as long as the primary purpose of the campaign was to address stereotypes and to offer role models to young Native Americans, not to raise funds. *Utah Informal Advisory Opinion 2001-3* (https://tinyurl.com/ybr746vt). *See also Washington Advisory Opinion 2002-1* (https://tinyurl.com/ydfqree6) (a judge may be identified by name and title when speaking on a county bar foundation video about receiving a minority law student scholarship from the foundation even if on occasion the video is used for fund-raising).

Other organizations

The New York committee noted that it has allowed judges "greater leeway" in their promotional activities on behalf of their colleges or law schools. *New York Advisory Opinion 2018-61* (https://tinyurl.com/y9mz3x8n). However, some advisory committees have also allowed judges to participate in campaigns for other types of non-profit organizations.

For example, the California committee advised that a judge could give a videotaped interview:

- To an organization that promotes fair treatment of gay and lesbian students about the laws on gay marriage, adoption, and employment that will be made available to schools as an educational tool,
- To a children's assessment program to educate the community about the program and the value of its work,
- To encourage citizens to become CASA volunteers, and
- About her career as a public defender to be shown at a legal community function honoring the history of the office.

California Judges Association Advisory Opinion 72 (2016) (https://tinyurl.com/y9vuwvjr).

In general, the California committee advised, a judge may participate in a videotaped interview for a program if the judge "[s]imply outlines

(continued)

what the program does and how the court uses the program" and does not "boldly stat[e] that this program is the best and you should get behind it." Thus, the committee stated that a judge may not participate, for example, in a video for a non-profit drug rehabilitation program used by the court when the video would be used to advertise that specific program.

The California committee also stated that a judge's participation in a video for an organization would not be appropriate if it would create reasonable doubt about the judge's capacity to act impartially. Thus, the committee advised, a judge may not participate in a video produced by Mothers Against Drunk Driving that discusses the impact of drunk driving on victims. Similarly, the committee stated that a judge could not participate in a video that would constitute a comment on a pending or impending case. Thus, the committee advised that a judge may not participate in a video for a public interest law firm about a major environmental case the judge litigated prior to her appointment when there is pending legislation on the issues involved in the litigation.

Other committees have allowed a judge to:

- Participate in an informational video about a bar association's volunteer lawyers program (*Alabama Advisory Opinion 2007-874*);
- Give her photograph and a short biography to the YWCA as a positive role model for young Latinas during "Hispanic Heritage Month" (*Kansas Advisory Opinion JE 145* (2006) (https://tinyurl.com/y92dbg8o));
- Participate in a promotional video profiling the judge for a public service announcement for the state office of higher education (*Minnesota Advisory Opinion 2016-1* (https://tinyurl.com/ot2ao3v));
- Appear in a promotional video about being a mentor for a non-profit organization that assists economically disadvantaged populations (*Pennsylvania Informal Advisory Opinion 1/21/2011* (https://tinyurl.com/jgqecme));
- Appear on a billboard for the Girl Scouts that is part of an image campaign, not a money-raising campaign (*South Carolina Advisory Opinion 4-2002* (https://tinyurl.com/ybq68z59)); and
- Appear and be identified by name and title in a county bar foundation informational video about receiving a minority law student scholarship (*Washington Advisory Opinion 2002-1* (https://tinyurl.com/ydfqree6)).

Some opinions have allowed participation only if the judge's judicial status is not referred to.

- A judge may participate in a recruiting videotape for the religious school where he sent his child but should instruct school officials to ensure that his title is not mentioned. *Illinois Advisory Opinion 2009-1* (https://tinyurl.com/yamvtytt).

(continued)

- A judge may make statements about past experiences as a member of a charitable organization to be used in newspaper advertisements educating the public about the organization's positive impact on the lives of successful people if the judge's title is not used. *Washington Advisory Opinion 2000-14* (https://tinyurl.com/y7t9jdlh).

Further, other committees have advised that a judge may not:

- Allow a photograph of the judge wearing a robe and identifying her as a judge to be used on billboards, in television spots, in printed materials, and on the system's web-site as part of a public relations campaign for the county library system (*Florida Advisory Opinion 2007-7* (https://tinyurl.com/yan4knu5));
- Allow his statement about a non-profit organization that will operate a nursery for parents who have to attend court or have other urgent needs for a temporary sitter to be used in an informational brochure when he would be identified as a judge (*New York Advisory Opinion 2005-56* (https://tinyurl.com/yceexlnv));
- Give an interview to be featured with others in a national promotion for a non-profit organization (*Pennsylvania Informal Advisory Opinion 4/29/05* (https://tinyurl.com/jgqecme)); or
- Allow a non-profit organization to use a photograph of the judge taken at a recent event and use her name in promotional materials (*Pennsylvania Informal Advisory Opinion 6/20/04* (https://tinyurl.com/jgqecme)).

