

# JUDICIAL CONDUCT REPORTER



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### JUDICIAL CONDUCT REPORTER Fall 2023

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*Center for Judicial Ethics*

## Avoiding nepotism and favoritism in judicial appointments

Under [Rule 2.13](#) of the 2007 American Bar Association *Model Code of Judicial Conduct*, a judge is required to:

- Avoid nepotism and favoritism,
- Make appointments impartially and on the basis of merit,
- Avoid unnecessary appointments, and
- Approve compensation of appointees only at the fair value of services rendered.

Canon 3C(4) of the 1990 model code had the same provisions.

In a new definition, [Comment 2](#) of the 2007 model explains that “nepotism” is “the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge’s spouse or domestic partner, or the spouse or domestic partner of such relative,” unless otherwise defined by law. As the [terminology section](#) states, persons within the “third degree of relationship” are great-grandparents, grandparents, parents, uncles, aunts, brothers, sisters, children, grandchildren, great-grandchildren, nephews, and nieces. In addition to the code, some jurisdictions have anti-nepotism statutes that judges, as well as other public officials, are required to comply with in hiring.

According to [comment 1](#), the rule applies to appointments of:

- Assigned counsel,
- Referees, commissioners, special masters, receivers, guardians, and similar officials, and
- Clerks, secretaries, bailiffs, and other personnel.

Comment 1 emphasizes that judges are required to eschew nepotism, favoritism, and excessive compensation even if the parties in the case consent to an inappropriate appointment or compensation.

### Examples of appointments of family members as attorneys for which judges have been disciplined:

- A judge appointed his son as counsel to indigent defendants in more than 200 cases and took judicial action in some of the cases. [In the Matter of Chaney](#), Final judgment (Alabama Court of the Judiciary February 24, 2020).
- A judge appointed his brother-in-law as an attorney in indigent juvenile cases. [In the Matter of Naman](#), Final judgment (Alabama Court of the Judiciary March 2, 2023).

- A judge appointed his father as counsel for indigent defendants in 238 cases and in many of those cases, handled preliminary matters, including setting bail, recalling warrants, deciding discovery motions, and arraigning defendants. *In re Davis*, 865 So. 2d 693 (Louisiana 2004).
- At an initial appearance, a judge signed a perfunctory order appointing his daughter, who was the county public defender, as counsel for an indigent murder suspect. *Commission on Judicial Performance v. Peyton*, 812 So. 2d 204 (Mississippi 2002).

### Examples of other appointments of attorneys for which judges have been disciplined:

- In numerous cases, a judge appointed two attorneys who rented office space from him to represent criminal defendants and approved their fees. *Inquiry Concerning Shook*, Decision and order (California Commission on Judicial Performance October 29, 1998).
- A judge appointed her former law partner to represent a conservatee without disclosing the relationship or disqualifying herself from the case. *In the Matter Concerning Johnson*, Decision and order (California Commission on Judicial Performance January 16, 2018).
- A judge appointed three friends to represent individuals seeking de facto custodian status in child custody cases without requesting or requiring them to apply for the appointments and without advising the attorneys or litigants in the cases of their friendship. *Gentry v. Judicial Conduct Commission*, 612 S.W.3d 832 (Kentucky 2020).
- Without disclosing the relationship, a judge appointed an attorney with whom she had an intimate relationship to represent indigent defendants and presided over the cases. *In re Chrzanowski*, 636 N.W.2d 758 (Michigan 2001).
- For two years, a judge appointed a former district attorney and two attorneys who shared offices with him to represent 45% of the defendants in cases in which he made appointments, which was 623 total appointments; 35 other attorneys were appointed to the remaining cases, and no other attorney receiving more than 33 appointments. *Public Warning of Emerson* (Texas State Commission on Judicial Conduct June 28, 2002).

### Examples of fiduciary appointments for which judges have been disciplined:

- Without disclosing the relationship, a special master appointed her domestic partner as a third party neutral in a divorce proceeding to accompany the parties when they made an inventory of their property. *Paus*, Order (Arizona Commission on Judicial Conduct November 8, 2019).
- A judge appointed an unqualified friend to whom he had loaned money as trustee of a trust and personal representative of a related estate,

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**Comment 1 emphasizes that judges are required to eschew nepotism, favoritism, and excessive compensation even if the parties in the case are willing to consent to an inappropriate appointment or compensation.**

(continued)

failed to disclose the friendship and financial relationship, and failed to act when faced with evidence of his friend's mismanagement and embezzlement. *In the Matter of Freese*, 123 N.E.3d 683 (Indiana 2019).

- A judge appointed as guardians ad litem the attorney representing her son in criminal cases and an attorney who worked at her husband's law firm. *Gordon v. Judicial Conduct Commission*, 655 S.W.3d 167 (Kentucky 2022).
- A judge appointed his wife as administrator of four estates, approving her accountings and setting and allowing her fees. *In re Jenkins*, 419 P.2d 618 (Oregon 1966).

### **Examples of appointments of special masters, mediators, or referees for which judges have been disciplined:**

- Without input from counsel, a judge appointed an attorney who was not on a court-approved list as a special master in a case without disclosing that he and the attorney were friends and socialized together, at times with their spouses; that he had received gifts from the attorney; that his nephew was employed by the attorney; and that he had officiated over the attorney's wedding. *Inquiry Concerning Bailey*, Decision and order (California Commission on Judicial Performance February 27, 2019).
- A judge appointed her first cousin as a mediator in a case without informing the parties of the relationship. *In the Matter of Fine*, 13 P.3d 400 (Nevada 2000).
- A judge appointed his son as a referee in four cases and confirmed his son's reports. *Kane v. State Commission on Judicial Conduct*, 406 N.E.2d 797 (New York 1980).
- A judge appointed unqualified friends to serve as adjunct settlement judges and ordered counsel and parties to pay their fees. *In re Complaint under the Judicial Conduct and Disability Action [White]*, Order (10<sup>th</sup> Circuit Judicial Council March 22, 2011).

### **Examples of favoritism in hiring personnel for which judges have been disciplined:**

- A presiding judge hired as a probation officer a woman with whom he was having a sexual affair and who did not have a college degree or the equivalent amount of related experience required by regulations; he also paid her more than the other, more-experienced probation officers and than her predecessor. *In re Cole*, Final decision and order (Arkansas Judicial Discipline and Disability Commission September 14, 1992).
- A judge employed his wife as court clerk. *Public Admonition of Huizenga* (Indiana Commission on Judicial Qualifications June 22, 2009).
- A judge's brother, with whom she resided and shared expenses, was hired in the court's probation department. *Public Admonition of Roby* (Indiana Commission on Judicial Qualifications August 11, 2003).

