JUDICIAL CONDUCT REPORTER

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NCSC
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Judicial ethics in landlord/tenant cases

Legal error

Appealable error is generally not considered judicial misconduct, but there are exceptions that apply, for example, when the error is egregious because the law is clear and the harm is serious. Legal error in landlord/tenant proceedings can fall within that exception if judges do not follow the procedures that ensure that both the tenant and the landlord have an opportunity to be heard.

As the New York State Commission on Judicial Conduct explained, "the fact that a tenant is facing the potential loss of his/her home places a special burden on a judge to make sure that the statutory requirements are met. In issuing a warrant [of eviction], a judge is obliged to know the statutory requirements, review the documents presented and make certain that they are valid." ***In the Matter of Williams*, Determination** (New York State Commission on Judicial Conduct November 2, 2015). In *Williams*, based on an agreement, the Commission publicly censured a judge for issuing warrants of eviction and money judgments in two proceedings without according the tenants an opportunity to be heard or reviewing the supporting documents. The Commission found that the judge's "errors and mishandling of both matters resulted in proceedings that were lacking in fundamental fairness."

In a second case, the Commission found that a judge committed misconduct by issuing a warrant of eviction against a tenant after an ex parte proceeding in which the landlord had not presented the documents required by law. ***In the Matter of Knopf*, Determination** (New York State Commission on Judicial Conduct September 23, 2020) (censure pursuant to agreement). The judge presided over a hearing in a summary proceeding for eviction and back rent. The tenant, Seneca Tarby, was not present. The landlord, Paul Jones, was present but did not provide the judge with the eviction petition, notice of petition, and executed service affidavit required by New York statutes. Nevertheless, the judge issued a warrant of eviction against Tarby.

Prior to execution of the eviction warrant, Tarby filed a motion to vacate the warrant based on Jones's failure to serve the required documents. The judge granted Tarby's motion but referred to Tarby as a "deadbeat" who did not pay his rent.

The Commission concluded that the deficiencies in the documents the landlord had filed would have been apparent if the judge had properly reviewed them. The judge had compounded his misconduct, the Commission noted, by referring to the tenant as a "deadbeat," creating at least the appearance that he was biased against the tenant and had prejudged the case.

"In issuing a warrant [of eviction], a judge is obliged to know the statutory requirements, review the documents presented and make certain that they are valid."

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See also ***In the Matter of Temperato,*** **Determination** (New York State Commission on Judicial Conduct March 20, 2013) (issuing a warrant and judgment in an eviction proceeding that did not comply with statutory requirements, a month after being privately cautioned for issuing a judgment that was inconsistent with the same statute).

Short-cuts

The Arizona Commission on Judicial Conduct publicly reprimanded a judge for committing multiple errors in an eviction proceeding. ***Carrillo,*** **Order** (Arizona Commission on Judicial Conduct November 13, 2015).

Brittany Gordon, a tenant, was served with a notice of a material and irreparable breach of her lease agreement. At a hearing, Gordon denied that she had breached the lease and offered a defense to at least one allegation. Without conducting a trial, the judge signed a judgment against Gordon even though the Arizona rules for eviction actions require a judge to hold a trial on the merits if a defense is raised. The judgement included past due rent even though Gordon had not received a notice of past due rent, the issue had not been addressed at the hearing, and the judge had not asked Gordon whether she agreed that she owed the claimed rent, as required by the rules. The judgment also included late fees and court costs even though the landlord had not presented any evidence that the lease allowed for the recovery of fees and costs.

In her response to the Commission, the judge explained that she had not noticed that the judgment was different from what had been alleged and acknowledged that she should not assume that the parties are using the correct language on their forms. However, she blamed the tenant, noting that Gordon never denied owing the rent and chose not to appeal. The Commission stated that the judge's response indicated that, despite her years on the bench, she was not aware of the due process required in eviction proceedings. The Commission also noted that a judge must comply with the law and the code notwithstanding the demands of a high volume court.

The Pennsylvania Court of Judicial Discipline removed a judge for her work habits and her handling of landlord/tenant cases, in addition to other misconduct. *In re Merlo*, 34 A.3d 932 (Pennsylvania Court of Judicial Discipline 2011), *affirmed*, 58 A.3d 1 (Pennsylvania 2012).

For days when she was absent, the judge had standing instructions to her staff about handling landlord/tenant cases seeking recovery of possession. As instructed, when the landlord was present and the tenant was not or when both were present and agreed to what the landlord was seeking, the staff would enter judgment on a form and mail it to the parties. (If both the landlord and tenant were present but they disagreed, the case was rescheduled.)

However, Pennsylvania law requires a judge to hold a hearing even if the tenant does not appear in a landlord/tenant case seeking recovery of possession. The Court concluded that the judge had not been faithful to the law, adding that her "short-cut procedures are the obvious product" of her absenteeism.

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See also ***Fletcher,*** **Order** (Arizona Commission on Judicial Conduct August 14, 2015) (judge used a sarcastic tone during an eviction trial, failed to afford either party a fair opportunity to be heard, and simultaneously entered judgment for the tenant and dismissed a case without prejudice); ***Public Reprimand of Uresti and Order of Additional Education*** (Texas State Commission on Judicial Conduct October 11, 2016) (judge entered conflicting judgments in eviction cases and awarded damages to a tenant).

Ex parte communications

Judges have also been disciplined for ex parte communications in eviction matters, sometimes with the landlord, sometimes with the tenant, and sometimes even without a case being filed.

Accepting the recommendation of the Board of Professional Conduct based on stipulations, the Ohio Supreme Court suspended a judge for one year for contacting a landlord on behalf of a tenant; the Court stayed the suspension on condition he commit no further misconduct. *Disciplinary Counsel v. Elum*, 71 N.E.3d 1085 (Ohio 2016).

Antonio Pettis approached the judge in the court parking lot and requested assistance regarding a dispute with his landlord, Susan Beatty. The judge recognized Pettis because the judge's wife, a former school teacher, had helped Pettis complete a scholarship application at their home the day before. Pettis explained that, although he had money to pay his rent, Beatty would not accept it. The judge agreed to help and took him to his chambers.