Resign-to-run rule

Rule 4.5 of the American Bar Association 2007 *Model Code of Judicial Conduct* provides: "Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office." (Similarly, Canon 5C(2) of the 1990 model code provided: "A judge shall resign from judicial office upon becoming a candidate for a nonjudicial office either in a primary or in a general election.") A comment added to the model code in 2007 explains that the purpose of the rule is to prevent the "potential for misuse of the judicial office" during a campaign and to prevent a judge from making political promises that, although appropriate in non-judicial campaigns, are "inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her."

In a First Amendment challenge by a Louisiana judge who wanted to run for mayor without first resigning, the U.S. Court of Appeals for the 5th Circuit acknowledged that "relegating one's robes to the closet is a heavy

(continued)

price to pay for tossing one's hat in the ring" but emphasized that a judge "who does not hold the powers of the office cannot abuse them or even be thought to abuse them." *Morial v. Judiciary Commission*, 565 F.2d 295 (5th Circuit 1977). The Court explained:

> By requiring a judge to resign at the moment that he becomes a candidate, the state insures that the judge will not be in a position to abuse his office during the campaign by using it to promote his candidacy. The appearance of abuse which might enshroud even an upright judge's decisions during the course of a hard-fought election campaign is also dissipated by requiring the judge to resign.

The Court also concluded that resignation was necessary to prevent post-campaign abuse or its appearance, which could not be prevented by a leave of absence during the campaign. Further, the Court reasoned, a state is not required to rely on post-campaign measures such as recusal or disciplinary proceedings against judges who used their office improperly during a campaign for non-judicial office. Thus, the Court held, "a requirement that a judge resign his office prior to becoming a candidate for non-judicial office bears a reasonably necessary relation to the achievement of the state's interest in preventing the actuality or appearance of judicial impropriety," without offending the First Amendment's guarantees of free expression and association or the Fourteenth Amendment's guarantee of equal protection of the laws. *Accord Matter of Buckson*, 610 A.2d 203 (Delaware 1992).

Similarly, the Maine Supreme Judicial Court concluded that the rule "rationally seeks to separate a judge's political, legislative, or executive branch ambitions from the judge's judicial decision-making to further the objective of maintaining a judiciary that is independent and impartial both in fact and in the public's perception." *In re Dunleavy*, 838 A.2d 338 (Maine 2003). Rejecting the judge's state and federal constitutional challenges, the Court found that a probate judge had violated the code of judicial conduct by running for the state senate without resigning his judicial position, although it imposed no discipline.

California and Montana are the only jurisdictions that have not adopted a resign-to-run requirement, although the California constitution requires a judge to take "a leave of absence without pay prior to filing a declaration of candidacy."

"[T]he purpose of the rule is to prevent the 'potential for misuse of the judicial office' during a campaign and to prevent a judge from making political promises . . . ."

Timing

Although the model code does not define when a judge becomes a candidate for non-judicial office, its definition of when a person becomes a candidate for judicial office has been applied as well to non-judicial offices to trigger the resign-to-run rule. The code provides that a person becomes a candidate for judicial office "as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for

(continued)

election or appointment to office." Thus, a judge must resign whenever the judge announces to the public the intention to run for a non-judicial office, whether by issuing a press release, filing with the proper authority, "or any other method by which he lets his candidacy become generally known. To hold otherwise would permit the very appearance of impropriety to which the [rule] is directed." *Kentucky Formal Opinion JE-23* (1981) (https://tinyurl.com/y9yk5m9y).

The Delaware Court on the Judiciary found that a judge's public announcement that he intended to have his "name placed before the Republican Convention to be the gubernatorial nominee for Governor of Delaware" violated the code. *Matter of Buckson*, 610 A.2d 203 (Delaware 1992). Without resigning first, the judge had issued a press release stating:

> The party deserves a choice. This is not partisan politics and, therefore, not in violation of any rules pertaining to the judiciary. When I am the nominee, I will resign my present position and ask the Governor to promptly name a successor acceptable to the Senate.
>
> Based upon the contacts by many people since my November announcement, I have statewide support. My plan is to attend functions of many of the Republican Party organizations to gain delegates to the convention by presenting my qualifications, . . . Based upon my experience in state government, I am eminently qualified to be Governor of Delaware . . . certainly more so than any person mentioned for the office to date.
>
> So . . . on to the convention! Thanks.

