

# JUDICIAL CONDUCT REPORTER



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

VOLUME 43, NO. 4 • WINTER 2022

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### JUDICIAL CONDUCT REPORTER Winter 2022

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National Center for State Courts  
ISSN: 0193-7367

An index and past issues are  
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## State judicial discipline in 2021

In 2021, there were approximately 116 public state discipline proceedings involving judges or former judges. Approximately 55% of the cases were resolved pursuant to an agreement.

Two judges were removed from office. (For more information about those cases, see [Removal cases in 2021](#), *infra*.) One judge was involuntarily retired. Twenty-eight judges publicly agreed to resign or retire and never serve in judicial office again. Seven judges publicly agreed to resign or retire and never serve again and, in addition, to receive a public censure (two judges) or a public admonishment (four judges) or to pay attorney's fees and costs for the investigation and prosecution of the case, which were almost \$74,500.

Twenty judges were suspended without pay for from seven days to two years, although five of those suspensions were deferred in whole or in part subject to the judge committing no further misconduct and other conditions.

- One judge was suspended without pay for two years with all but six months deferred subject to the judge completing a lawyers assistance monitoring program.
- One judge was suspended for 18 months and agreed to complete an on-line ethics course.
- Two judges were suspended for one year; one of those suspensions was stayed after approximately two months conditioned on the judge complying with a counseling and training plan.
- One judge was suspended for 10 months with her resumption of duties conditioned on her compliance with a professional development plan.
- Four judges were suspended for six months. Two of those suspensions were stayed with education requirements. One also required the judge to complete anger management training. One also placed the judge on probation, prohibited her from serving in the family court division during her probation, and ordered her to consult with a mentor and apologize to each person she had wronged.
- Three judges were suspended for three months or 90 days. One of those suspensions also included a censure and required the judge to obtain additional judicial education and to apologize. Sixty days of one of those suspensions was stayed conditioned on the judge attending a class on mindfulness, patience, or civility and consulting with a counselor or life coach about how to treat the professionals appearing in his court.
- Four judges were suspended for one month or 30 days; one of those suspensions included a requirement of additional training, a mentorship, and probation.

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- One judge was suspended for two weeks and placed on probation until the end of his term.
- One judge was suspended for 10 days, fined \$37,500, and publicly reprimanded.
- Two judges were suspended for seven days.

Fifty judges (or former judges in approximately 12 cases) received public censures (seven), reprimands (24), admonishments (16), or warnings (three), with additional education or mentoring required in 13 of the cases. One of the censures also included a \$1,000 fine. One of the reprimands also included a \$2,500 fine.

Two judges and one former judge were ordered to cease and desist certain conduct. Two former judges received informal adjustments. One judge was suspended with pay for 30 days in a state that does not have the option of suspension without pay.

One former judge had his law license suspended for 180 days in attorney discipline proceedings for conduct while he was a judge. One former judge will be suspended without pay for six years if he is elected or appointed to judicial office during the next six years.

## Removal cases in 2021

From 1980 through 2020, approximately 462 judges were removed from office as a result of state disciplinary proceedings. In 2021, two judges were removed.

### Failing to cooperate

Granting the recommendation of the Commission on Judicial Disabilities based on the judge's admissions, the Maryland Court of Appeals removed a judge from office for (1) her conviction on charges of driving while impaired by alcohol, speeding, negligent driving, reckless driving, and dumping or depositing refuse on the highway; (2) failing to be truthful and cooperative during the traffic stop, injecting her judicial position as soon as she was stopped by the officer, and mentioning the officer's superior to try to influence the officer; and (3) failing to comply with a diversion agreement with the Commission, failing to comply with the conditions of a reprimand by the Commission, and failing to cooperate with the Commission. *In the Matter of Nickerson*, 248 A.3d 298 (Maryland 2021), [granting recommendation](#).

### 42 instances, numerous victims

In 2021, the California Supreme Court denied a court of appeal justice's petition for review of a decision of the Commission on Judicial Performance

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removing him from office for (1) a pattern of unwelcome, undignified, discourteous, and offensive conduct toward a female appellate justice; (2) unwelcome, undignified, and discourteous behavior toward two female research attorneys that would reasonably be perceived as sexual harassment; (3) inappropriate conduct toward two female judicial assistants, a female research attorney, and a female appellate justice; (4) poor demeanor toward a female appellate justice, a female judicial assistant, a female research attorney, and a male research attorney; (5) a pattern of conduct toward five female attorneys who did not work for the court that demeaned the judicial office and lent the prestige of office to advance his personal interests; (6) appearing to be under the influence of alcohol on seven occasions, five of which were at the courthouse late at night; (7) comments to a female highway patrol officer about her appearance and his wife; and (8) using profanity to refer to two female justices when speaking to highway patrol officers. [\*Inquiry Concerning Johnson, Decision and order\*](#) (California Commission on Judicial Performance June 2, 2020), [review denied](#). The Commission decision was based on the findings of the three masters who had presided over the evidentiary hearing.

Between January 2010 and June 2018, Justice Jeffrey Johnson engaged in a pattern of conduct toward his colleague on the bench, Justice Victoria Chaney, that was reasonably perceived as sexual harassment or gender bias. For example, Justice Johnson asked Justice Chaney to have an affair with him after she had declined a previous request; inappropriately touched, squeezed, and patted her multiple times; made numerous sexual comments to her; and during a discussion about sexual harassment, said to her, “You would never report me [for sexual harassment], would you?” or words to that effect.