- A judge hired her niece and rehired a magistrate who was unqualified because he lived outside the district. *In re James*, 821 N.W.2d 144 (Michigan 2012).
- A judge hired her daughter as her court officer without competitive consideration of other qualified applicants and authorized her to be paid a salary commensurate with the position even though she had no experience or training. *In re Dumas*, Reprimand (Tennessee Court of the Judiciary July 16, 2010).

### Appearance of favoritism

In some cases, judges have been disciplined for inappropriate appointments based on the appearance of favoritism, in other words, on a finding that the judge appeared to make an appointment based on something other than the appointee's qualifications, without a finding of actual favoritism because the appointee was unqualified or the appointment was intended to somehow benefit the judge.

For example, despite the finding that there was no express agreement, a judge was sanctioned for creating the appearance that he had exchanged a discount on his legal fees for appointments to his divorce attorney, casting doubt on the integrity and impartiality of the judiciary. *Inquiry into Blakely*, 772 N.W.2d 516 (Minnesota 2009) (30-day suspension without pay and censure).

In December 2003, Christine Stroemer was representing the judge in his divorce, and he owed her law firm more than \$42,000 in legal fees. By the time the final dissolution decree was entered in September 2004, he owed approximately \$98,000 to the firm. On April 4, 2006, the judge paid the law firm \$31,982.84 from the sale of his home to settle his outstanding bill of \$94,545.62. The firm wrote off \$64,128.

Beginning in December 2003 and for the next three and a half years, the judge appointed Stroemer as a mediator or third-party neutral in 16 cases. There was no dispute that the law firm was highly qualified to provide mediation services and well regarded in the area of family law. The judge also referred his personal tax accountant to Stroemer for representation in her divorce, which generated significant fees for the law firm, and the judge and his second wife referred families using the wife's day care business to Stroemer.

During this time, the judge and Stroemer exchanged emails about his bill. For example, agreeing to waive interest as long as he was making regular payments, Stroemer acknowledged the judge's financial situation and added, "I DO want to thank you for the referrals and certainly appreciate the work." In an email on the day of the settlement, Stroemer told the judge that she had had to do a "lot of explaining" to her partners about writing off over \$60,000 in legal fees and that it "was a very difficult decision" that affected her income and then added, "I do hope that you continue to recognize my legal abilities and continue to refer mediation cases to me." The judge "did not disabuse her of any notion that there was a connection between the mediation referrals and the discounted bill."

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In the discipline hearing, the judge and Stroemer both testified that they did not make a bargain to exchange mediation and arbitration appointments for a fee discount. Stroemer and another partner testified that the law firm agreed to reduce the judge's legal bill because he had no money and getting the proceeds from the sale of his house was preferable to getting monthly payments for years to come. They also testified that it was not uncommon for the firm to accept some discount of legal fees in exchange for an immediate cash payment, although they acknowledged that the judge's discount was one of the largest the firm had ever agreed to. The judge testified that he had not recognized the possible appearance of a connection between the negotiated fee reduction and his appointments until he re-read the emails while responding to the Board.

The Court concluded:

Despite the absence of a specific finding of quid pro quo, Judge Blakely's actions reflect a serious lack of judgment. Acting in his official capacity as a judge, Judge Blakely ordered parties in family court matters to use the mediation services of his personal attorney, at their own expense, without informing them that Stroemer represented him in his divorce, that he owed her firm substantial legal fees, or that he had negotiated and obtained a substantial discount of his legal bill. Judge Blakely's actions created a perception that he was using his position as a judge to secure a discount on his legal fees by making mediation appointments to his attorney.

#### **Examples of appearance of favoritism in appointments for which judges have been disciplined:**

- A judge appointed a friend of the chief justice as coroner, even though he had not applied during the application period and the choice was based on criteria that were not part of the stated qualifications and on terms that were significantly different from those advertised, creating the "indelible impression" that his hiring involved favoritism even if the judge thought he was the most qualified applicant. *In the Matter of Johnstone*, 2 P.3d 1226 (Alaska 2000).
- A judge hired his girlfriend to review and summarize medical records in 19 cases, creating an appearance of favoritism even though no actual favoritism was proven because she was qualified and performed the work and her involvement did not affect the judge's adjudication of the cases. *In re Granier*, 906 So. 2d 417 (Louisiana 2005).
- A judge appointed the sons of two other judges as guardians ad litem, receivers, and referees while those other judges were appointing his son to similar positions, creating an appearance of favoritism. *In the Matter of Spector*, 392 N.E.2d 552 (New York 1979).
- A judge appointed her accountant and friend as a fiduciary or guardian for incapacitated people and the accountant did not bill the judge for preparing her tax returns, creating the appearance that the judge received financial benefits from the appointments. [\*In the Matter of Lebedeff\*](#),

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**In some cases, judges have been disciplined for inappropriate appointments based on the appearance of favoritism.**

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Determination (New York State Commission on Judicial Conduct November 5, 2003).

- Creating an appearance of favoritism, a judge appointed a friend as counsel to the public administrator (which administers the estates of decedents who die without a will) and, over more than five years in 475 proceedings, awarded millions of dollars in fees to his friend without applying statutory standards and without requiring substantiation. *In the Matter of Feinberg*, 833 N.E.2d 1204 (New York 2005).
- Bypassing the rotation system through which the court clerk usually assigned guardians, a judge appointed his former campaign opponent and the opponent's law partner as guardian in a disproportionate number of cases, creating the appearance that the appointments were politically motivated. *In the Matter of Ray*, Determination (New York Commission on Judicial Conduct April 26, 1999).

## Factors

In an advisory opinion, the Indiana Judicial Qualifications Commission described the factors judges should evaluate when they are considering “hiring a relative or friend, or anyone referred to the judge or recommended by a relative or friend.” *Indiana Advisory Opinion 2-1998*. The Commission explained:

Nepotism and favoritism are overlapping concepts, the former involving favoritism towards relatives of the judge. In either instance, the prohibition is against allowing judges' relationships to direct the judges' decisions about employment and appointments.