The judge then called Beatty, identified himself as "Eddie Elum from the Massillon Court," and urged her to accept Pettis's late rent payment. After Beatty told the judge that Pettis had violated his lease and that she had already given him a three-day notice to vacate, the judge discussed Pettis's security deposit with her and asked whether she would give Pettis two more days to remove his belongings. When Beatty told the judge that she may have already changed the locks, the judge said that she could not do that without a writ. The judge asked Beatty to have her lawyer contact him. During the nine-minute phone call, Beatty could hear the judge consulting Pettis. Subsequently, the judge called Beatty twice, but she did not return his phone calls. Beatty was surprised and intimidated by the judge's phone call and felt bullied because he was a judge.

In the disciplinary proceeding, the judge acknowledged that Beatty could reasonably have perceived his call as advocating on behalf of Pettis and against her. The judge stated:

> As a lawyer, I have been trained to resolve disputes. As a judge, I know I've got to step back and can't get involved. Unfortunately, I let my heart do my thinking for me. And I went and tried to put two people together to resolve a rental dispute that got way out of hand because there was a lot of facts that I was not privy to. And I got myself in quicksand and I made a terrible mistake.

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The Texas State Commission on Judicial Conduct publicly warned a judge for intervening in a landlord/tenant dispute at the landlord's request when no case was pending in his court. ***Public Warning of De La Paz*** (Texas State Commission on Judicial Conduct August 3, 2012).

As a benefit of his employment, Raymond Tejeda lived in a mobile home owned by his employer, Allen Mittag. Mittag fired Tejeda and told him to vacate the mobile home within 24 hours. When Tejeda asked for more time to pack his belongings, Mittag went to the judge's office and explained the situation. According to the judge, Mittag did not have to file an eviction proceeding because there was no lease and Mittag's firing of Tejeda entitled him to immediate possession of the property. The judge agreed to help Mittag, and they drove to the mobile home in the judge's vehicle. When they got there, the judge "made a scene," according to Tejeda and witnesses, yelling at Tejeda and threatening that he would "lose all [his] things." Tejeda moved out shortly thereafter.

In response to the Commission's inquiries, the judge denied threatening or yelling at Tejeda but acknowledged telling him to leave the premises immediately. The judge explained that, while he did not know Mittag very well, he had known Tejeda and his family "personally for many years," and believed that he could resolve the problem by "speak[ing] to [Tejeda] and explain[ing] why he needed to leave the property."

See also Commission on Judicial Performance v. Sutton, 985 So. 2d 322 (Mississippi 2008) (judge had ex parte communications and engaged in other conduct in three eviction cases that indicated partiality towards the tenants); ***In the Matter of Holmes*, Determination** (New York State Commission on Judicial Conduct May 29, 1997) (judge issued a warrant of eviction without any notice to the tenant or any court proceeding, based solely on the ex parte request of the landlord); ***In the Matter of Kristoffersen*, Determination** (New York State Commission on Judicial Conduct October 25, 1990) (judge sent letter to tenants and issued warrant to evict based on ex parte communications from a landlord, even though no court action was pending); ***In the Matter of Baldwin*, Determination** (New York State Commission on Judicial Conduct August 22, 2008) (judge stayed a warrant of eviction based on an ex parte communication from the tenant's attorney and failed to require the tenant to make a deposit with the court, as required by law).

Other violations

Judges have also been disciplined for other types of misconduct in landlord/tenant cases. *See* ***Delaney*, Order** (Arizona Commission on Judicial Conduct September 18, 2018) (judge failed to de-escalate a contentious hearing in an eviction case, raised his voice at the landlord, and presided over a request for an injunction against the landlord by one of the tenants); ***In the Matter Concerning Watson*, Decision and Order** (California Commission on Judicial Performance November 6, 2008) (judge presided over a bench trial in an unlawful detainer case while he was a defendant in a lawsuit raising a similar issue filed by tenants of apartment units he owned); ***Commission on Judicial Performance v. Bozeman***, 302 So.3d 1217 (Mississippi 2020) (judge awarded unpaid rent to a landlord above the statutory limits on civil

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judgments in the judge's court); ***In the Matter of Merino*, Determination** (New York State Commission on Judicial Conduct October 2, 2014) (judge failed to appoint an interpreter for a Spanish-speaking tenant in a summary eviction); ***Public Admonition of Geick*** (Texas State Commission on Judicial Conduct May 5, 2008) (for 20 years, judge had practice of refusing to accept eviction filings from landlords for part of December); ***Public Admonition of Corbin*** (Texas State Commission on Judicial Conduct May 9, 2011) (judge directed court staff to accept rental payments from tenants on behalf of landlords in eviction cases).

Interim suspensions pending discipline proceedings or criminal charges

In over half the states, a judge can be suspended with pay pending the resolution of allegations of misconduct. In addition, over 30 states have constitutional provisions, statutes, or rules that authorize the interim suspension of a judge with pay pending the outcome of criminal proceedings. How that suspension authority is implemented differs from state to state.

Discipline proceedings

In one state, suspension with pay is automatic and imposed in every formal judicial discipline proceeding. A provision in the Alabama constitution states: "A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending . . . a complaint against him filed by the judicial inquiry commission with the court of the judiciary."

However, in all other states where interim suspension is available, judges are not automatically or routinely suspended in discipline proceedings. The circumstances under which suspension can be imposed vary based on:

- Which authority can suspend the judge—the judicial conduct commission or the supreme court;
- The stage of the process at which a suspension be imposed—any time or after a formal complaint is filed;
- What notice and opportunity to be heard the judge receives;
- Whether disciplinary proceedings are expedited when a judge is suspended; and
- The criterion for when an interim suspension is warranted.

In most states, it is the supreme court that decides whether to disqualify a judge pending discipline proceedings, in response to a recommendation by the commission and/or at its own initiative. Following are examples of those provisions.

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- In Vermont, "upon the recommendation of the [Judicial Conduct] Board, or on its own motion, the Supreme Court may suspend a judge, without loss of compensation, based upon sufficient evidence that the judge poses a substantial threat of serious harm to the public or to the administration of justice, pending final determination of any proceeding under these rules."
- The Mississippi Commission on Judicial Performance "may, with two-thirds (2/3) of the members concurring, recommend to the Supreme Court the temporary suspension of any justice or judge against whom formal charges are pending."
- In South Dakota, "upon the issuance of a written notice and complaint to a judge, or at any time thereafter, the [judicial qualifications] commission may, in its discretion, issue its order directed to the judge ordering the judge to appear before the commission and show cause why the commission should not recommend to the Supreme Court that the judge be suspended from office, with compensation, while the matter is pending."
- The Wisconsin Supreme Court "may, following the filing of a formal complaint or a petition by the [judicial] commission, prohibit a judge or circuit or supplemental court commissioner from exercising the powers of a judge or circuit or supplemental court commissioner pending final determination of the proceedings."