In her testimony, Justice Chaney explained why she had not reported Justice Johnson sooner or told him to stop harassing her.

- She was concerned that reporting him would negatively affect the court’s work, particularly given the conflicts and divisiveness among the justices of the division.
- She did not think anyone at the court would take action if she reported him.
- “She believed that, until the ‘Me Too’ movement, women who complained were not believed and instead were ridiculed, fired, or marginalized.”
- She was afraid of how Justice Johnson would respond given his temper.
- “She had conflicting feelings about him.”
- She believed that “she could handle it because she is a ‘tough lady.’”

Justice Chaney also stated that she had thought she was the only person Justice Johnson was sexually harassing but that, “once she learned that others at the court claimed he had sexually harassed them and that she

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**In 2021, two judges were removed from office as a result of state disciplinary proceedings.**

would be interviewed as part of a workplace investigation, she decided to report his conduct.”

Other examples of Justice Johnson’s misconduct:

- He stroked a research attorney’s arm and commented on her attractiveness.
- He asked a research attorney overly personal questions about her tattoos; asked if her boyfriend was Black and made a joke based on sexual and racial stereotypes; made a sexual reference during a staff lunch that was irrelevant to the topic being discussed; and made a joke about sexual arousal during a conversation in his chambers.
- He invited an attorney he met at an event for new attorneys to the courthouse to impress her with his status and power and the trappings of his office and made inappropriate comments to her.
- He became intoxicated at a professional event and repeatedly and inappropriately touched an attorney, grabbed her waist and wrist, kissed her, and made inappropriate statements to her.
- A custodian saw the justice “over-the-top drunk” in the courthouse around 11:00 p.m. one night and, at the justice’s request, took a man and a woman, who appeared intoxicated, to his chambers.

In determining the appropriate sanction, the Commission emphasized that the justice had committed “a substantial amount of misconduct”—“42 separate instances of proven misconduct”—some of it “quite egregious.” It noted that there were 11 women who were victims of his sexual misconduct, seven who were victims of conduct that would reasonably be perceived as sexual harassment in their workplace, and four whom he had touched without their consent, which is “especially serious misconduct.” Many of the incidents, it noted, occurred at the courthouse during business hours, and others occurred at law-related functions. The Commission also found that the justice’s “intentional fabrication and misrepresentation of facts during the evidentiary hearing, while he was under oath, is exceptionally egregious and demonstrates that he lacks the essential qualities of honesty and integrity that are required of a judge.”

The Commission emphasized that the justice’s “lack of recognition of his misconduct creates a significant risk that he will reoffend.” The Commission was also “troubled by the justice’s assertions that certain witnesses, whom the masters found credible, were lying or invoking racist stereotypes” and agreed that those claims were unsupported by the evidence and compounded the injury the witnesses suffered.

The justice had argued that “much of his proven past conduct was ‘within the bounds of tolerated or acceptable conduct in the not-so-distant past.’” However, the Commission concluded that, “while it is true that social mores have evolved, it has never been acceptable for a judge to engage in unwelcome physical contact with women, or to engage in conduct that would reasonably be perceived as sexual harassment, especially at court.”

Past issues of the  
*Judicial Conduct  
Reporter* and an  
index are available  
on the [CJE website](#).

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Noting that for years the justice and other judicial officers have received training in avoiding sexual harassment, the Commission concluded that “it is implausible that Justice Johnson did not know the appropriate standards of behavior for a person in his position.” Although the justice criticized “some of the women for not reporting him sooner,” the Commission recognized that the women had “understandable” concerns about possible retaliation or adverse consequences to their careers if they reported him and that “the failure to immediately report the misconduct does not mean that it did not happen.”

### What they said in or about criminal proceedings that got them in trouble

- “What we’re not going to have in this jury is people coming in overnight and thinking up s\*\*\* and try to make s\*\*\* up now so they can get out of the jury. That’s not going to happen.” Judge during voir dire. [Scotti](#) (Nevada Commission 2021) (reprimand for this and other misconduct).
- “If I was in drug court, I would have stayed my a\*\* in the car.” Judge to a defendant in an assault case. *Rasul*, 245 A.3d 535 (New Jersey 2021), [adopting recommendation](#) (10-month suspension with pay for this and related misconduct).
- “Kansas boy” and “Can I take a wild guess? Did you have a felony record before [Independence Community College] gave you a scholarship?” Judge to male African-American college athlete at arraignment. *Cullins*, 481 P.3d 774 (Kansas 2021) (one-year suspension stayed in part).
- “[He needs to be hung] with a f\*\*\*ing noose around his neck.” Judge after magistrating an African-American man arrested for public intoxication. [Baldwin](#) (Texas Commission 2021) (reprimand).
- “Not that you can do in front of all these people, no.” Judge after a female defendant asked, “do I owe you anything?” when he released her on her own recognizance *Rodriguez*, 260 A.3d 848 (New Jersey 2021), [adopting recommendation](#) (public reprimand).
- “Didn’t live in the U.S.” Magistrate explaining why he ordered a defendant held on an \$8,000 bond as a flight risk. [Guthrie](#) (New Mexico 2021) (30-day suspension without pay for this and other misconduct).
- “ID.” Judge on a note pad he showed to a police officer testifying in a trial because the officer had not identified the defendant as the same person the officer had ticketed. [Guthrie](#) (New Mexico 2021) (30-day suspension without pay for this and other misconduct).