The rule does not mean that a judge may never employ or appoint either a legal relative, friend, or political ally. However, the prospective employee's merit and concerns for the proper administration of justice must be paramount in the decision. Otherwise, the judge violates not only Canon 3C(4), but Canon 2B, which precludes judges from using the office to advance the private interests of others. Additionally, a judiciary free of nepotism and favoritism is critical to the public's trust in the fairness and integrity of the legal system; a judge who practices nepotism and favoritism also violates Canons 1 and 2 which obligate judges to uphold the integrity and independence of the judiciary and to at all times promote the public's confidence in it.

The opinion emphasized that “the position for which the judge is considering hiring a friend or relative must be announced or advertised to the public in the same manner other vacancies within the court are announced or advertised, and other qualified applicants must be considered. Only if the friend or relative is objectively qualified for the position, and only after the judge has weighed every relevant factor, may the judge hire or appoint a friend or relative.”

According to the opinion, before hiring a relative or friend, a judge should consider:

- “The degree, extent, or depth of the relationship of the prospective employee to the judge;”

- Whether the position “is relatively lucrative;”
- Whether the position is permanent or temporary, full-time or part-time;
- “The degree of day-to-day supervision and contact the judge would have with the prospective employee;” and
- The qualifications of other applicants.

The Commission explained:

[T]he employment or appointment of a spouse likely will never be appropriate. On the other hand, the Commission has, from time to time, approved the hiring of a more distant relative, after consideration of the other factors discussed below. With this, and all considerations suggested in this opinion, the predominant issue is merit. . . .

Employing a relative as a temporary filing clerk during another employee’s leave of absence, a circumstance the Commission has approved, is unlikely to threaten the public’s trust, whereas a judge who confers upon a sibling, child, parent, or member of the judge’s household a key post in the judiciary likely will be scrutinized by the Commission. . . .

A judge who hires, for example, a niece or nephew as bailiff without the Commission’s approval invites public criticism and a Commission inquiry, whereas the Commission may be inclined to approve the employment of the same relative as, for example, a secretary in the probation department.

The Commission urged judges to seek its approval before hiring or appointing a relative or close friend to any position. In [Public Admonition of Roby](#) (Indiana Commission on Judicial Qualifications August 11, 2003), the Commission publicly admonished a judge for, in addition to other misconduct, the hiring of her brother in the court’s probation department. Noting its advisory opinion, the Commission explained that if the judge had contacted the Commission, it would have advised her that the close degree of her relationship to her brother and, most importantly, the fact that they lived together suggested that his employment with the court benefited her financially.

### Guidance

The advisory committee for federal judges has also issued an opinion summarizing its guidance for judges when “making a decision about whether a particular person may be ‘appointed to’ or ‘employed in’ a particular court, as such decisions relate to nepotism and/or favoritism.” [U.S. Advisory Opinion 115](#) (2016). The opinion explained that the anti-nepotism provision in the Code of Conduct for U.S. Judges ([Canon 3B\(3\)](#)) reflects, “in part, statutory prohibitions on nepotism found in 28 U.S.C. § 458 and 5 U.S.C. § 3110.” The opinion noted that the code’s rules also apply “to the appointment and hiring of volunteer employees, for example when a judge appoints a law student as an unpaid voluntary extern.”

The federal committee stated that favoritism is not “limited to defined family relationships” but focuses “on the appearance that someone may gain an advantage in the appointment or employment process, for reasons

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**The opinion emphasized that “the position for which the judge is considering hiring a friend or relative must be announced or advertised to the public in the same manner other vacancies within the court are announced or advertised, and other qualified applicants must be considered.”**

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other than merit, because of his or her broader connections to a judge or judicial employee.” The opinion added that “favoritism principles may also counsel against an appointment where the appointment poses a significant risk of ongoing conflicts of interest.”

The opinion summarized the advice it has previously given judges about avoiding favoritism in hiring decisions and in appointments.

- “A judge should not hire a person with whom the judge is in a serious romantic relationship.”
- A retired federal district judge should not be appointed as a special master charged with resolving claims for attorney’s fees in a complex lawsuit.
- A judge may hire a law clerk who was the child of a legislative branch official if it is clear that the appointment was based on a merit selection process.
- Although the appointment of the spouse of the clerk of court as a magistrate judge in the same court is not prohibited, “each judge involved in the appointment process should evaluate whether, if selected, the judge’s relationship to the clerk of court would give rise to the appearance of favoritism.”

Because 28 U.S.C. § 458 applies to the appointment or employment of any individual “who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court,” the opinion summarized the advice it has previously given judges about hiring or appointing other judges’ family members.

- A judge may not appoint the husband of another judicial colleague to act as a special master.
- A judge may not hire as a judicial assistant the spouse of another judge within the same district.
- A judge may not appoint another judge’s child to serve as defense counsel under the Criminal Justice Act.
- A judge may not appoint as a law clerk a person related to a judge of the same court.
- Bankruptcy and magistrate judges may not hire the relatives of other bankruptcy and magistrate judges within the same district.
- A judge may not hire the child or the spouse of a grandchild of a senior district judge of the same court.
- A judge may appoint another judge’s child as defense counsel in a case as long as the appointment does not constitute de facto full-time service and there are no other unusual circumstances that create the appearance that the court is favoring the child of one of its own judges.
- The spouse of a bankruptcy judge may be included on a register of mediators for the bankruptcy court if no member of the court is involved in the selection for the register or in the selection of the mediator in a

particular case and provided the spouse does not serve as a mediator in a case assigned to the relative/judge.

- A judge may appoint as a law clerk a person who is related to a judge of another federal court within the same circuit.

#### **Examples of advisory opinions about appointing family members as attorneys:**

- A judge may not appoint an attorney who is related to the judge or the judge's spouse within the third degree of consanguinity to represent indigent parties indicted by a grand jury. [\*Ohio Advisory Opinion 1993-4.\*](#)
- A judge should not appoint as counsel a member of their household or a relative within the third degree or ratify or approve such an appointment made by courtroom officials from a list of approved applicants. [\*North Carolina Formal Advisory Opinion 2015-3.\*](#)
- Orders appointing a judge's child as counsel in cases should be signed by a special judge who will hear the proceedings involving the child. [\*West Virginia Advisory Opinion 1995-37.\*](#)

#### **Examples of advisory opinions about other appointments of attorneys:**

- A judge may not appoint to represent indigent defendants in criminal cases an attorney who has announced that they are opposing the judge in the upcoming election. [\*Alabama Advisory Opinion 2017-932.\*](#)
- A judge may appoint an attorney who is married to their clerk to represent indigent defendants if there is a rotation system for such appointments with little or no discretion exercised by the judge. [\*Arizona Advisory Opinion 1994-12.\*](#)
- A judge may appoint an attorney who is an associate in their son's law practice as an attorney for the mentally incompetent or as counsel for an indigent in juvenile court as long as the appointment is based on merit, not friendship or other factors, and as long as the judge's son is not entitled to receive a percentage of the money paid by the court to the appointed attorney. [\*Ohio Advisory Opinion 1993-2.\*](#)