In five states, it is the judicial conduct commission that can temporarily suspend a judge. For example, in Virginia, "in any pending investigation or formal hearing, the [Judicial Inquiry & Review] Commission may suspend a judge with pay . . . ." The commissions in California, Kentucky, Nevada, and Wyoming have similar authority.

In some states, there is an administrative remedy to temporarily relieve a judge of judicial duties following allegations of misconduct. For example, a court rule in Illinois provides that, "in order to promote public confidence in the integrity and impartiality of the judiciary, and taking into consideration the nature and severity of any charges against or implications of improper conduct by a judge, a chief judge . . . may temporarily assign a judge to restricted duties or duties other than judicial duties."

In over half the states, a judge can be suspended with pay pending the resolution of allegations of misconduct.

Timing and procedure

In some states, a judge can be suspended with pay even before a formal complaint is filed, that is, for example, "pending the resolution of preliminary or formal proceedings" (Colorado), "before or after the filing of a Notice of Formal Charges" (Florida), "incident to a preliminary investigation or a formal proceeding" (Idaho), or "during any stage of a disciplinary proceeding" (Nevada). In other states, an interim suspension is only authorized when formal charges have been filed after an investigation, that is, for example, "upon notice of formal proceedings by the commission [on judicial performance] charging the judge with judicial misconduct

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or disability" (California), when "formal charges are pending" against a judge (Mississippi), or "following the filing of a [Judicial Conduct] Board Complaint" (Pennsylvania). In Michigan, the Judicial Tenure Commission can petition for an interim suspension "with the filing of a complaint" but can also do so earlier in the process "in extraordinary circumstances" following "a request for investigation, pending a decision by the commission regarding the filing of a complaint."

In most states, the procedures for interim suspension provide that a judge be given notice and an opportunity to respond before the suspension is imposed. Following are examples of provisions in those states.

- The California Commission "may issue a notice of intention to temporarily disqualify the judge along with a notice of formal proceedings" or the examiner may file with the Commission a motion to temporarily disqualify the judge after a notice of formal proceedings. The judge then gets 10 days after service or 15 days after mailing to respond.
- In Michigan, a judge gets 14 days to respond to a petition by the Commission for an interim suspension "unless the commission has filed a motion for immediate consideration."
- The Nevada Commission on Judicial Discipline is required to give a judge seven days notice of its intention to suspend the judge, an opportunity to respond, and a public hearing, unless the judge waives the hearing. If the Commission suspends the judge, the judge may appeal the suspension to the Supreme Court.
- The Texas State Commission on Judicial Conduct may recommend suspension after giving the judge "notice and an opportunity to appear and be heard before the Commission."

In several states, an interim suspension with pay can be imposed without prior notice to the judge but then the judge can challenge the order. Following are examples of provisions in those states.

- The Minnesota Supreme Court may order an "interim suspension, with pay, pending final decision as to ultimate discipline," and the suspended judge "shall be given a prompt hearing and determination by the Supreme Court upon application for review of the interim suspension order."
- In South Carolina, "upon receipt of sufficient evidence demonstrating that a judge poses a substantial threat of serious harm to the public or to the administration of justice, the Supreme Court may place the judge on interim suspension pending a final determination in any proceeding under these rules." Then, the suspended judge "may apply to the Supreme Court for reconsideration of the order."
- A panel of the Wyoming Commission on Judicial Conduct and Ethics may "order such temporary discipline or interim suspension

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as may be appropriate under the circumstances," effective immediately. The judge then has 20 days "to request modification or dismissal of the order."

In some states, after a judge is suspended, the commission is required to expedite resolution of the disciplinary proceedings against that judge.

- In California, when a judge is temporarily disqualified, "the disposition of the charges in the notice of formal proceedings shall be accelerated and the formal proceedings shall proceed without appreciable delay."
- In Georgia, "if a judge is suspended or transferred to interim inactive status . . . the [Judicial Qualifications] Commission shall expedite his or her disciplinary proceedings."
- In Louisiana, "disciplinary proceedings involving judges who have been disqualified from exercising any judicial function . . . , shall be expedited and shall be resolved by the [Judiciary] Commission within six months, unless good cause is shown."
- In Michigan, "whenever a petition for interim suspension is granted, the processing of the case shall be expedited in the commission and in the Supreme Court."
- In Nevada, within 60 days of suspending a judge on an interim basis, the Commission is required to file a formal statement of charges, rescind a suspension, or enter into a deferred discipline agreement with the judge.

Grounds

Not all evidence of even serious misconduct merits an immediate suspension, and the tests for when the circumstances are exceptional enough to warrant that temporary remedy focus on the harm the judge's conduct is causing the public, individuals, the administration of justice, and/or public confidence in the judiciary. For example, whether a judge poses "a substantial threat of serious harm to the public or to the administration of justice" is the standard in Georgia, Louisiana, Nevada, and Vermont.

Some of the tests note that the harm should be continuing to justify an interim suspension. For example, the criterion in North Carolina is whether the judge is "engaged in serious misconduct that poses an ongoing threat of substantial harm to public confidence in the judiciary or to the administration of justice." The test in Idaho is whether "the continued service of the accused judge is causing immediate and substantial public harm or harm to himself or others, and an erosion of public confidence to the orderly administration of justice."

A judge's failure to cooperate with the discipline investigation is identified as a relevant consideration in several states.

- In South Carolina, a judge's failure to "fully respond to a notice of investigation," "fully comply with a proper subpoena," "appear at

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and fully respond to inquiries at an appearance," or "respond to inquiries or directives of the Commission [on Judicial Conduct] or the Supreme Court, including failing to appear at a hearing in formal proceedings" are listed as grounds for an interim suspension, in addition to "a substantial threat of serious harm to the public or to the administration of justice."