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- “Oh, before we get started, I think [A.O.’s] under the influence. I want her drug tested.” Judge about a criminal defendant’s girlfriend who was quietly observing courtroom proceedings and who he subsequently sentenced to 10 days in jail for contempt for refusing to submit to a drug test. *Repp* (Ohio Supreme Court November 9, 2021) (one-year suspension without pay with six months stayed with conditions for this and related misconduct).
- “No probation=u buying drinks.” Judge in text to an attorney/friend who had texted the judge that he “wanted no probation” for a client. *Easthope* (Michigan Attorney Discipline Board 2021), *notice* (180-day suspension of former judge’s law license for numerous ex parte communications with his friend, an attorney who appeared before him).
- “An appeal to the higher courts in Alabama on behalf of a capital defendant sentenced to death by judicial override is ceremonial at best.” Judge in decision declaring state’s capital murder sentencing scheme unconstitutional. *Todd* (Alabama Court of the Judiciary 2021) (90-day suspension without pay for this and related misconduct).
- “[The courthouse is not] the most safest place in the world;” “I have tried the County Board, I have tried everything to get people to do something to keep guns out of this courthouse, and nothing happens, so you know, you got to protect yourself;” and “[I keep it] up here on the bench just because I want to protect myself.” Judge removing his handgun from a holster under his robe while sentencing a defendant who had pled no contest to stalking charges. *Woldt*, 961 N.W.2d 854 (Wisconsin 2021) (seven-day suspension without pay for this and other misconduct).
- “I would love to grant this motion, I would love to have a trial on this issue, I’d love that he get found guilty, and I’d love to give him a year in jail for wasting my time today. I would love to do that, but unfortunately I can’t.” Judge denying defendant’s post-conviction motion. *Woldt*, 961 N.W.2d 854 (Wisconsin 2021) (seven-day suspension without pay for this and other misconduct).
- “I mean that’s a stupid argument;” “Attorneys that practice in front of me a lot know, that when things are getting behind, they know the best thing they can do is to shut their ‘pie holes;” and “Jump to the chase.” Judge displaying irritation at defense counsel’s attempt to argue on behalf of his client. *Woldt*, 961 N.W.2d 854 (Wisconsin 2021) (seven-day suspension without pay for this and other misconduct).
- The “so-called victim in this case,” and “You’re a very smart man. You would be amazed at the amount of defendants that come in and say, ‘Yeah, there is,’ and then they continue to go on.” Judge referring to the 13-year-old victim and congratulating a defendant for not exercising his right to speak in allocution after pleading no contest to sexual assault. *Woldt*, 961 N.W.2d 854 (Wisconsin 2021) (seven-day suspension without pay for this and other misconduct).

- “Let me tell you, you’ve been given a gift from God because there’s no question in my mind that you’re guilty of this crime. . . . What you do with it is your choice. Fair enough?” Judge to a defendant who had been acquitted by a jury. [Connolly](#) (California Commission 2021) (admonishment for this and other misconduct).
- “I know who you are. You’re the lady that likes to flim-flam people,” and “If you mess with my son, I’ll bust you’re a\*\*. Do you hear me? I’ll bust you’re a\*\*.” Judge to a pro se traffic defendant who asked him to recuse himself because she was going to sue his son to learn the name of the driver who had struck her vehicle in the parking lot of a Waffle House and left the scene. [Price](#) (Alabama Court of the Judiciary 2021) (three-month suspension without pay and censure).

## Judicial ethics during a crisis

### *Top judicial ethics and discipline stories of 2021*

In 2020, the COVID-19 pandemic gave rise to a new type of judicial misconduct: an injudicious response to the changes in the courthouse compelled by the public health crisis. There were two cases in that category in the first year of the pandemic. See [Ledsinger](#) (Tennessee Board of Judicial Conduct September 28, 2020) (reprimand for stating in court, “the Grand Wizard of our Supreme Court said we have to wear these masks”); [Hinson](#) (Tennessee Board of Judicial Conduct December 15, 2020) (reprimand for failing to comply with the court’s COVID-19 plan on courtroom capacity and social distancing and commenting that he wished the chief justice “would win an award so that the COVID-19 mandates” would end).

In 2021, there were seven public judicial discipline sanctions and at least three private dispositions that directly related to the pandemic.

#### **In contravention of protocols**

Failing to comply with court orders designed to make the courthouse safe was the basis for several proceedings against judges in 2021.

A magistrate was suspended for 30 days without pay for, in addition to other misconduct, failing to wear a protective face covering at all times while on court premises, as required by the New Mexico Supreme Court’s order on the administration of the judiciary during the public health emergency, and placing a court clerk in a difficult position by asking the clerk if they minded if he did not wear a mask. [In the Matter of Guthrie, Order](#) (New Mexico Supreme Court October 29, 2021). The magistrate agreed that he had put the health of court staff at risk.

The Arizona Commission on Judicial Conduct publicly reprimanded a judge for repeatedly failing to wear a face covering when interacting with

The COVID-19 pandemic gave rise to a new type of judicial misconduct: an injudicious response to the changes in the courthouse compelled by the public health crisis.