#### **Examples of advisory opinions about fiduciary appointments:**

- A judge may not appoint their brother as a guardian ad litem even when the appointment is governed by a rotating list. [\*Nebraska Advisory Opinion 2017-2.\*](#)
- A judge may not appoint an attorney from the small law firm that represents their family's real estate business as a guardian ad litem. [\*New York Advisory Opinion 2023-95.\*](#)
- A judge may appoint an attorney who is an associate in their son's law practice to serve as the fiduciary of an estate or as a guardian as long as the appointment is based on merit, not friendship or other factors,

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and as long as the judge's son is not entitled to receive a percentage of the money paid by the court to the appointed attorney. [\*Ohio Advisory Opinion 1993-2\*](#).

- A judge cannot appoint their brother-in-law or his law partner as a guardian ad litem in abuse and neglect cases or summary proceedings being heard in their courtroom. [\*West Virginia Advisory Opinion 2019-26\*](#).

### **Examples of advisory opinions on appointments of special masters, mediators, referees, and similar positions:**

- A judge may appoint their personal friend and tax preparer as a receiver but must disclose the relationship, and the parties must agree to the appointment. [\*Florida Advisory Opinion 1993-53\*](#).
- A judge may enter an agreed order appointing their cousin as a mediator as long as it was the parties that initiated the selection of their cousin. [\*Florida Advisory Opinion 2017-20\*](#).
- A judge may not appoint their sibling as a master commissioner. [\*Kentucky Advisory Opinion JE-128\*](#) (2017).
- A part-time judge may not appoint their son or daughter as acting judge to serve during their vacation. [\*Ohio Advisory Opinion 2004-10\*](#).
- A judge may not appoint their child to serve as a pro tem judge to occasionally substitute for them. [\*Washington Advisory Opinion 1992-11\*](#).
- A judge may not appoint their father as a supplemental court commissioner. [\*Wisconsin Advisory Opinion 2012-1\*](#).

### **Examples of advisory opinions on hiring personnel:**

- A judge may hire the daughter of their sister-in-law's brother (i.e., the judge's brother's "niece-in-law") as a law clerk. [\*Delaware Advisory Opinion 2004-4\*](#).
- A judge may not employ their spouse as their judicial assistant. [\*Florida Advisory Opinion 2022-12\*](#).
- A judge's spouse may not be hired or appointed as a court program specialist in the same division as the judge even though the judge recuses from voting on filling the position. [\*Florida Advisory Opinion 1999-10\*](#).
- A judge may hire another judge's child as a secretary if the child is qualified. [\*Illinois Advisory Opinion 1997-18\*](#).
- A judge may not employ their child as a law clerk. [\*Kentucky Advisory Opinion JE-88\*](#) (1997).
- A judge may not hire a relative within the third degree of consanguinity as a law clerk. [\*Nevada Advisory Opinion 2005-2\*](#).
- A judge may not appoint their child to a judicial clerkship or provide their child with an unpaid summer internship. [\*New Hampshire Advisory Opinion 2006-1\*](#).

- A judge may employ their nephew as a law clerk if he is qualified. [\*South Carolina Advisory Opinion 3-2008\*](#).
- The niece of a judge's spouse may not be employed by the court in which the judge serves if they have a close familial relationship. [\*Washington Advisory Opinion 2006-5\*](#).
- A judicial officer should not permit their child to be employed in the clerk's office in the court in which they sit even on a part-time, temporary basis. [\*Washington Advisory Opinion 2005-6\*](#).

## Statements of clarification, explanation, and correction by judicial conduct commissions

In all states, discipline proceedings are confidential at the initial stages after an individual files a complaint against a judge unless an exception applies. In approximately 23 states, there is an exception that allows the judicial conduct commission to issue a clarifying, explanatory, or corrective statement when, despite the confidentiality requirement, the complaint has become public. In Massachusetts, for example, "in cases in which the subject matter has become public," the Commission on Judicial Conduct may issue a statement "to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, or to state that the judge denies the allegations." Rules of the Massachusetts Judicial Conduct Commission, [Rule 5B\(3\)](#).

The circumstances that can justify such a statement are described differently in different states although the gist is often similar. For example:

- The Alaska Commission on Judicial Conduct may release a statement "to preserve public confidence in the administration of justice . . . when the subject matter of a complaint is generally known to the public." Alaska Commission on Judicial Conduct Rules of Procedure, [Rule 5\(b\)](#).
- In Georgia, "When the alleged misconduct or incapacity of a judge who is the subject of a complaint has been publicized and the public would expect the [Judicial Qualifications] Commission to be investigating such conduct, the Investigative Panel may authorize the chairperson or the Director to publicly confirm the existence of such an investigation . . ." Rules of the Georgia Judicial Qualifications Commission, [Commentary 5 to Rule 11E\(2\)\(a\)](#).
- The Indiana Judicial Qualifications Commission "may disclose information . . . where the Commission elects to respond to publicly disseminated statements by a complainant or a judicial officer." Indiana

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- Court Rules for Admission to the Bar and the Discipline of Attorneys, [Rule 25 VIII.B \(c\)](#).
- The Maryland Commission on Judicial Disabilities “may issue a brief explanatory statement necessary to correct any inaccurate or misleading information from any source about the Commission’s process or procedures.” Maryland Court Rules, [Rule 18-407\(2\)](#).
  - In North Carolina, a statement may be issued when a complaint “is made public by the complainant, the judge involved, independent sources, or by rule of law,” and the Commission on Judicial Standards deems it “appropriate in the interest of maintaining confidence in the administration of justice.” Rules of the North Carolina Judicial Standards Commission, [Rule 6\(3\)](#).
  - In Tennessee, the exception allows disclosure “if it becomes apparent that allegations of misconduct by a judge have become a matter of public record independent of any action by the Board [of Judicial Conduct] and that continued silence by the Board may be detrimental to the public interest, may lead to bringing the judiciary into public disrepute, or may adversely affect the administration of justice.” Rules of the Tennessee Board of Judicial Conduct, [Rule 0787-01-.03\(1\)](#).
  - The Wyoming Commission on Judicial Conduct and Ethics may issue a statement when “the subject matter of an investigation, proceeding, or determination becomes public through independent sources or through a waiver of confidentiality by the judge, or in extreme circumstances when the confidence of the public in the judiciary is involved, or when the interests of the judge involved would be adversely affected, or when the interests of the Commission would be adversely affected.” Rules Governing the Wyoming Commission on Judicial Conduct and Ethics, [Rule 23\(d\)\(7\)](#).