- In Florida, "the responsiveness of the judge to the disciplinary process" is included in the factors to be considered in a recommendation for interim suspension, with "the seriousness of the allegation of misconduct, the preservation of public confidence in the judicial system, or whether the judge has engaged in conduct that demonstrates a present unfitness to hold office."
- In Colorado, the statement of the reasons in support of the suspension "may include the Judge's failure to cooperate" with the Commission on Judicial Discipline.

In some states, evidence of a disability may be grounds for an interim suspension pending further proceedings. For example, the Vermont Supreme Court "may suspend temporarily a judge from acting in any judicial capacity, when the judge's physical or mental disability prevents the judge from fulfilling the duties of the office" based "upon the consent of the judge, the judge's acceptance of disability insurance payments, reports from one or more physicians, or such other stipulations, documents or evidence as it deems appropriate" or "when the judge claims that a physical or mental disability prevents assisting in the preparation of the defense to a formal charge." The Idaho Supreme Court may temporarily suspend a judge pending further proceedings based on "a court order or judgment declaring the accused judge to be incompetent or incapacitated."

Not all states describe when an interim suspension is appropriate. For example, the rule in Oregon simply gives the Supreme Court the authority to "temporarily suspend a judge whose conduct is the subject of proceedings . . . from exercising any judicial functions during the pendency of those proceedings."

With respect to the standard of proof for interim suspension decisions, some rules refer to sufficient evidence (Georgia, South Carolina, and Vermont), preponderance of the evidence (Nevada), clear and convincing evidence (North Carolina), substantial, credible evidence (Louisiana), apparent good cause (California), or probable cause (Wyoming). However, not all interim suspension rules specify a standard of proof for the determination.

In one of the few published opinions discussing when an interim suspension is appropriate, the Nevada Supreme Court emphasized that "the interim suspension of a duly elected judge is a significant matter" and "powerful tool" that should not be lightly imposed and is "properly invoked" "only when the Commission [on Judicial Discipline] is satisfied that the threat posed by a judge cannot await the disposition of formal proceedings . . . ." *In*

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

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the Matter of Halverson, 169 P.3d 1161 (Nevada 2007). The Court concluded that a suspension is appropriate when a judge poses a real, rather than illusory, threat of great harm to the public or the administration of justice.

The Court agreed with the judge that an interim suspension was warranted only to protect against current or anticipated future harm and not merely to redress past misconduct. However, the Court stated that "past conduct is a reasonable basis upon which to predict future conduct" and that the Commission was not required to disregard "past conduct that would indicate an ongoing problem." The Court also noted that, although generally the standard of proof in judicial discipline matters in Nevada is clear and convincing evidence, given the different purpose of an interim suspension, the appropriate standard was a preponderance of the evidence.

The Court affirmed the Commission's decision to suspend a judge with pay pending the outcome of its investigation of allegations that the judge was abusive toward court personnel; fell asleep on the bench; was not cooperating with colleagues and court administration; and was unable to adequately conduct criminal trials, as evidenced by her persistent improper contact with deliberating juries. Although it rejected the judge's due process arguments, the Court cautioned the Commission to hold a full hearing on formal charges without significant delay because procedural safeguards that are adequate for a temporary suspension may be insufficient if it "takes on the attributes of more permanent discipline."

Removal recommendations

In at least eleven states, if, after formal proceedings, a commission determines that a judge should be removed, retired, and/or suspended from office, the judge is automatically suspended with pay pending review of that recommendation or decision. For example, a provision in Arizona states: "A judge is disqualified from acting as a judge, without loss of salary, while there is pending ... a recommendation to the supreme court by the commission on judicial conduct for his suspension, removal or retirement." The states with similar provisions are: Alaska, California, Connecticut, Indiana, Missouri, Montana, Nebraska, North Dakota, South Dakota, and Washington.

In five states, suspension pending a removal recommendation is discretionary with the court or commission. For example, the New York Court of Appeals "may suspend a judge or justice from exercising the powers of his office while there is pending a determination by the commission on judicial conduct for his removal or retirement . . . ." The supreme courts in Arkansas and Vermont have similar authority. The Rhode Island Commission on Judicial Tenure & Discipline "may, in its discretion, order the suspension" of a judge without loss of compensation pending supreme court review of a Commission recommendation for the suspension, immediate temporary suspension, removal, or retirement of a judge. The Kansas Commission on Judicial Conduct has a similar provision.

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In two states, a judge is or may be suspended with pay when impeachment proceedings are pending against the judge.

- In Arkansas, "a judge may be suspended by the Supreme Court with pay . . . when articles of impeachment have been voted by the House of Representatives."
- In Missouri, "a judge is disqualified from acting as a judicial officer . . . after articles of impeachment have been voted by the House of Representatives. A judge so disqualified shall continue to receive his salary."

Criminal cases

In over 30 states, a judge is or may be suspended with pay pending the outcome of certain criminal proceedings. In some states, the suspension is automatic or required. For example, a Montana statute provides: "A judicial officer must be disqualified from serving as a judicial officer, without loss of salary, while there is pending an indictment or an information charging him with a crime punishable as a felony under Montana or federal law." In other states, the suspension is discretionary with the supreme court or conduct commission. For example, the rule in Minnesota states: "The Supreme Court may, without the necessity of board [on judicial standards] action, suspend a judge with pay upon the filing of an indictment or complaint charging the judge with a crime punishable as a felony under state or federal law."

In most states, as the Montana and Minnesota provisions illustrate, being charged with a felony under state or federal law is grounds for the temporary suspension of a judge. In several states, being charged with a misdemeanor can also result in an interim suspension if the charge involves official misconduct (Texas), adversely affects the judge's ability to perform the duties of the office (Arkansas, Hawaii, and Vermont), "relates to and adversely affects the administration of the office of this indicted judge and . . . the rights and interests of the public are adversely affected thereby" (Georgia), or is a class A misdemeanor (Utah). In Connecticut and New York, a suspension may be imposed not only when a judge is charged with a felony, but when a judge is charged with a crime involving "moral turpitude."

In several states (Louisiana, Maryland, South Carolina, and West Virginia), being charged with a "serious crime" or "serious offense" is the basis for interim suspension of a judge. In Louisiana, a "serious crime" for purposes of a judge's interim disqualification is any felony or "any other lesser crime that reflects adversely on the judge's honesty, trustworthiness, or fitness as judge." In Maryland, a "serious crime" is defined as a felony; a crime that "reflects adversely on the judge's honesty, trustworthiness, or fitness as a judge;" or a crime that "involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or conspiracy to commit such a crime."