He had also attended regional party caucuses and other meetings to gain support.

Removing him from office, the Court held that the judge had publicly announced his candidacy and had actively engaged in political activity to secure the nomination. Finding that his political activity clearly went beyond that of a prospective candidate, the Court rejected the judge's defense that he was just "testing the waters," although it stated that a judge does not have to resign "merely to learn whether he has a realistic chance of election."

Similarly, advisory committees have stated that, without having to resign, a judge may make preliminary surveys of financial and voter support (*Kentucky Formal Opinion JE-23* (1981) (https://tinyurl.com/y9yk5m9y) and discuss the possibility of becoming a candidate with the head of a local political committee, political party members, governmental officials, and political authorities. *New York Advisory Opinion 1991-44* (https://tinyurl.com/ya6yr5lt); *New York Advisory Opinion 1997-65* (https://tinyurl.com/yd369fyk); *New York Advisory Opinion 1993-55* (https://tinyurl.com/y9aa2woc). The Florida judicial ethics committee also noted that the resignation requirement is not triggered simply by an intent to run for office. *Florida Advisory Opinion 1994-20* (https://tinyurl.com/ydg5m98q). It stated that when a person becomes a candidate may depend on the nature of the community; in a large community, the committee advised, telling a few friends would not make the

(continued)

judge a candidate for purposes of the rule, but in a small community, the situation may be perceived differently.

A judge cannot circumvent the resignation requirement by taking a leave of absence during the campaign. *See New York Advisory Opinion 1989-126* (https://tinyurl.com/y7h9b43g) (town justice may not take a leave of absence to campaign for town supervisor); *South Carolina Advisory Opinion 7-1992* (https://tinyurl.com/yapq869f) (a magistrate cannot simply take a leave of absence, without pay, to become a candidate for sheriff). Further, a judge cannot postpone resignation until the appointment of a replacement or for other considerations, and the resignation must be effective immediately upon becoming a candidate. *See West Virginia Advisory Opinion* (January 27, 2011) (https://tinyurl.com/y8o4slus) (a magistrate must resign immediately on announcing his candidacy for sheriff and cannot remain in the position pending appointment of a new magistrate); *West Virginia Advisory Opinion* (February 23, 2012) (https://tinyurl.com/y8o4slus) (a mental hygiene commissioner must resign immediately upon becoming a candidate for the house of delegates and cannot be appointed for the limited purpose of serving as the substitute drug court judge during the election); *New York Advisory Opinion 2009-126* (https://tinyurl.com/y8hbdwlt) (a judge who has announced his candidacy for an elective non-judicial office may not remain on the judicial payroll after resigning to receive compensation for accrued vacation time).

Offices

By its terms, the rule does not require a judge to resign before running for a different judicial office. *See Florida Advisory Opinion 2011-9* (https://tinyurl.com/ycvr5dlm) (a civil traffic infraction hearing officer may run for county judge); *Kansas Advisory Opinion JE-117* (2004) (https://tinyurl.com/ycr72pbf) (a municipal judge may run for district magistrate); *Oklahoma Advisory Opinion 1998-3* (https://tinyurl.com/y88p5y2z) (a sitting appointed judge may run in a judicial election); *Tennessee Advisory Opinion 2003-4* (https://tinyurl.com/yd8n6sz3) (a general sessions judge may run for state court). *But see In re Hodgdon*, 19 A.3d 598 (Vermont 2011) (public reprimand of a judge who failed to resign as assistant judge upon becoming a candidate for probate judge when Vermont code provides that, "[a] judge shall resign from judicial office upon becoming a candidate for any elective office, except that a judge of probate or an assistant judge may be a candidate for reelection or may serve as town meeting moderator . . . ").