The Wyoming Commission is required to first submit a proposed explanatory statement “to the judge involved for comment or criticism prior to its release, but the Commission, in its discretion, may release the statement as originally prepared or as the Commission deems appropriate.” Hawaii and Minnesota have similar rules regarding prior submission to the judge. See Rules of the Hawaii Supreme Court, [Rule 208\(c\)](#); Rules of the Minnesota Board on Judicial Standards, [Rule 5\(e\)\(1\)](#).

In some states, the release of a corrective statement is at the judge’s request. For example, [Rule 102\(d\)](#) for the California Commission on Judicial Performance provides:

[I]f public reports concerning a commission proceeding result in substantial unfairness to the judge involved in the proceeding, including unfairness resulting from reports which are false or materially misleading or inaccurate, the involved judge may submit a proposed statement of clarification and correction to the commission and request its issuance. The commission shall either issue the requested statement, advise the judge in writing that it declines to issue the requested statement, or issue a modified statement.

In approximately 23 states, there is an exception that allows the judicial conduct commission to issue a clarifying, explanatory, or corrective statement when, despite the confidentiality requirement, the complaint has become public.

In Alabama:

When a judge has been publicly charged or is the subject of an investigation by the [judicial inquiry] commission, or in any proceeding in which the subject matter is generally known to the public and in which there is a broad public interest, the commission may, at the request of the judge involved, issue one or more short announcements approved by the judge confirming or denying the existence of charges before it, clarifying the procedural aspects, or defending the right of a judge to a fair hearing, or in order to preserve public confidence in the administration of justice.

Rules of Procedure of the Alabama Judicial Inquiry Commission, [Rule 5A\(1\)](#). The exception in Missouri provides: “If a judge is publicly charged with involvement in proceedings before the Commission [on Retirement, Removal and Discipline] resulting in substantial unfairness to the judge, the Commission, at the request of the judge involved, may issue a short statement of clarification and corrections.” Rules Governing the Missouri Bar and the Judiciary, [Rule 12.21\(c\)](#). North Dakota has a similar rule. Rules of the North Dakota Judicial Conduct Commission, [Rule 6C](#).

*See also* Rules of the Arizona Commission on Judicial Conduct, [Rule 9\(c\) \[2\]](#); Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission, [Rule 7C](#); Colorado Rules of Judicial Discipline, [Rule 6.5](#); Rules of the Louisiana Judiciary Commission, [Rule 23\(b\)](#); Procedural Rules of the Nevada Commission on Judicial Discipline, [Rule 7](#); Rules of the New Hampshire Supreme Court, [Rule 40\(3\)\(e\) and \(f\)](#); Pennsylvania Judicial Conduct Board Rules of Procedure, [Rule 18\(B\)](#); Vermont Rules for Disciplinary Control of Judges, [Rule 6\[12\] and \[13\]](#); Wisconsin Statutes, [757.93\[2\]](#).

### Disclosure of dismissals

In approximately 13 states, there is an exception that allows the judicial conduct commission to publicly explain its dismissal of a complaint that has become public. For example, [Rule 5\(e\)\[2\]](#) of the Minnesota Board on Judicial Standards provides: “If an inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, or if a complaint filed with the board has become publicly known, information concerning the lack of cause to proceed may be released by the board.” Similarly, in Missouri, [Rule 12.21\(d\)](#) states: “If a judge is publicly associated with having engaged in serious reprehensible conduct or having committed a major offense, and after a preliminary investigation or formal hearing it is determined there is no basis for further proceedings or recommendation of discipline, the Commission may issue a short explanatory statement.” There are similar exceptions for the commissions in Arkansas ([Rule 7\(5\)](#)), Massachusetts ([Rule 5C](#)), North Dakota ([Rule 6C](#)), and Vermont ([Rule 6\(11\)](#)).

In some states, a judge may ask the commission to issue a statement explaining that it has dismissed a complaint. Under [Rule 5A](#) in Alabama, “In any instance where accusations against a judge have been considered by the commission and it has been determined that there is no basis for the filing of charges against the judge or for further proceedings before the commission, the commission may, at the request of the judge, issue an

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explanatory statement approved by the judge.” [Rule 5\(c\)](#) for the Alaska Commission has a similar exception.

See also Colorado Rules of Judicial Discipline, [Rule 6.5\(g\)](#); Nebraska Discipline Procedures for Judges, [§ 5-121\(A\)\(1\)](#); Rules of the North Carolina Judicial Standards Commission, [Rule 6\(3\)](#); Washington State Commission on Judicial Conduct Rules of Procedure, [Rule 11](#); Wisconsin Statutes, [757.93\(2\)](#).

For a discussion of other exceptions to confidentiality rules, see the [summer 2023](#) issue of the *Judicial Conduct Reporter*.

## A judge accompanying a family member to court

With some caveats, judicial ethics opinions advise that a judge may attend a court hearing or similar proceeding to support a family member.

The committees explain that the situation requires a balancing of two concerns. On the one hand, the committees acknowledge, it is understandable that a judge would be worried about a family member “during occasions of stress or vulnerability,” which are likely in a legal proceeding ([Michigan Advisory Opinion JI-15](#) (1989)), and would “wish . . . to lend support to a family member in an emotionally trying situation” ([Massachusetts Advisory Opinion 2008-4](#)).

On the other hand, as a public figure and a member of the judicial branch, a judge’s presence at a proceeding when not required will “inevitably be noticed,” and observers might infer that “the judge is attempting to influence the outcome” or the conduct of the proceeding, creating at least an appearance of impropriety. [Michigan Advisory Opinion JI-15](#) (1989). The public may see the judge’s attendance as “an attempt, at the very least, to signal to the presiding judge . . . [their] relationship to a litigant in the matter pending before him or her in the hope that that relationship may play a positive role in the litigation’s outcome.” [Massachusetts Advisory Opinion 2008-4](#).