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the public and staff in court facilities as required by administrative orders; failing to require individuals in his courtroom to comply with the orders; and appearing “to publicly denigrate those orders,” in addition to other misconduct. [Goodman, Order](#) (Arizona Commission on Judicial Conduct May 13, 2021). The Commission found that some court personnel were distressed by the judge’s refusal to wear a face covering and would not enter his courtroom, but he persisted, “despite counseling and admonitions by two presiding judges.” The judge was then ordered to work only in the courtroom or his office, but he also violated that directive and was banned “from the courthouse entirely, requiring judges pro tem to preside over matters that could not be handled remotely.” The judge called his conduct “[s]poradic human omissions,” but the Commission found that he had “needlessly consumed judicial time and resources, including an internal investigation, witness interviews, and repeated interventions by two presiding judges.”

In another case, a justice of the peace had occasionally failed to wear a mask as required by the court’s COVID-19 safety protocols and touched court papers after licking his fingers. When he learned that a complaint had been filed with the human resources department, the judge spoke tersely to his staff, advised them that he would no longer socialize with them, and temporarily excluded them from assisting him with weddings. Although it dismissed the complaint against the judge, in a [warning letter](#), the Arizona Commission reminded the judge of his obligations to follow administrative orders and to be patient, dignified, and courteous with staff, explaining that his “outburst . . . could be perceived as retaliation and have a chilling effect on staff’s right and duty to report misconduct.”

Accepting an agreement, the South Carolina Supreme Court suspended a magistrate for six months without pay for his disruptive behavior during a meeting about the court’s COVID-19 safety plan. *In the Matter of Rivers*, 862 S.E.2d 449 (South Carolina 2021). The Court also ordered the magistrate to complete anger management counseling. In the discipline proceedings, the magistrate acknowledged that “his concerns regarding Covid-19 did not excuse his behavior” and that his conduct “reflected poorly on his professional judgment and temperament.”

In May 2020, the Florence County magistrates and clerks met to discuss the court’s plan for re-opening safely despite the pandemic. During the meeting, Magistrate Rivers repeatedly asked questions, spoke in a loud voice, challenged the Chief Magistrate’s plan, and “became visibly agitated.” Another magistrate told him to follow the Chief Magistrate’s direction. Because of Magistrate Rivers’s “continued disruptions,” the Chief Magistrate “adjourned the meeting prematurely without completing the agenda,” apologizing to the other attendees.

Leaving the room after the meeting, Magistrate Rivers confronted the magistrate who had suggested he follow the Chief Magistrate’s directions; he expressed his displeasure and told the other magistrate not to disrespect him again.

Magistrate Rivers then returned to the meeting room, startling the Chief Magistrate. Magistrate Rivers hit his hands together and loudly

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requested that the Chief Magistrate show him respect in the future. The Chief Magistrate became concerned for her physical safety.

The next day, the Chief Magistrate reported the incident to the Office of Disciplinary Counsel. Approximately a month later, Magistrate Rivers told a county clerk that the Chief Magistrate “does not know who she is dealing with and she will regret doing this,” referring to her complaint.

The Kentucky Judicial Conduct Commission [privately reprimanded](#) a judge for actively discouraging attorneys from choosing to appear remotely during the pandemic. In a June 2020 order about re-opening the courts, the Kentucky Supreme Court required judges to permit those who were high risk or who had been exposed to COVID-19 to appear remotely. “In contravention” of that directive, the judge, in open court, “freely voiced frustrations with remote court appearances” and warned that appearing remotely may prejudice litigants. The judge also required attorneys who chose to appear remotely to verify that they maintained malpractice insurance, which the judge did not require for attorneys appearing in-person; to waive the right to request reconsideration of rulings based on technical difficulties or confusion; and to acknowledge that appearing remotely was solely the attorney’s choice. These measures were intended by the judge to deter attorneys from appearing remotely and penalized high-risk and possibly exposed attorneys.

### “Attempting to navigate technology”

Based on an agreement, the Washington State Commission on Judicial Conduct publicly reprimanded a judge for declining to allow someone to appear at the end of a calendar via Zoom, in addition to other misconduct. [In re Burchett, Stipulation, agreement, and order](#) (Washington State Commission on Judicial Conduct April 23, 2021). The judge also agreed to work with a mentor judge and to receive additional ethics training. The Commission found that the judge had displayed a “disregard for an individual attempting to navigate technology and appear in court.”

At the conclusion of the afternoon calendar one day in February 2021, just after 3:15 p.m., the court clerk told the judge that there was one more person in the Zoom “waiting room” and asked if they should be “let in” so that the judge could speak with them. Apparently tired, the judge said that “[I] just can’t.” The clerk then surmised that it could be the one person from the 2 p.m. docket who had failed to appear and for whom a warrant had been issued because the person in the waiting room had renamed themselves, “Help I couldn’t log in at 2 p.m.” The judge said, “You almost hate to not talk to them if they can figure that out,” referring to the novel name, but the judge again declined the clerk’s request to let the person in and said that they “would have to do the bench warrant docket.” *See also* [Quickle, Order](#) (Arizona Commission on Judicial Conduct June 11, 2021) (reprimand for speaking sharply to court staff after being disconnected from a Zoom hearing, in addition to other misconduct); [In the Matter Concerning Connolly, Decision and order](#) (California Commission on Judicial Performance April 2, 2021) (admonishment for interrupting and speaking irritably and

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sarcastically to defense attorneys who had appeared for an arraignment by phone the first day after the governor had issued the COVID-19 stay-at-home order).