In addition, a judge may become a candidate for appointment to a non-judicial office without resigning. A comment to the model code explains that, when a judge is seeking an appointive, non-judicial office, the dangers the resignation requirement was designed to prevent "are not sufficient to warrant imposing the 'resign to run' rule." Further, according to the reporter's notes for the 2007 model code (https://tinyurl.com/yc8orazg), the ABA was concerned that a judge might be deemed a candidate for an appointive non-judicial office "merely by being considered by an executive branch officer for appointment," and it did not want to require automatic

(continued)

resignation under those circumstances, particularly as several nominees might be under consideration for the same position and the confirmation process could be lengthy and uncertain. However, as a "fail-safe," the code reminds a judge who is a candidate for appointive office to continue "to abide by the other provisions of this Code (such as maintaining independence, integrity, and impartiality)" during the appointment process.

For example, the Ohio judicial ethics committee advised that a judge was not required to resign from judicial office to become a candidate for appointment to the office of prosecuting attorney but that her activities would be limited by the code of judicial conduct. *Ohio Advisory Opinion 1998-6* (https://tinyurl.com/y8ly3kwe). Thus, the opinion stated, the judge could announce to the public and to the appointing authority her intention to be a candidate and could seek support or endorsement from individuals or organizations that make recommendations for the appointment. However, the judge could not participate in any fund-raising and must ensure that her efforts to be appointed district attorney did not interfere with the diligent and impartial performance of her judicial duties. The committee advised the judge to resign from judicial office before accepting the appointment if it was offered. *See also Nevada Advisory Opinion JE2011-15* (https://tinyurl.com/yc4yybmg) (a judge must resign before becoming a candidate for appointment to the unexpired term of the elective office of district attorney); *New York Advisory Opinion 2015-176* (https://tinyurl.com/y7ezn65q) (a judge may discuss his interest in an interim appointment to non-judicial office with the public official who will make that decision if the position becomes vacant).

There are no other exceptions to the resign-to-run requirement. Thus, conduct commissions and advisory committees have stated that a judge must resign before running for:

- Circuit clerk (*Commission on Judicial Performance v. Ishee*, 627 So. 2d 283 (Mississippi 1993));
- Sheriff (*Florida Advisory Opinion 1996-5* (https://tinyurl.com/ybknzrvy); *South Carolina Advisory Opinion 7-1992* (https://tinyurl.com/yapq869f); *West Virginia Advisory Opinion* (January 27, 2011) (https://tinyurl.com/y8o4slus));
- Legal offices such as county attorney (*Kentucky Informal Opinion JE-18* (1981) (https://tinyurl.com/ydx885xy)), or district attorney (*North Carolina Advisory Opinion 2017-1* (https://tinyurl.com/y9brnejs));
- State and local legislative offices such as the house of delegates (*West Virginia Advisory Opinion 2012-6* (https://tinyurl.com/y8o4slus)); state senate (*In re Dunleavy*, 838 A.2d 338 (Maine 2003)); the town select board (*In re Colby*, 989 A.2d 553 (Vermont 2009)); the county board (*New York Advisory Opinion 2005-14* (https://tinyurl.com/yajosgu4)); or the county board of supervisors (*Commission on Judicial Performance v. Ishee*, 627 So. 2d 283 (Mississippi 1993));
- Executive offices such as mayor (*Louisiana Advisory Opinion 35* (1976)); town supervisor (*New York Advisory Opinion 1989-126*

(continued)

(https://tinyurl.com/y7h9b43g)); or governor (*Matter of Buckson*, 610 A.2d 203 (Delaware 1992))

- Offices such as sanitation district board member (*Arizona Advisory Opinion 1982*-1 (https://tinyurl.com/y7ytyakv)); fire district commissioner (*New York Advisory Opinion 2010-207* (https://tinyurl.com/y77ptf88)); or regent or trustee of a state university *Nevada Advisory Opinion JE1998-1* (https://tinyurl.com/yasp9azv)); and
- School board (*In the Matter of Vosburgh*, Determination (New York State Commission on Judicial Conduct September 24, 1991) (https://tinyurl.com/y9vhy5co)); *New York Advisory Opinion 1990-79* (https://tinyurl.com/y7kxvt93)); *Washington Advisory Opinion 1985-8* (https://tinyurl.com/ycyu2kr7)).