To strike the correct balance, a judge who wishes to attend a proceeding with a family member may do so only in a supportive role, not as a legal advocate. [Indiana Advisory Opinion 2-2020](#). To dispel any concerns about the judge’s role, the Indiana committee cautioned, the judge, in and around the location and immediately before and during the proceeding:

- Must not refer to their judicial status,
- Should try to keep others from referring to them as “judge,” “magistrate,” “commissioner,” “referee,” or other judicial title,
- Should not wear any court-related clothing (for example, a judicial robe or shirt with a court logo), and
- Should not interact with others in a manner that conveys that they have special influence or are a “court insider,” by, for example, visiting the

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presiding judge's chambers or the hearing officer's office, socializing with tribunal staff, or interacting informally with any prosecutorial or investigative staff.

[Indiana Advisory Opinion 2-2020](#). Accord [Massachusetts Advisory Opinion 2006-3](#).

Noting that a hearing that is emotionally charged for a family member might also produce “intense emotions” for a relative/judge, the Indiana opinion also warned judges to carefully evaluate whether they “can maintain composure during the hearing” and to remember that they must behave in a manner that promotes public confidence in the integrity, independence, and impartiality of the judiciary even when not acting as a judge and regardless how others may be reacting. Similarly, the Massachusetts committee warned that “trial dynamics may produce sudden and unexpected situations in which it is impossible to avoid an appearance that [they] are seeking to influence, even subtly, the outcome.” [Massachusetts Advisory Opinion 2006-3](#).

Committees have given judges permission to support family members in a variety of legal situations.

- To provide emotional support during a legal proceeding or a deposition, a judge may be at the side of a child, parent, or other family member related within the third degree by blood or marriage. [Michigan Advisory Opinion JI-15](#) (1989).
- A judge may attend a real estate arbitration proceeding with their spouse, a real estate broker. [Missouri Advisory Opinion 117](#) (1985).
- A judge may attend proceedings in a criminal case against their adult daughter to provide emotional support. [New Mexico Advisory Opinion 2022-2](#).
- A magistrate court judge whose adult child was the victim of a crime may accompany their child to general sessions court proceedings involving the prosecution of the crime. [South Carolina Advisory Opinion 1-2018](#).
- A judge may accompany a family member to meet with the family member's attorney to provide emotional or moral support or personal advice based on common sense and good judgment, but not to provide legal advice about potential settlements. [Connecticut Advisory Opinion 2009-12](#).
- Without negotiating on their behalf or providing advice about answering questions, a judge may attend a settlement conference or investigative interview to provide emotional support for a family member and, during a break, may “answer the family member's questions, assist the family member in evaluating the strengths and weaknesses of certain positions, and provide informal, common sense input.” [Indiana Advisory Opinion 2-2020](#).

Compare [Pennsylvania Informal Advisory Opinion 4/25/2011](#) (a judge from a small judicial district may not attend an unemployment compensation hearing for their spouse, who is represented by a lawyer) with [Pennsylvania Informal Advisory Opinion 9/23/2011](#) (without flaunting that they are a judge, a judge may attend a proceeding at which their spouse's former law partner will plead guilty to crimes against the law firm's clients and partners).

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With some caveats, judicial ethics opinions advise that a judge may attend a court hearing or similar proceeding to support a family member.



In [\*New York Advisory Opinion 1999-24\*](#), the New York judicial ethics committee stated that a judge may accompany their child to a small claims proceeding in which the child is a party and may observe the proceeding as a member of the audience only if the proceeding is in a county other than where the judge sits and where it is not likely that the judge is known. *See also* [\*New York Advisory Opinion 1990-26\*](#) (a judge may sit inconspicuously in the observer's area of a courtroom to view their child's appearance as a lawyer except in any court located within the judge's own county or where it is likely that the judge may be recognized).

However, in a subsequent opinion, the New York committee announced that it “now is of the view” that a judge may attend court proceedings involving a family member in any county if the judge does not act as an attorney, does not have any ex parte contact with the judge presiding in the matter, and does not invoke their judicial office or otherwise lend the prestige of their judicial office for their relative's benefit. [\*New York Advisory Opinion 2012-143\*](#). Further, the committee clarified that that permission extends to proceedings involving any fourth degree relative by blood or marriage, including a step-relative.

The New York committee has answered questions about judges' attending a variety of types of proceedings with family members.

- After a judge's adult child has been convicted and sentenced, a judge may attend and participate in the child's parole hearing, provided they do so in the obvious role of a parent and without reference to their judicial status or otherwise invoking the prestige of judicial office, including for a stepchild regardless whether they are formally adopted. [\*New York Advisory Opinion 2023-82\*](#).
- A judge may accompany their sibling, a pro se litigant, to court in another state. [\*New York Advisory Opinion 2014-38\*](#).
- A judge may accompany their ailing, elderly parent to an eviction proceeding in the same courthouse where they preside. [\*New York Advisory Opinion 2013-68\*](#).
- A judge may accompany their minor child to family court when the child testifies as the complainant in a juvenile delinquency case. [\*New York Advisory Opinion 2007-178\*](#).
- A judge may accompany their minor son to a transit adjudication bureau hearing regarding a summons for violating an ordinance regarding occupying subway seats and may act as his parental representative. [\*New York Advisory Opinion 2006-101\*](#).
- A judge may observe their daughter “in action” arguing an appeal as an assistant district attorney assigned to the appeals bureau. [\*New York Advisory Opinion 2004-126\*](#).

*But see* [\*In the Matter of Thwaits\*](#), Determination (New York State Commission on Judicial Conduct December 30, 2002) (public censure of a judge for, in addition to other misconduct, sitting near her relatives in a small courtroom

during a felony hearing for the brother of her daughter's husband, who was charged with felony criminal contempt and stalking his estranged wife).

## Recent cases

### “Much more cautious now”

Agreeing with the recommendation of the Judiciary Commission, which was based on a stipulation, the Louisiana Supreme Court publicly censured a judge for engaging in improper ex parte communications with the district attorney's office about unsealing the transcripts of hearings on a defendant's indigency and granting the state's motion to unseal without holding a hearing or giving the defense an opportunity to respond. *In re Canaday* (Louisiana Supreme Court October 20, 2023).

In a high-profile murder case, the judge presided over multiple hearings about the defendant's indigency and his request for ancillary funding for expert witnesses. Because defense strategy would be disclosed during the hearings, the district attorney was not present, and the transcripts were sealed.

The judge found that the defendant was not indigent and denied his request for funding. The defense challenged the indigency ruling in a writ application to the Third Circuit Court of Appeal. To facilitate the application, the judge granted defense counsel's request for transcripts of the hearings. When defense counsel moved to obtain a missing transcript, the judge ordered that the transcript be given to defense counsel and handwrote that it be “release[d] from seal.”