Based on an agreement, the Washington Commission publicly admonished a second judge for criticizing the prosecution of a case in comments that he thought could only be heard by the court employees in the courtroom but that were being broadcast through the court's YouTube channel. [\*In re Antush, Stipulation, agreement, and order\*](#) (Washington State Commission on Judicial Conduct November 19, 2021). The Commission noted that the admonishment "may help to alert other judges to the risks of unguarded comments damaging public confidence in the impartiality, integrity and independence of the judiciary, at a time when courts are using more varied technological broadcast means than ever before in conducting the courts' business."

During the pandemic, the Spokane Municipal Court, like many courts in the state, provided live stream coverage of court proceedings on YouTube to allow the public to observe proceedings. The live stream usually ended at the conclusion of the court proceedings.

On November 12, 2020, the judge presided over a criminal jury trial on charges of disorderly conduct and failure to disperse. After the prosecution and defense had rested their cases, the judge dismissed the jury for the day. Shortly after everyone but the judge and two clerks had left the courtroom, the judge stated:

It's frustrating because I don't think this ever should have been tried. It's a simple misdemeanor. The guy has no record. Best case scenario, he got carried away. I mean this is the best possible case scenario is that he got carried away in the moment. Do you really want to f\*\*\* with someone's life like that? Apparently. Worst case scenario ... The thing is, like I didn't hear anybody say they saw the guy throw jack. Did you hear that ... [recording stops].

Although, according to the stipulation, the judge "reasonably believed" that he could only be heard by the court employees who were present, in fact, the courtroom's audio recording was still activated and, therefore, his comments were broadcast to the public through the court's live stream YouTube channel. The prosecution learned of the judge's comments that evening via the broadcast.

The following morning, the prosecution moved for a mistrial based on the judge's comments. After hearing argument and reviewing his comments, the judge agreed that, "while judges are human and have opinions, it was wrong for him to verbalize them in a way that undermined public confidence in the fairness and impartiality of the rulings he had made in the case before him." He granted the motion for a mistrial, apologized, and expressed his regret for the waste of time and resources.

The discipline agreement stated:

Respondent's actions were careless, but there is no basis to believe he flagrantly or intentionally violated his oath of office. At the time he made the comments at issue, Respondent was unaware that anyone other than court staff could hear the comments. There are many pressures upon a trial judge, and it is understandable, though ill-advised, for a judge to vent to trusted court associates even in private. Respondent credibly stated that he did not intend to impair the case before him.

On the other hand, Respondent revealed his strong opinion about the merits of a case about to go to a jury and that opinion became public (although Respondent did not intend those comments to be public). In this context, presiding over a pending jury trial, Respondent's comments caused actual injury by affecting the outcome of a criminal case and consequently damaged the perceived integrity of the justice system to anyone who may have heard the comments.

The Minnesota Board on Judicial Standards [privately admonished](#) a judge who, before the beginning of a hearing by Zoom, "not realizing others had joined the meeting, used a derogatory word to refer to a party. The comment was overheard by others at the Zoom hearing, including the party's attorney. The judge showed remorse, immediately apologized, and self-reported his conduct to the Board."

#### **"An unpredictable and unforeseeable situation"**

Another judicial discipline case involved conduct that was not unique to the pandemic but illustrated that the safeguards that might detect a judge's problems during in-person court proceedings may be "lacking or insufficient" in the "largely virtual environment" necessitated by the public health crisis, creating an "unpredictable and unforeseeable situation." In that uncontested case, a judge was involuntarily retired based on "extensive and extraordinary delays" in cases and a mental and/or physical disability that is or is likely to become permanent and that prevents or seriously interferes with the proper performance of his judicial duties. [In re Berk, Order](#) (D.C. Court of Appeals November 4, 2021), [affirming order](#). The D.C. Commission on Judicial Disabilities and Tenure commended "the public, including litigators and litigants, who brought their concerns regarding Judge Berk's conduct to the Commission attention" and emphasized that "the Commission cannot serve its mission and protect the public interest without the kind of proactive disclosures, reporting, and cooperation here."

In May 2021, the Commission began receiving complaints about substantial delays by the judge and/or his failure to dispose of matters. In addition to possible violations of the code of judicial conduct, the complaints raised questions about medical, cognitive, confusion, memory, focus, attention, speech, or other issues that could be affecting the judge's ability to perform his judicial duties. The judge went on administrative leave in June.

Following an investigation, the Commission found delays throughout the judge's calendar, including cases in which no written rulings were issued for as long as nine months. In some cases, no hearings were set, hearings were continued without resolution for months at a time, trials and hearings were completed but no decision was entered, or no initial status

**The Commission found that the judge had displayed a "disregard for an individual attempting to navigate technology and appear in court."**

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hearing was scheduled. The judge's clearance rate was 54.4%, at least 30% lower than other judges with similar caseloads on the the same calendar. The delays involved child custody, childcare, and child support matters, contested divorces, and other family-related matters. In some instances, the Commission noted actual or potential harm to litigants, including particularly vulnerable individuals such as children.