The New York State Commission on Judicial Conduct found that, even though he was unopposed and the post was non-partisan, a judge violated the code by running for re-election to the school board. *In the Matter of Vosburgh*, Determination (New York State Commission on Judicial Conduct September 24, 1991) (https://tinyurl.com/y9vhy5co). The judge was already a member of the school board when he was elected as a part-time town court justice. When he stood for re-election to the school board, he asked for an advisory opinion but ignored the judicial ethics committee's advice that he should resign. *New York Advisory Opinion 1990-79* (https://tinyurl.com/y7kxvt93). Explaining why resignation was required, the committee noted that "[s]chool boards are subjects of wide-spread community interest," handling, for example, school budgets and taxes, and school board members could be the object of public criticism. Thus, the committee emphasized, the judge "could be highly visible in educational controversies, which could be inconsistent with judicial duties," even if unopposed in the election. Similarly, in admonishing the judge, the Commission explained that, "[s]ervice on a school board often requires a member to take positions on controversial issues of community interest other than those related to the law, the legal system or the administration of justice."

Recent cases involving Facebook

Post and mocking reply

The Arizona Commission on Judicial Conduct publicly reprimanded a judge for mocking a litigant in posts on his Facebook page. *Urie*, Order (Arizona Commission on Judicial Conduct June 12, 2018) (https://tinyurl.com/y9d9surv).

Starting "In the category of, You can't make this stuff up!," the post purported to be a verbatim account of the judge's exchange with a litigant in an eviction proceeding. (A screenshot of the post is attached to

(continued)

the reprimand.) The judge did not use specific names but referred to the individuals by their role in the case, for example, "landlord" and "tenant."

After a maintenance man testified to finding powder that tested positive for heroin under the bathroom rug in an apartment, the tenant claimed that the heroin could not have been his because cocaine, not heroin, was his drug of choice and he keeps all of his drugs in a safe. When asked how the heroin got into his apartment, the tenant said, "I don't know. Maybe one of the hookers I had in my apartment left it." The post ended: "Needless to say, the Court ruled in favor of the landlord."

When one of his Facebook friends asked, "True story in your court?," the judge posted: "Yes. It goes without saying but the tenant wasn't the brightest bulb in the chandelier."

The Commission found that the judge's post and reply "mocked the intelligence level of the tenant. This is an appearance of impropriety and diminishes public confidence in the judiciary." The Commission also ordered the judge to delete the post and to review *Arizona Advisory Opinion 2014-11* (http://tinyurl.com/k5ug3j2) "so he can ensure all future social media postings comply with the Code and that opinion."

Photo and comments

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

On September 5, 2017, the judge arraigned Tracie Williams on charges of financial exploitation of the elderly and related felonies for allegedly forging her dying mother's will to receive more than $1,000,000. A TV station was present, filmed the arraignment, and ran a story in which the judge appeared prominently.

That evening, the judge posted on his Facebook page a still photo of the video from that story showing him seated in court conducting the initial appearance. The caption underneath the photo read: "Police: Woman Exploits over One Million Dollars from Dying Mom." The news logo appeared to the right of the heading.

The judge's post elicited several negative comments about the defendant, including "[d]isgusting," "[h]ang 'em high Brent," "[h]opefully you set a high bond," and "I didn't think anything could be lower than rescinding DACA. I was wrong." There were also statements of support for the judge's handling of the arraignment, such as "[g]o Brent," "[g]et 'em Brent," and "[t]hat face! Good one."

The Commission "strongly disagree[d]" with the judge's argument that his posting of the photo was not a comment on the case. It explained:

> There is an old maxim that "a picture is worth a thousand words." The saying is designed to convey the concept that a single image often expresses an intricate idea better than any written description. By placing that still photo on his Facebook page, Respondent expressed to his Facebook friends

(continued)

the woman's perceived guilt in a louder voice and in a more certain tone then if he had actually written the words himself.

The Commission also found that the judge had "clearly called into question the integrity and independence of the judiciary."

> The post was . . . designed to elicit responses from his friends because that's what Facebook is meant to be – an alternate public means of communication. The fact that the friends' comments were largely negative is no surprise. . . . Respondent adopted a position that was certainly contrary to the neutral and detached demeanor of all judges but was undoubtedly popular with his friends.

The Commission stated that the judge's failure to remove the comments "constituted a tacit endorsement" of their contents.

News story and comment

Based on an agreement, the Kentucky Judicial Conduct Commission publicly reprimanded a judge for sharing a news story on her Facebook account with the comment: "This murder suspect was RELEASED FROM JAIL just hours after killing a man and confessing to police." *In re the Matter of McLaughlin*, Agreed order of public reprimand (Kentucky Judicial Conduct Commission June 12, 2018) (https://tinyurl.com/y9jrdlga). The judge's Facebook account identifies her by name and judicial title.