In an email to the judge that did not copy defense counsel, the district attorney's office asked whether the judge's order gave it access to the transcripts as well as defense counsel and the appellate court. When Amber Thibodeaux with the district attorney's office followed up by text, the judge replied: “Since I don't believe the state could appeal my granting relief to the defense on funding, I don't think they can support the courts [sic] position to deny. The courts [sic] reasons will be sufficient for the 3rd to review. If the 3rd requests a states [sic] response obviously they could access the record.” Thibodeaux responded: “Thank you for getting back with me. Enjoy your trip & safe travels! We'll see you on the 9th.” Defense counsel was not included in these communications.

After the court of appeal reversed the judge's indigency ruling, Thibodeaux emailed him a copy of the decision. The judge replied: “If the state wants to take up to the Supreme Court, I will unseal the record. GMC.” Defense counsel was not copied on this email.

The district attorney's office then filed a motion to unseal all the documents and transcripts related to the determination of the defendant's

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indigency, and the judge granted the motion without a hearing and without giving defense counsel an opportunity to respond. Defense strategy, including experts and their expected testimony, was discussed in one of the transcripts released by the judge.

After that ruling, defense counsel argued successfully that the judge should be recused from the case; the Third Circuit and the Louisiana Supreme Court denied requests to reverse the recusal. Both the state and defense counsel expended significant time, effort, and funds on the recusal and review proceedings. Negative media reports about the judge's actions prompted the Commission investigation.

According to the judge, it was not unusual for Thibodeaux to contact him or his secretary regarding scheduling or issues with the daily docket. He stated that he "did not intend" his communication with Thibodeaux about unsealing the record "to be a definitive response as to what my action would be," but only to suggest that the district attorney "send me a motion." However, he acknowledged that his language was inappropriate and had suggested that he would grant a motion to unseal. The judge further admitted that he "may have had some ego involved" and "a 'knee-jerk reaction" to the Third Circuit deeming his indigency ruling incorrect. He wanted the issue before the Louisiana Supreme Court.

The judge also admitted that he had not carefully reviewed the state's motion before unsealing the transcripts, explaining that the motion had been in a stack of hundreds of discovery-type motions presented when he did not have a magistrate and was duty judge. He admitted "just signing things, and I'm not even reading them . . . ." Although the judge said that he had gotten "kind of caught up in a perfect storm," he also acknowledged that he had "created the situation," committed legal error, and "took away from the esteem of the judiciary." He agreed that his eventual recusal was proper and confessed that if he was defense counsel, "I would have felt the same way."

In aggravation, the Court stated that the judge's "actions harmed the integrity of and respect for the judiciary. His ex parte communications gave the impression he granted special access and advantages to prosecutors regularly appearing in his court," which was reinforced when he failed to thoroughly review the motion to unseal and summarily granted it without the required hearing and without providing defense counsel the opportunity to object. The Court concluded that "upon media reporting on Judge Canaday's actions, public trust in and respect for the judiciary eroded."

In mitigation, the Court emphasized that the judge "has consistently acknowledged and apologized for his misconduct and its impact on the judiciary." The judge described the measures he had taken to prevent repeating his misconduct; he now requires that all communications go through his legal assistant and that any email include opposing counsel, he refuses to accept text messages and he reviews all motions before determining whether a contradictory hearing is required. The judge testified that he is "much more cautious now in what I sign."

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**The judge described the measures he had taken to prevent repeating his misconduct.**

## “Snowflake,” “saving face,” and “fast and loose”

The California Commission on Judicial Performance publicly admonished a former judge for (1) stating that the plaintiff in a defamation action was “hypersensitive” and a “snowflake” and needed to “litigate like a grown-up” and offering to dismiss the case so he could appeal; (2) in a second matter, after a court of appeal justice vacated an order that he had issued, sending an email to her about the case; and (3) in an unlawful detainer suit against a commercial tenant, intentionally disregarding the law regarding relief from a default judgment and making discourteous comments. *In the Matter of Hunt*, Decision and order (California Commission on Judicial Performance August 31, 2023).

(1) Mohammad Abuershaid, a deputy public defender, used a fictitious name to file a defamation lawsuit alleging that a senior member of the district attorney’s office routinely referred to him as a terrorist. The judge, sua sponte, set a hearing on an order to show cause why he should not stay the case until the plaintiff amended the complaint to reflect his legal name.

At the hearing, the judge remarked about the plaintiff’s use of a fictitious name:

He did that because he says that if his real name were made public, the alleged defamation, which meant that somebody had called him a “terrorist,” would damage his professional reputation as a deputy public defender.

Now, I bet I’m older than everybody on the line right here, so it’s true, the world has changed since I grew up. And we have become in my lifetime rather what I consider to be hypersensitive to people’s feelings. You know, I have even heard about young people being described as “snowflakes” because they are supposedly so insecure that they need to have what are called “safe spaces” if they are confronted with situations or things that they are unfamiliar with.

But I cannot believe that there’s a public policy in the state of California that permits adults to bring lawsuits under fictitious names just because of their transient, personal feelings having been hurt or damaged. I’m talking about adults here. Adulthood means a recognition that life routinely brings adversely [sic]. It means self-sufficiency. It means strength of mind, courage, and wisdom, and resilience. You’re talking about an old-fashioned person here. And I believe in those things. And honestly, I bet those of you who don’t have a case hanging there believe those things, too, about adults. Adulthood routinely brings adversity. The law expects—routinely, it expects the characteristics I’ve listed are a normal condition of adulthood. It is only when those qualities that I’ve just listed are proved to be abnormally lacking, like cases of mental illness or stuff like that, that the law will recreate [sic] some very closely-edged exceptions, all consistent with due process by the way.

He said to the plaintiff’s attorney, “I’ll take your arguments to the contrary, but my tentative ruling will be, as you get to put in your brief an alternative, to give you a week to amend your complaint. Tell your client to step up to the bar and give his name and litigate like a grown-up.”

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Before the Commission, the judge argued that his remarks “reflected ‘a different generation giving advice and insight to a younger generation, each of whom was speaking a different language’ and that his discussion about cultural changes and heightened sensitivities of young people were interpreted negatively.” However, the Commission stated that his “remarks, on their face . . . insinuated that Mr. Abuershaid was ‘hypersensitive,’ was a ‘snowflake,’ and needed to ‘litigate like a grown-up’” and were “gratuitous and unrelated” to whether he could file under a fictitious name. The Commission also rejected the judge’s argument that his “snowflake” remark “was collateral, finding that it “was personal, critical, and created the appearance of bias against Mr. Abuershaid.”