The delays appear to have noticeably increased in the late spring and summer of 2020, when the judge assumed responsibility for the domestic relations calendar, especially after the court resumed hearings in a virtual environment due to the pandemic. The delays significantly worsened in or around late fall 2020 and into 2021.

The Commission found that the judge had reason to believe that he was experiencing health issues that were interfering with his duties as early as the fall of 2020 and that certain issues were occurring during court hearings. However, he did not notify court leadership of the extent of the delays and did not disclose his medical condition to them until around May 2021. The Commission also found that other judges, including judges in leadership, and staff were aware of "red flags" about the judge's performance but did not take sufficient steps "to protect the public until after the Commission made inquiries and the judge agreed to take a pause in judicial responsibilities." The Commission concluded that the challenges of the pandemic "led to a breakdown in the court's internal processes that periodically assess judicial workloads and calendar activity."

To assure the public that these matters would be "addressed differently in the future," the Commission explained that the court had reinstated internal processes that had been temporarily paused during the pandemic, will enhance oversight and monitoring, and will provide training on the importance of reporting to and "transparency with the Commission" if a judge has a medical issue that "may require monitoring, accommodations of disabilities, or action to avoid unnecessary challenges or harm to the public." The Commission also described the steps the court had taken to eliminate the judge's backlog.

### **What they said in family court or domestic violence proceedings that got them in trouble**

- "Don't lie to me;" "Appalling;" "That's baloney;" "Pathetic;" "Both of you are doing terribly, and there isn't a chance in the world these children are coming home if you continue doing what you're doing;" and "You're clean? And you expect me to believe that?" Judge to parents

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during dependency hearings. *Roberts* (California Commission 2021) (admonishment for this and other misconduct).

- “[You are putting your dispute] in the hands of a guy who wears a costume;” and “[Another judge] would wade through the bulls\*\*t.” Judge to parties in two family law cases. *Hinson* (Tennessee Board 2021) (30-day suspension with pay).
- “I would not believe his tongue if it were notarized.” Judge about social worker in family court proceeding. *Younge* (Pennsylvania Court of Judicial Discipline 2021) (six-month suspension for this and other misconduct).
- “I am the judge trying to effect equitable distribution. We’re having a hearing. Now, you let me in that house or [the bailiff] is going to arrest you for being in direct contempt of court.” Judge before searching a self-represented ex-husband’s home for marital property. *Goldston*, 866 S.E.2d 126 (West Virginia 2021) (censure and \$1,000 fine).
- “Counsel, there’s a thin line between being an advocate and being a ‘d\*\*k’—thin line—and you’re blurring it.” Judge to attorney during the cross examination of the director of county family court services in a custody/placement modification hearing. *Woldt*, 961 N.W.2d 854 (Wisconsin 2021) (seven-day suspension without pay for this and other misconduct).
- “I’m going to tell you like I tell a lot of people with this same charge because all of these charges are the same. We as men—and I can speak to you as man, because I’m a man, as well, we get frustrated with the women human beings because we try to straightened [sic] out a creation because they was created with a curve, but we as men, we think we are above creation, and we can straighten it out. No matter how much you try, or how you try to straighten out that curve, you can never do it. We get frustrated, and then—but in our frustration you can’t come at them like you’re Mike Tyson, and they’re in the ring like they’re Leon Spinks. You can’t do it. You can’t punch, you can’t hit. At best, you treat [them] as if you’re holding a feather, just to let them know you’re the man, and you’re in control. But on each one of these five complaints it said you went at ‘em like Mike Tyson.” Judge to defendant with multiple domestic violence charges. *Brister*, 258 A.3d 1045 (New Jersey 2021), [\*adopting recommendation\*](#) (one-month suspension without pay).
- “I’m just sick and tired of victims coming in here and they call the cops when they need ‘em but then later on they come and say: Oh, no, this person’s an angel.” Judge to domestic violence victim who said she wanted the defendant to be fined and get community service. *Woldt*, 961 N.W.2d 854 (Wisconsin 2021) (seven-day suspension without pay for this and other misconduct).



## Judicial disqualification

### *Top judicial ethics and discipline stories of 2021*

In September 2021, *The Wall Street Journal* published an article entitled [“Hidden Interests: 131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest.”](#) According to the newspaper, 129 U.S. district court judges and two U.S. court of appeals judges heard one or more cases involving corporate parties in which they, their spouse, or a minor child owned stock, contrary to the statutory requirement that a federal judge disqualify from any matter in which the judge knows of a personal financial interest, no matter how small. *The Wall Street Journal* published follow-up articles, and numerous other media outlets picked up the story.

In his [2021 Year-End Report on the Federal Judiciary](#), U.S. Supreme Court Chief Justice John Roberts addressed *The Wall Street Journal* articles, stating that the U.S. Judicial Conference “is taking the concerns seriously and has committed itself to the careful labor of addressing them.” The Chief Justice emphasized that the *Journal* had not concluded that any of the conflicts “affected the judge’s consideration of a case or that the judge’s actions in any of those cases—often just routine docket management—actually financially benefited the judge.” The Chief Justice noted that “the 685 instances identified amount to a very small fraction—less than three hundredths of one percent—of the 2.5 million civil cases filed in the district courts in the nine years included in the study.” Further, he explained, for most of the judges identified (83 of the 131), there were only one or two lapses over the nine-year period, likely attributable to “oversights in which the judge’s conflict-checking procedures failed to reveal the financial conflict.” The Chief Justice acknowledged that a small number of judges had “multiple violations, or professed ignorance of the ethics rule” and “are now learning the lesson” for apparently failing to take “sufficient note” of the ethics training they had received when they were new judges.