Meme

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for posting on his Facebook page a meme that endorsed the extermination of Muslims and statements that criticized liberals. *Public Reprimand of Burkeen* (Texas State Commission on Judicial Conduct February 21, 2018) (https://tinyurl.com/y9nnywla). The judge maintained a personal Facebook page that identified him as the county judge of Limestone County and was publicly viewable at the time of the posts at issue.

The judge shared a "meme" on his Facebook page that featured a picture of retired Marine Corps General James Mattis with the text: "Fired by Obama to please the Muslims, hired by Trump to exterminate them." The judge deleted the meme the same day.

In response to the Commission's inquiry, the judge explained that he thought the meme "showed an interesting contrast" between the two presidents' attitudes toward General Mattis. The judge also stated that he "never would have shared this post if [he] thought it would be taken as an endorsement of genocide. [He] realized afterwards that [he] should not have posted it, because it's not just about how [he] interpreted it, but how others might."

In early 2017, the judge posted on his Facebook page:

> The best part of Trump's election has been that it has revealed once again how hateful, intolerant, arrogant and divisive liberals are, not to mention the fact that they have taken the word hypocrisy to new extremes...

(continued)

> Hope apparently is defined by liberals as hatred and intolerance, persecution of Christians, embracing criminals, murdering police officers, racial violence, and of course, a welfare state financed by borrowed money…
>
> A good example of the shallowness of liberal thinking is the fact liberals have convinced themselves that the norm is the lunacy we have gone through in the last eight years, and that anything else is not survivable. In the last eight years, police officers and fire fighters became the bad guys, criminal conduct was justified if not glorified, the Bible became 'hate speech,' Christians became targets of private and public discrimination, and the government began telling us where to go to bathroom, and who our children have to go to bathroom with.

Subsequently, the judge posted:

> Do the morons claiming Trump is another Hitler not know who Hitler was? I realize liberals have not been much blessed with brains, but surely they can figure out that Hitler was a SOCIALIST. It was the National Socialist Party. He was one of you! His goals were your goals.

In response to the Commission inquiry, the judge stated that his posts never impacted his judicial duties and did not cast discredit on the judiciary, noting "everyone here knows I'm a conservative Christian," and he has liberal friends who "never expressed anything but confidence in my role as a jurist." In a subsequent affidavit, the judge acknowledged that the wording in the posts was "tack[y] and insulting," that "there is no excuse for the way [he] phrased these posts," and that the posts were "improper and inappropriate."

Retaliation

Accepting an agreed statement of facts and recommendation, the New York State Commission on Judicial Conduct publicly admonished a judge for entering a property without the owner's permission, taking photographs, posting the photos on Facebook with disparaging comments about the owner, and failing to promptly remove the posts despite assuring the Commission that he would do so. *In the Matter of Fisher*, Determination (New York State Commission on Judicial Conduct June 26, 2018) (https://tinyurl.com/y94vg3rp). The Commission noted that, although neither of the posts referred to the judge's judicial position or mentioned the property owner by name, "many in his small community would likely know that he is a judge and would recognize the property and individuals involved."

The judge's wife was co-executrix of the estate of her late stepfather. The primary asset of the estate was a house. In March 2012, the estate sold the property to S. On January 10, 2015, S. was in arrears in her mortgage payments and was not living on the property. After consulting the estate's attorney but without providing notice to S. or obtaining her permission, the judge entered the property, which was in a state of disorder, and took photographs.

The judge posted seven of the photographs on his wife's Facebook account, including at least two showing the interior of the house, with the

(continued)

Social media and judicial ethics: Part 1
Judicial Conduct Reporter
(Spring 2017)

comment, "Mom and Alton are turning over in their graves," a reference to his deceased mother-in-law and stepfather-in-law. In comments on his post, other Facebook users expressed their disgust and sadness about the state of the property without identifying S. by name. For example, one user opined that the residents of the property were "either on drugs or have mental illness."

The Commission stated:

> Even if, as he claims, the property appeared to have been "abandoned and uninhabited," respondent had no legal right to enter, "inspect" and photograph the premises simply because of his wife's connection to the estate, which, in the event of a default, had legal remedies spelled out in the contract of sale. As a judge for over 20 years who presumably has handled numerous Trespass cases, respondent should have recognized that entering a private property without the owner's permission may constitute a violation under the Penal Law (§140.05).