When Abuershaid’s counsel, Matthew Murphy, contended that the case was not about his client’s “hurt feelings,” but about defamation per se, the judge stated, “It actually may not be [defamation] per se. The material that you’ve alleged does not mention that guy’s name. It doesn’t even mention his name.” The judge also suggested that Murphy was trying to get the case before the Court of Appeal and offered to make it “easier” on him by dismissing the case as “a catalyst” for getting the “case in front of the DCA.” The Commission found that the judge’s comments were discourteous, gave the appearance of embroilment, and suggested that he had prejudged the outcome of the case.

(2) In a civil action, the judge granted the defendant’s ex parte request to advance the hearing on their summary judgment motion. The plaintiff petitioned for a writ of mandate and requested a stay, and the Presiding Justice of the Fourth District Court of Appeal, Kathleen O’Leary, vacated the judge’s decision and issued an alternative writ or order to show cause.

The next day, Judge Hunt sent Justice O’Leary an email that stated: “I may be stupid, but I know when someone is saving face.” When Justice O’Leary received the email, she questioned whether it was from a judge and reported it to the presiding judge and the assistant presiding judge. Believing the email was a spoof, the presiding judge alerted the California Highway Patrol personnel at the appellate court.

Before the Commission, the judge acknowledged that he should not have sent the email, expressed remorse, and said that, upon realizing his error, he immediately apologized to Justice O’Leary. The Commission concluded that the judge’s email was an improper ex parte communication with the appellate court, gave the appearance of embroilment, and was discourteous and intemperate.

(3) In a commercial unlawful detainer action against a retail tenant for failing to pay rent during the pandemic, the landlord’s attorney had the summons and complaint served on an employee at a store rather than, as requested, at the law firm the tenant had retained for real estate disputes arising out of the effects of COVID-19. When the tenant did not file an answer, the landlord’s attorney requested entry of a default judgment, again improperly sending the request to a store without notifying the tenant’s counsel or sending a copy to their corporate headquarters. The court entered a default judgment.

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The tenant filed a motion to set aside the default. At a hearing, the tenant’s attorney presented evidence that the landlord’s attorney had not properly served the pleadings. During the hearing, the judge stated to the tenant’s attorney:

- “I mean, I’ve got very little indication that your client took it seriously.”
- “I’ve got a lot of indication that your client was just dragging its feet, hoping that this would go away.”
- “But I’m getting a very uncomfortable position about this tenant playing pretty fast and loose with whether they pay rent or not, or whether they want to be there or not.”

After hearing oral argument, the judge took the matter under submission; subsequently, he issued a minute order denying the motion to set aside the default. On appeal, the court of appeal reversed the judge’s order.

The Commission determined that when he denied the tenant’s relief from the default judgment, the judge had intentionally disregarded the law on default judgments, ignoring the evidence, abusing his authority and discretion, and disregarding the tenant’s fundamental right to a hearing on its potential eviction. The Commission also found that the judge’s accusations about the tenant reflected poor demeanor and gave the appearance of bias against the tenant and prejudgment of the underlying action. Rejecting the judge’s argument that his remarks were “entirely within what is expected and permitted of a judicial officer in colloquy with counsel regarding contested legal matters,” the Commission concluded that his “comments were discourteous and unnecessary;” that his focus on the tenant’s failure to pay rent created the appearance of bias and prejudgment; and that, as the court of appeal had also concluded, he “completely ignored the ethical and statutory violation committed” by the landlord’s counsel.

### “The character assassination game”

The Utah Supreme Court’s approved an order of the Judicial Conduct Commission publicly censuring a former judge for sending court staff an email before he retired that stated:

Just so all of you are on the same page, I am not retiring because I want to, I am leaving because several staff members here at the court filed complaints against me. The judicial conduct commission acted on those complaints and are requiring that I retire. Those staff members know who they are and I know too because their names were listed in the report. Thanks for playing the character assassination game, appreciate ya.

The Commission noted that removal would have been the appropriate sanction if the judge had not retired. *In re Ridge* (Utah Supreme Court July 3, 2023).

The judge sent the email after he had agreed to retire and to be publicly censured to resolve a complaint. Thus, based on that agreement, the judge was also publicly censured for (1) taking prescribed medication while he

presided in court and appearing groggy and tired; (2) engaging in inappropriate conduct and making inappropriate comments during WebEx hearings; (3) being impatient with defendants; (4) being impatient and discourteous to court staff and failing to be diligent in his administrative duties; and (5) questioning Hispanic defendants who requested an interpreter, entering pleas without counsel or an interpreter, and not allowing a defendant to enter a not guilty plea. *In re Ridge* (Utah Supreme Court July 3, 2023).

In June 2021, the judge was prescribed and took medication to relieve numbness of his feet caused by back problems. He took the medication while presiding in court and appeared tired and groggy. Defendants, attorneys, court personnel, and witnesses observed his state while on the medication.

Sometimes during WebEx court hearings in 2021, the judge did not turn on his camera; did not wear judicial robes and/or was dressed very casually when the camera was on; babysat his grandson; and had his TV on. Also during 2021, the judge had his dog—an emotional support animal—with him during court proceedings at home and at the courthouse. (Approving the censure, the Court stated that it was relying on the judge’s stipulation that he had violated the code of judicial conduct and was not offering an opinion on whether all of his conduct related to the WebEx hearings violated the code.)

At the end of a court day in November 2021, when everyone was off a WebEx hearing except for one defendant, the prosecutor, and court staff, the following comments were made:

Judge: Okay, I’m going to go shoot myself. You guys have a good afternoon.

Bailiff: I have valium in my desk Judge. I’m gonna go take some. (laughing).

Judge: I wish you had some here, I’d take some with you.

Prosecutor: You guys have to be careful what you admit in front of the prosecutors. (laughing).

Bailiff: Yeah, I ain’t afraid of you. (laughing).

Prosecutor: I’ll come down harder on you guys. I’m going to ask for prison time for you. (laughing).

The Commission found that the comments were clearly jokes and everyone was laughing but that the defendant was able to see and hear the conversation.

During another WebEx hearing, the judge said, “Ah stupid,” when his mic was still on after an exchange with a defendant about hiring an attorney.

Throughout 2021, the judge came to the courthouse less and less, was not available to follow through on matters, did not respond to or communicate with staff, and did not attend all administrative meetings. The judge agrees that he made comments and sent emails to staff that had an impatient and angry tone.

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