However, the Chief Justice stated that “this context is not excuse. We are duty-bound to strive for 100% compliance because public trust is essential, not incidental, to our function.” The report explained that the Administrative Office of the Courts is working with the Judicial Conference to improve automated detection of potential conflicts and to enhance ethics training and provide refresher courses to ensure that judges are aware of their obligations and know how to effectively use the conflict-checking tools.

\* \* \*

In 2021, two state supreme courts adopted specific rules for disqualification motions in appellate courts, which fewer than a dozen states have. In a 2014 resolution, the Conference of Chief Justices noted that different procedures for disqualification may be required for intermediate appellate courts and courts of last resort than for trial courts when it urged “its members to establish procedures that incorporate a transparent, timely,

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and independent review for determining a party's motion for judicial disqualification/recusal." *Resolution 8, Urging Adoption of Procedures for Deciding Judicial Disqualification/Recusal Motions: Ensuring a Fair and Impartial Process* (Conference of Chief Justices 2014).

In September, the Hawaii Supreme Court adopted new [Rule 5 of its rules of appellate procedure](#). The rule provides:

(a) Motion for disqualification or recusal. A party to any proceeding in the appellate courts may file a motion to disqualify or recuse a judge or justice before whom the case is pending.

(b) Time. The motion must be filed within 10 days after either the document initiating the proceeding in the appellate court is filed or the party discovers new information which, by due diligence, could not have been discovered earlier, that there is reason to believe that any judge or justice should not participate in deciding the case or a matter therein. Except for good cause shown, failure to file the motion by this deadline shall be deemed a waiver of the party's right to object to the judge or justice's participation.

(c) Contents. The motion shall concisely state the facts, reasons, and authority for the requested relief, and shall be supported by a declaration or affidavit, and any pertinent exhibits, establishing the asserted facts. The filing party shall, in the same or a separate declaration or affidavit, also declare or aver that the motion is made in good faith and not for purposes of delay.

(d) Determination of motion. Rule 27(c) of these Rules shall not apply to a motion under this Rule. If the judge or justice who is the subject of the motion does not recuse from the case, the relevant appellate court shall resolve the motion. If the judge or justice does not recuse, the judge or justice may file a response to the motion within five days. A substitute judge or justice shall replace the judge or justice who is the subject of the motion, for the limited purpose of resolving the motion.

(e) Only one motion permitted. Only one motion for disqualification or recusal may be filed by each party at each of the appellate courts, unless the party discovers new information, which by due diligence could not have been discovered earlier, that the judge or justice should recuse or be disqualified from hearing the case or a matter therein. Any such subsequent motion or amended motion must be filed within 10 days after the discovery of the new information.

In December, the North Carolina Supreme Court issued an [administrative order](#) that provides:

[The Court shall assign any motion] seeking the recusal or disqualification of a Justice from participation in the deliberation and decision of a matter pending before the Court . . . to the Justice who is the subject of the motion for their determination. That determination shall be final.

In the alternative, any Justice who is the subject of a recusal or disqualification motion filed with the Court may decline to decide the motion on their own and exercise the discretion to refer the motion to the full Court for disposition without their participation. In that instance, a majority of the Court must concur to disqualify a Justice from participating in the

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deliberation and decision of a case. The determination by the Court shall then be final.

Any Order reporting the disposition on a motion to recuse shall indicate whether it was decided by the Justice who was the subject of the motion or was by them referred to the remaining members of the Court for decision.

### What they said around the courthouse that got them in trouble

- “This is ridiculous!”; “This isn’t working! This isn’t working!”; and “Fix it immediately!” Judge yelling to staff about internet outage in courthouse. *Roberts* (California Commission 2021) (admonishment for this and other misconduct).
- “Get off [my] f\*\*\*ing back.” Judge to court administrator who told her that the remedy she had imposed in a criminal case was unauthorized. *Rasul*, 245 A.3d 535 (New Jersey 2021), *adopting recommendation* (ten-month suspension with pay for this and related misconduct).
- “You look hot,” and “You smell good.” Appellate court justice to his judicial assistant. *Johnson* (California Commission 2020) (removal for this and other misconduct).
- “You have the cutest little a\*\* in the Second Appellate District,” or words to that effect. Appellate court justice to a female justice, who was wearing workout shorts and a top at lunchtime. *Johnson* (California Commission 2020) (removal for this and other misconduct).
- “You can’t sexually harass someone who’s on your own level.” Appellate court justice to a female justice at a restaurant during a holiday party. *Johnson* (California Commission 2020) (removal for this and other misconduct).
- “What are you going to do?” Judge, shrugging, to custodians about two women with the judge who were apparently drunk and were climbing on the lion statues in the courthouse lobby. *Johnson* (California Commission 2020) (removal for this and other misconduct).
- “N-word.” Judge using full word in conversation with court staff on why Black people can use the word but White people cannot. *Chase*, 485 P.3d 65 (Colorado 2021) (censure of former judge).
- “F\*\*\*\*\* b\*\*\*\*.” Judge referring to another judge in a conversation with her clerk. *Chase*, 485 P.3d 65 (Colorado 2021) (censure of former judge).