In over 30 states, a judge is or may be suspended with pay pending the outcome of certain criminal proceedings.

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In many states, when a judge is convicted of or pleads guilty to a felony or other serious crime, the judge may be suspended *without pay*; in some states, a judge is automatically removed from office when a conviction becomes final. For example, in Montana, the statute provides that, if a judicial officer "pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law or of any other crime involving moral turpitude," the Montana Supreme Court may suspend the judge without salary on the recommendation of the Judicial Standards Commission. If the conviction is reversed, the "suspension terminates and the officer must be paid the officer's salary for the period of suspension." If the conviction becomes final, the Court "shall remove the officer from office."

Suspension without pay

Suspension *without pay* is an option pending the outcome of disciplinary proceedings and/or criminal charges in Florida, Hawaii, Michigan, New Jersey, New Mexico, Pennsylvania, Texas, and West Virginia. For example, in Hawaii, "interim suspension *with or without pay*, pending final decision as to ultimate discipline, may be ordered by the supreme court" in any judicial discipline proceeding. In Florida, an investigative panel of the Judicial Qualifications Commission may order a judge to show cause before the panel why it "should not recommend to the Supreme Court that the judge be suspended from office, *either with compensation or without compensation*, while the inquiry is pending." The New Mexico Judicial Standards Commission "may petition the Supreme Court for immediate temporary suspension of the judge *with or without pay* or for other interim relief." In Louisiana, a judge may consent to an interim disqualification without pay.

In Pennsylvania, the Judicial Conduct Board "may direct Chief Counsel to file with the Court [of Judicial Discipline] a motion for the interim suspension of a Judicial Officer, *with or without pay*, following the filing of a Board Complaint or when an indictment or information charging the Judicial Officer with a felony has been filed." In cases in which it has ordered that an indicted judge be suspended without pay, the Pennsylvania Court of Judicial Discipline has applied a "totality of the circumstances test" that considers the nature of the crime, its relation to judicial duties, the impact or possible impact on the administration of justice, and the harm or possible harm to public confidence in the judiciary. *In re Melvin*, 57 A.3d 226 (Pennsylvania Court of Judicial Discipline 2012). In *Melvin*, the Court suspended without pay a supreme court justice charged with theft and diversion of services based on the work state employees did on her campaign while on state time. The Court found that the conduct described in the state criminal information filed by the district attorney, the testimony before the grand jury, and the evidence presented at the preliminary hearing was "so egregious" that suspension without pay was required. The Pennsylvania Court has also ordered a judge suspended without pay without a hearing following the filing of a misconduct complaint that did

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not involve criminal charges. *In re Tranquilli*, Order (Pennsylvania Court of Judicial Discipline August 26, 2020). The Board had alleged that the judge made inappropriate remarks about jurors in a post-trial conversation with the attorneys in a criminal case (including referring to one as "Aunt Jemima"), made insulting remarks to the parties in a custody case, and made improper remarks in a second criminal case.

In West Virginia, following notice to the judge and a hearing, the Supreme Court of Appeals may suspend a judge "with or without pay" when a judge has been indicted or charged with a serious offense, has engaged or is currently engaging in a serious violation of the code of judicial conduct, or "has become unable or unwilling to perform his or her official duties." The Court has declined "to create a bright-line rule for determining when a suspension should be with pay as opposed to without pay," noting that "members of the judiciary, as elected public figures, may become the target of malicious and unwarranted accusations and prosecutions or of politically-motivated charges, especially in the time prior to elections, which may never prove to be true, but which may lead to a member of the judiciary being forced to defend his or her name." *In the Matter of Cruickshanks*, 648 S.E.2d 19 (West Virginia 2007). The Court listed the factors it would consider in determining whether to suspend a judicial officer with or without pay:

- "Whether the charges of misconduct are directly related to the administration of justice or the public's perception of the administration of justice;"
- "Whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer's public persona;"
- "Whether the charges of misconduct involve violence or a callous disregard for our system of justice;"
- "Whether the judicial officer has been criminally indicted;" and
- Any mitigating or compounding factors.

In *Cruickshanks*, the Court suspended without pay a magistrate who had been indicted on state charges that she conspired with her son to retaliate against an inmate who was a witness against him. The Court acknowledged the judge's argument that she was being deprived of her only source of income but noted that, if she was acquitted, she could seek backpay "to make her whole again" and that if "she is unable to hire an attorney to defend the charges against her, she can file a pauperis affidavit and seek court-appointed counsel as any indigent defendant can."

For a compilation of provisions regarding the interim suspension of judges pending disciplinary proceedings and criminal charges, see the most requested resources section of the Center for Judicial Ethics website.

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Encouraging pro bono services

Rule 3.7(B) of the American Bar Association *Model Code of Judicial Conduct* provides: "A judge may encourage lawyers to provide pro bono publico legal services." A comment explains: "In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office...." Approximately 30 jurisdictions have adopted that rule or a similar rule since it was added to the model code in 2007.

Even prior to explicit permission in the code, judicial ethics advisory committees approved judicial efforts to increase lawyer participation in pro bono programs. As the Michigan advisory committee explained:

> The encouragement and promotion of attorney participation in pro bono representation of needy clients only serves to improve our judicial system as a whole. Therefore, it is clearly permissible for sitting judges to write, speak, lecture, and otherwise participate in a wide range of activities designed to promote and encourage attorneys to engage in such pro bono representation.

Michigan Advisory Opinion J-7 (1998). Other committees have given similar advice.

- A judge may make general appeals to lawyers to participate in pro bono efforts. *Alaska Advisory Opinion 2004-1*.
- A judge may encourage attorneys to perform pro bono services. *Colorado Advisory Opinion 2006-2*.
- The chief judge of a circuit may send a letter encouraging attorneys to join the "One Campaign" of The Florida Bar by donating pro bono legal services or donating money to a legal aid organization. *Florida Advisory Opinion 2010-31v*.
- A judge may write a letter to members of the bar "exhort[ing] the goodness and desirability of pro bono work." *Kentucky Advisory Opinion JE-107* (2005).
- The judges of a circuit may place an ad in the local bar newspaper or appear at a bar meeting to solicit volunteers to handle one pro bono case a year. *Maryland Opinion 1996-20*.