The Commission was "unpersuaded" by the judge's "dubious claim that he mistakenly believed he could lawfully enter the property to inspect it because of a spousal connection," but, noting that the judge had acted after consulting the estate's attorney, it stated, "while that is inconclusive, acting in good faith after attempting to get legal advice about the matter would be mitigating."

In August 2015, S. paid the outstanding balance, discharging the mortgage.

From December 2015 to March 2017, S. was the complaining witness in several proceedings in the judge's court against her domestic partner, G., who was charged with various offenses. By letter dated March 15, 2017, the Commission asked the court clerk for copies of court records and audio recordings of proceedings related to G. The Commission's letter did not refer to S.

The judge personally replied to the Commission's request to the clerk and submitted copies of G.'s court records. The judge also gratuitously included numerous Facebook posts apparently by S. that urged others to contact the Commission about Judge Fisher and his co-judge. The judge sent the posts because he believed S. had filed a complaint and he wanted the Commission to understand "what [he] was dealing with."

On April 6, 2017, the judge posted 10 photographs of the interior of the property on his Facebook account, six purportedly taken prior to its sale to S. and four taken by the judge in January 2015. The post included the comment: "house before sale (holding paper) [sic] next photos behind 4 months of not making payments and not paying and ballon [sic] payment of ($25000.00) power off, behind $6200.00 in taxes starting to foreclose. good [sic] thing mommy and daddy come [sic] through. (if selling do a back groung [sic] check.)" Other Facebook users could view the post, and some commented. The judge intended the photos and his comment to be viewable by the public because he was "upset" at S. for repeatedly and publicly accusing him and his co-judge of judicial misconduct and encouraging others to file complaints.

Social media and judicial ethics: Part 2
Judicial Conduct Reporter
(Spring 2017)

(continued)

The Commission found:

> Even if he was provoked by what he perceived as S.'s improper behavior, it was respondent's obligation as a judge to observe high standards of conduct and to act with restraint and dignity instead of escalating the unseemly public accusations and debate over a private matter that played out on Facebook. Every judge must understand that a judge's right to speak publicly is limited because of the important responsibilities a judge has in dispensing justice, maintaining impartiality and acting at all times in a manner that promotes public confidence in the judge's integrity.

In testimony before the Commission on July 10, 2017, the judge pledged to remove the April Facebook post "this afternoon." By letter dated November 10, the Commission asked the judge why he had not removed the post. On November 13, the judge removed from the post the four photographs he had taken without authorization. The judge did not remove his comment, the other photographs, and comments by other users, and they remained publicly viewable at least until February 2, 2018.

The Commission stated that the judge's misconduct was compounded by his inexplicable failure "to remove the offensive Facebook post promptly after the Commission questioned him about the matter, despite promising under oath to do so." The Commission explained that leaving his denigrating comments on Facebook, where more people could read them and comment, "was a further injustice to the owner of the property."

Endorsements

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for posting campaign advertisements for other candidates on his Facebook page and sitting in the campaign tent of three candidates during an election. *Public Reprimand of Lopez* (Texas State Commission on Judicial Conduct June 6, 2018) (https://tinyurl.com/ybmfteyn).

In January 2016, the judge shared a campaign advertisement for a candidate for district attorney on his Facebook page. During the 2016 election for Rio Grande City Council, the judge was observed sitting under the campaign tent of a candidate for mayor and two candidates for city commissioner from different precincts. In March 2016, the judge shared a campaign advertisement for those three candidates on his Facebook page. The judge sits on the Rio Grande Municipal Court.

In his response to the Commission, the judge stated that he had "no involvement" and "did not authorize" the posting of the campaign advertisements on his Facebook page and did not learn of the posts until he received the letter of inquiry from the Commission.

(continued)

Recent posts on the blog of the Center for Judicial Ethics
https://ncscjudicialethicsblog.org

A sampling of recent judicial ethics advisory opinions (June)

A sampling of recent judicial ethics advisory opinions (July)

Anonymous complaints

A universe of worthy messages:
Symbols on robes and signs in the courthouse

Independent factual investigations IRL:
In the Matter of Calvert (Wisconsin 2018)

Recent cases (May)

Recent cases (June)

Recent cases (July)

Recent cases (August)

Educating and assisting

What they said that got them in trouble in the first half of 2018

Special presentations