But see *Nebraska Advisory Opinion 2002-3* (a judge may not sign a "recruiting letter" for the state bar association asking attorneys to perform pro bono legal services for low income clients).

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Limits

There are some limits to how judges can encourage pro bono service by judges. For example, several committees caution that a judge cannot solicit an individual attorney to take a specific case or client. *See* ***Alaska Advisory Opinion 2004-1*** (a judge may not individually solicit attorneys to accept particular cases); ***Michigan Advisory Opinion J-7*** (1998) (a judge should not directly solicit individual attorneys to provide pro bono services to specific persons); ***New York Advisory Opinion 2017-114*** (a judge presiding over a civil matter involving allegations of sexual abuse by a non-party minor should not solicit pro bono representation to help the minor protect his right against self-incrimination during a deposition and should not direct the parties' attorneys to solicit such representation); ***New York Advisory Opinion 1993-60*** (a judge may not ask members of the criminal bar if they would accept as a private client someone who could not pay the attorney's regular fee); ***Texas Advisory Opinion 289*** (2004) (a judge may not refer a criminal defendant who does not qualify for a court-appointed attorney to a law firm for representation without a fee).

In addition, some committees advise that judges may only encourage pro bono service in general without promoting a specific program, to avoid abusing the prestige of office, engaging in improper fund-raising, or creating the appearance that a particular organization is in a special position to influence the judge. The Alaska committee stated that a judge may not individually solicit attorneys to participate in pro bono programs on behalf of specific organizations. ***Alaska Advisory Opinion 2004-1***. Similarly, the Kentucky committee advised that a judge could write a generic letter to bar members regarding pro bono work but could not refer to a particular organization. ***Kentucky Advisory Opinion JE-107*** (2005).

However, other committees have not imposed that restriction and have allowed solicitation on behalf of a specific organization. For example, the Texas committee advised that a board of judges may send a letter asking members of the local bar association to donate time and services to a legal services pro bono legal clinic. ***Texas Advisory Opinion 258*** (2000). *See also* ***Florida Advisory Opinion 2019-27*** (a chief judge may appear before bar associations to solicit attorney volunteers for a service that refers military veterans to attorneys for pro bono services); ***Maryland Advisory Opinion Request 2017-35*** (a judge may send a letter encouraging attorneys to contact a named legal clinic or other agency "to discuss taking just one case in the coming months").

Coercion

Noting concerns about judges' appearing to coerce attorneys to volunteer, the Arizona committee discouraged judges from participating in a telephone bank organized by a non-profit organization to solicit attorneys to donate time for pro bono legal services if the attorneys are likely to appear before the judge and the judges identify themselves or "their identity otherwise becomes known" during the calls. ***Arizona Advisory Opinion 2000-6***. Further, even if the judges were anonymous, the committee warned, the

"The encouragement and promotion of attorney participation in pro bono representation of needy clients only serves to improve our judicial system as a whole."

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judges presumably would know the identity of the attorneys they contact, and, therefore, would know who agreed to donate time and who refused, which might cast reasonable doubt on their capacity to act impartially toward those attorneys. Thus, the committee stated, "the best and safest course of action is for judges to avoid direct telephonic contact with prospective attorney donors. Only if the judge's name and position are not disclosed to the attorneys and are not otherwise discernible should the judge even consider personally participating in this activity."

A judge asked the Florida committee whether she could request that a bar association convene a special lunch meeting where she could solicit attorneys to volunteer for appointment as pro bono attorneys ad litem for children in dependency cases. In response, the committee noted the difficulty of specifically defining the type of conduct that in this context may appear to a reasonable person to be coercive or to cast reasonable doubt on the judge's impartially. ***Florida Advisory Opinion 2012-26***. Relying for guidance on the bar rule regarding conflicts in accepting pro bono appointments, the committee stated that a judge's request might be considered coercive if it "causes, or is likely to cause, an attorney to volunteer" for service that is likely to violate the Rules of Professional Conduct or the law, is likely to result in an unreasonable financial burden" on the attorney, or is so repugnant to the lawyer, because of the client or the case, that it would be "likely to impair the client-lawyer relationship or the lawyer's ability to represent the client." Similarly, the committee stated that "it is common sense" that a judge should not engage in conduct that would create the appearance that "the judge likely will favor attorneys who volunteer for appointment and/or disfavor attorneys who do not volunteer for appointment." With those caveats, the committee stated that a judge may request a bar association to convene a special meeting where the judge could make her pitch.

But the committee also noted its concern that at such a meeting a judge could "impermissibly engage in 'arm-twisting' or more subtle pressure tactics to inappropriately influence the attorneys in attendance to agree to 'volunteer' for cases." Thus, the committee warned the judge to be cautious about her "tone or delivery." The committee also recommended that the judge request that the bar association allow her to make the solicitation at a regular meeting rather than hold a special meeting just for that purpose.

Letters

The ABA advisory committee stated that, in general, a letter from a supreme court justice urging lawyers to meet their professional responsibility to provide pro bono legal services would not be threatening or coercive and would not lead a reasonable person to feel obligated to perform pro bono services. ***ABA Formal Advisory Opinion 470*** (2015). Further, the committee stated, if duplicated and mailed by the state bar association to all lawyers in the state, a letter would not be an abuse of the prestige of office even if judicial stationery is used.

However, the committee noted that there could be circumstances when "a letter from a judge urging a lawyer to perform pro bono legal services

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could be viewed as coercive by a reasonable person." Thus, the committee directed judges to consider the following factors before sending a letter.

- "The tone of the letter. A letter in which the justice speaks in aspirational and encouraging language will have a much different impact than a letter that features dictatorial, condescending language."
- "Whether the letter is a personalized correspondence or a general plea to the bar as a whole. A letter in which the recipient lawyer is identified by name in the salutation runs the risk of a reasonable person finding such a letter coercive."
- "Whether there will be some kind of post-letter monitoring. A letter in which a judge encourages a lawyer to perform pro bono legal services and then explains that the lawyer's participation, or lack thereof, will be monitored runs the risk of a reasonable person finding such a letter coercive."
- "The number of lawyers who will receive the letter. In smaller jurisdictions or in limited scope mailings that are targeted at lawyers who practice in a particular area of the law, a reasonable person might feel coerced into providing pro bono legal services."
- "The number of judges serving the jurisdiction. . . . [I]n smaller jurisdictions with a limited number or only one judge, a lawyer who receives a letter from the judge encouraging that lawyer to provide pro bono legal services could feel coerced into doing so."

See ***Minnesota Advisory Opinion 2016-1*** (in most situations, judicial encouragement of lawyer volunteer work through organizations that provide legal representation for low income individuals is not likely to be viewed as coercive).

Appreciation

The comment to Rule 3.7(B) explains that a judge may encourage pro bono service in many ways, "including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work." *See also* ***Alaska Advisory Opinion 2004-1*** (judges may teach at seminars for pro bono attorneys); ***Colorado Advisory Opinion 2006-2*** (judges may attend events designed to recognize attorneys who have performed pro bono work).

However, the Alaska advisory committee stated that a judge may not host a social event for lawyers who participated in pro bono activities as that could be interpreted as evidence that the lawyers are in a special position of influence with the judge or could compromise the judge's impartially. ***Alaska Advisory Opinion 2004-1***. For the same reasons, the Alaska committee stated that a judge could not send letters of appreciation directly to attorneys who have been active in pro bono programs. In contrast, the New York committee advised that a judge who serves on a court-sponsored pro bono

The ABA advisory committee stated that, in general, a letter from a judge urging lawyers to meet their professional responsibility to provide pro bono legal services would not be threatening or coercive and would not lead a reasonable person to feel obligated to perform pro bono services.

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action committee could, using court letterhead or committee letterhead, sign formal or handwritten letters or notes of appreciation on behalf of the committee to attorneys who serve as volunteer pro bono advocates before other judges. *New York Advisory Opinion 2009-68*.

Other opinions have stated that judges may:

- Publicly acknowledge the pro bono activity of particular attorneys by placing an advertisement in a newspaper or displaying a plaque in the courthouse (*Alaska Advisory Opinion 2004-1*);
- List on the court's official website attorneys who have volunteered for a program that offers litigants a free consultation, with links to the attorneys' websites (*Nevada Advisory Opinion JE2008-10*);
- Serve on the board of a particular pro bono program (*Alaska Advisory Opinion 2004-1*);
- Serve as an advisor for a pro bono legal services program (*Colorado Advisory Opinion 2006-2*); and
- Make procedural and scheduling accommodations for pro bono attorneys (*Colorado Advisory Opinion 2006-2*).

Information

When asked whether judges can encourage litigants to take advantage of pro bono services, advisory committees have stated that judges may not refer litigants to specific organizations, but may publicize the availability of programs in general.

- Judges may not notify self-represented litigants "from the bench" about a coalition of agencies assisting tenants in eviction cases during the COVID-19 pandemic but could tell "an unrepresented litigant that he or she has a general right to seek the assistance of counsel and that there are organizations which may be able to assist on a reduced or a no-fee basis." The court may post information about the coalition's services in "highly visible" locations near courtrooms and throughout the courthouse. *Nebraska Advisory Opinion 2020-1*.
- A court's official website may list attorneys who have volunteered for a program that offers litigants a free consultation, with links to the attorneys' websites, if the court disclaims any endorsement of any attorney. *Nevada Advisory Opinion JE2008-10*.
- A court may create and make available to litigants at the courthouse a list or directory of attorneys on the assigned counsel panel who are willing to represent litigants on a sliding fee scale if the list includes a disclaimer that the court and its staff are not recommending any particular attorney. *New York Advisory Opinion 2018-114*.

Finally, advisory committees have opined that courts and judges may provide other support for pro bono programs.

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- Judges, individually or as a group, may actively support creation of a panel of volunteer criminal defense attorneys, provide brochures about their services, and periodically announce their availability. *Minnesota Advisory Opinion 2016-1*.
- A court may, subject to an appropriate disclaimer, allow a non-profit legal aid program to set up a table outside a courtroom to offer financially eligible parties free legal advice, pro se pleadings, and, in some cases, representation. *New Mexico Advisory Opinion 2017-7*.
- An administrative judge may permit a pro bono committee to implement a project in which a judge announces at the beginning of a court calendar that volunteer attorneys are available in the courthouse to consult with and represent tenants in eviction proceedings if the judge makes clear that the attorneys do not speak for the court and that the judge and the court do not recommend any of the attorneys or their services. *New York Advisory Opinion 2008-192*.

Recent case

Independent investigation

Granting a joint motion for approval of a recommendation, the Mississippi Supreme Court suspended a judge for 30 days without pay, publicly reprimanded her, and fined her $1,000 for (1) initiating ex parte communications with another judge and a friend to investigate a civil matter, (2) failing to comply with the statutory limitations on money judgments in her court, and (3) retaliating against a court clerk who filed a complaint with the Commission. *Commission on Judicial Performance v. Bozeman*, 302 So.3d 1217 (Mississippi 2020).

(1) Anthony Smylie sued Rapid Oil Change for $2,043.88. Rapid Oil Change filed a countersuit against Smylie for filing a frivolous claim and harassment. On December 7, 2018, after hearing the testimony of both parties, Judge Vicki Ramsey continued both cases to January 25, 2019. Judge Ramsey subsequently granted Smylie's motion to recuse her from the case.

On January 25, after hearing the testimony of both parties, Judge Bozeman called for a recess and stated that she needed to talk to Judge Ramsey and a friend before she could rule. Judge Bozeman went to her chambers, called Judge Ramsey, and asked her about the testimony given at the initial hearing. Judge Bozeman also called a friend who was a mechanic to inquire about the validity of the parties' arguments. The judge then returned to the bench and ruled in favor of Smylie based on the

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information she had received during the phone calls, without giving either party a chance to respond to the information.

(2) Cumberland Apartments filed an affidavit alleging that its tenant Ashley Minor should be removed from the premises and that she owed $2,557 in unpaid rent, plus court costs. The judge presided over a hearing at which Minor failed to appear but a representative for Cumberland Apartments was present. The judge granted its request to amend its complaint to include the rent that had accrued up to and including the date of the judgment and awarded Cumberland Apartments $3,949, which exceeded the statutory limits for justice courts.

(3) In October 2018, Mona Carr, the Copiah County Justice Court Clerk, filed a complaint against the judge alleging various procedural errors. Following an investigation, the Commission filed a formal complaint against the judge. The Commission failed to find grounds for public discipline; however, it privately admonished the judge, fined her, and required her to complete 25 hours of judicial training by the Commission's staff.

Carr later ran against the judge for her judicial seat but lost the primary election.

In September 2019, the judge filed a complaint with the county board of supervisors alleging 11 instances of inappropriate conduct by Carr, three of which related to Carr's complaint with the Commission against her. The Court concluded that the judge clearly misused her judicial position to retaliate against Carr.

Orchestrated release

Adopting the findings and recommended sanction of the Board of Professional Conduct, based on stipulations, the Ohio Supreme Court suspended a judge for six months for interfering in a case assigned to another judge; the Court stayed the entire suspension conditioned on the judge completing two hours of CLE and engaging in no further misconduct. ***Disciplinary Counsel v. Goulding*** (Ohio Supreme Court September 29, 2020).

One Friday in February 2019, C.G. was arrested and held without bail in the county jail following his indictment by a county grand jury on three second-degree felony counts of illegal use of a minor in a nudity-oriented performance.

On Sunday, long-time friends of the judge summoned him to their home to assist them with an emergency. The friends informed the judge that their daughter had locked herself in her room following C.G.'s arrest. The judge used his cell phone to call the county pretrial services department; the officer who answered his call knew he was a common pleas court judge. The judge confirmed that C.G. remained in custody and asked about the charges. The officer reported that C.G. had been charged with several felony counts of illegal use of a minor in a nudity-oriented performance and that a public safety assessment had recommended that C.G. be released on a recognizance bond and prohibited from having contact with the alleged

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victim. In addition, the officer informed the judge that C.G. was on probation for an aggravated-menacing conviction in the municipal court. The officer told the judge that C.G. was scheduled for arraignment on Tuesday before Judge Joseph McNamara, who, like Judge Goulding, sits on the Lucas County Court of Common Pleas.

On the phone with the officer, Judge Goulding ordered a recognizance bond with a no-contact order, allowing for C.G.'s immediate release.

Meanwhile, the daughter of the judge's friends had been speaking with C.G. on her cell phone. When she learned that the judge had "orchestrated" C.G.'s release, she handed the phone to the judge. The judge informed C.G. that he would be released in about an hour, instructed him to "sit tight" until his parents arrived, and told him that he would have to appear before Judge McNamara. C.G. thanked the judge, and the judge asked, "Do you have any questions?" C.G. stated that he did not and again thanked the judge.

After handing the phone back to his friends' daughter, the judge sent a text message advising the attorney representing C.G. that he had set a recognizance bond with a no-contact order. Later that evening, the attorney responded to thank the judge for his assistance.

Meanwhile, the judge's friends informed him that the alleged victim of C.G.'s offenses (who was significantly younger than C.G.) had sent nude photographs of herself to C.G. and that C.G. had been expelled from two schools for drug-related behavior. The judge began to have second thoughts about setting the bond and permitting C.G. to be released before his scheduled arraignment.

Unable to obtain additional information about C.G.'s aggravated-menacing conviction from the municipal court's website, the judge took the phone from his friends' daughter and spoke with C.G. a second time. He asked C.G. whether his aggravated-menacing conviction involved the same victim, and C.G. assured him that it did not. The judge then asked C.G. questions about the charges pending against him.

Later that evening, the county jail released C.G. on a recognizance bond pursuant to the judge's order. Without the judge's involvement, C.G. would have been held without bail until his arraignment two days later.

In a voicemail message on the day of C.G.'s scheduled arraignment, Judge Goulding informed Judge McNamara that he had set bond in C.G.'s case. Judge McNamara left that bond intact.

While preparing discovery in C.G.'s case, a county assistant prosecutor listened to C.G.'s jail calls and recognized the judge's voice. The assistant prosecutor informed his supervisor and notified the judge that he would be listed as a state's witness in the case. The judge self-reported his misconduct to Disciplinary Counsel.

In aggravation, the Board noted that the judge had "exhibited an attitude of denial," "downplayed his offenses," and "failed to offer any plausible explanations" even though he admitted that his conduct was wrong. The judge characterized the ex parte communications as "simply ministerial" and the violation as "de minimis and inconsequential." The Board stated:

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> When asked why he went above and beyond obtaining and transmitting the publicly available information about C.G.'s status as requested by his friends, Goulding stated that he "guess[ed]" he had acted out of "habit" when he took it upon himself to interfere in another judge's case by setting bail and securing the defendant's release from jail before his scheduled arraignment. He insisted that C.G.'s release benefitted the jail by making a bed available—though he presented no evidence that the jail was overcrowded at that particular time. And although Goulding self-reported his conduct..., the board found that he would not have made that report if the assistant prosecutor had not informed Goulding that he had discovered the recorded ex parte communications and identified Goulding as a potential witness in C.G.'s case.

Solar opposition

The Texas State Commission on Judicial Conduct publicly warned a judge for asking law enforcement to target commercial vehicles associated with a solar farm project and making racially insensitive comments about people of Mexican descent in those conversations; the Commission also ordered the judge to obtain two hours of instruction with a mentor. ***Public Warning of Plaster and Order of Additional Education*** (Texas State Commission on Judicial Conduct August 12, 2020).

The judge's family owns land next to property where a solar farm was being built, and she publicly opposed the project, which had generated controversy in the community and opposition from many residents. Four officers or troopers from the county department of public safety gave sworn statement to the Commission about several conversations they had with the judge about trucks involved in the project. For example, the judge went to the department office to ask if any of the troopers "had contacted any semi-trucks or drivers which were going to or from the Solar Plant project site." When the troopers informed her that they were unaware of any such contact, the judge stated that "they were all 'illegal'. . . they were all driving up and down load zone restricted roads and all the drivers they had employed were 'Mexicans'. . . that 'None of them had driver['s] licenses, since they are Mexican."

In response to the Commission's inquiry, the judge acknowledged that she spoke to law enforcement "as a citizen" out of her "deep concerns" about the excessive speed at which the vehicles were being operated and the rocks they were throwing off, one of which broke her windshield. The judge said that she could not remember exactly what she told law enforcement personnel but that, if she referred to the drivers as Mexican in the conversations, it was only for identification, "not in a racial way," adding, "we have many fine Mexican people in this County."

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