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- “F\*\*\*” and its “derivatives.” Judge frequently in the courthouse. *Cullins*, 481 P.3d 774 (Kansas 2021) (one-year suspension stayed in part).
- “B\*\*ch” and “c\*\*t.” Judge describing women while in the courthouse. *Cullins*, 481 P.3d 774 (Kansas 2021) (one-year suspension stayed in part).
- “Hello I’m talking to you. This is your honor speaking.” Judge in text to member of the public who frequented the courthouse and had not responded to the judge’s sexual, homophobic, and racist comments. *Poe* (West Virginia Commission 2021) (admonishment).

## What judges said on social media that got them in trouble in 2021

*Top judicial ethics and discipline stories of 2021*

Continuing a trend that began with one case in 2009, misconduct on social media was the basis for 14 judicial discipline cases in 2021. Examples of judges’ inappropriate posts:

- “4:30 a.m. and just signed a search warrant. 4 overdosed in the last 24 hours. Hope they nail the SOB;” and “And the good news is the person the search warrant was on led to the arrest of a person with alleged fentanyl-laced heroin and over \$6,000.00 in cash and two digital scales. Good job by State Police.” Judge almost immediately after signing a search warrant and later after signing a criminal complaint. *In the Matter of Williamson*, Order (West Virginia Supreme Court of Appeals April 15, 2021).
- “When stealing stealth is key. You want to blend in with your surroundings;” “You and your 5’10 sister walk in [Walmart] with green hair and green toenails and green flip flops that smack the back of your feet with every step you make and you don’t blend in and you are caught with three steaks shoved into your pants. You forgot to be stealth;” “Remember people, the goal of criminal and bad behavior is to get away with it;” “Screaming and cursing and fighting in front of police officers 10 out of 10 times is detrimental to ones [sic] freedom;” and it is “downright damn humiliating when [police are] pulling crack from your crack! Find someplace else to hide your stash.” Judge providing “legal tips” on Facebook. *Webb* (Tennessee Board of Judicial Conduct November 5, 2021) (public reprimand for this and other misconduct).
- “Well damn! Give me a black hat and a black horse and call me a desperado, I feel like I was in [sic] just busted.” Judge on Facebook about the second suspension of his law license for failing to comply with continuing legal education requirements. *Webb* (Tennessee Board of Judicial Conduct November 5, 2021) (public reprimand for this and other misconduct).

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Continuing a trend that began with one case in 2009, misconduct on social media was the basis for 14 judicial discipline cases in 2021.

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- “For my birthday this year, I’m asking for donations to American Red Cross. I’ve chosen this nonprofit because of food, water, and much more provided for those affected by Hurricane Florence in NC & SC.” Judge in Facebook post. *In the Matter of Johns*, 864 S.E.2d 546 (South Carolina 2021) (18-month suspension without pay for this and other misconduct).
- “I receive the phone call early this morning for an inquest. It’s very hard when it’s a friend, as I still have to do my job. Now sitting outside the house in my car. I’m finding it really hard not to break down. This world lost a GREAT WOMAN today in Bastrop as God has taken another angel too [sic] add to the kingdom that awaits us all. Rest in Peace Kat Stewart Handy.” Judge in Facebook post after conducting the inquest for a friend’s death. *Public Reprimand of Thomson* (Texas State Commission on Judicial Conduct October 29, 2021).

### Political and controversial viewpoints

There were eight cases in 2021 in which judges were disciplined for social media activity expressing views about controversial issues or endorsing political candidates. Three of those cases were discussed with prior cases in the [spring 2021 issue of the \*Judicial Conduct Reporter\*](#). See *In the Matter of Quinn, Public reprimand* (Minnesota Board on Judicial Standards March 9, 2021) (public reprimand for Facebook posts and reactions by judge endorsing or opposing candidates for public office, including posts about his participation in the Trump Boat Parade on the Mississippi River); *In the Matter of Peck, Determination* (New York State Commission on Judicial Conduct March 19, 2021) (public admonishment for posting photographs of himself wearing a sheriff’s uniform, comments expressing his appreciation for law enforcement officers, and comments about his appearance at a “Back the Blue” event); *In the Matter of Jackson, Public admonishment* (West Virginia Judicial Investigation Commission February 24, 2021) (public admonishment for Facebook comments about a pharmacist arrested for destroying COVID-19 vaccine dosages and about the siege at the U.S. Capitol).

Since that article was published, there have been five additional discipline proceedings addressing similar misconduct.

The Texas State Commission on Judicial Conduct publicly warned a judge for posting a meme about border crossings, support for judicial candidates, opposition to candidates for other offices, and a negative comment about Scientology. *Public Warning of Baca Bennet and Order of Additional Education* (Texas State Commission on Judicial Conduct August 16, 2021). The Commission also ordered the judge to obtain instruction on racial sensitivity with a mentor.

The judge posted to her Facebook page a meme that had an image of the Looney Tunes character Wile E. Coyote reading a book, with the comment, “How to carry kids across the border . . .,” followed by an image of Dora the Explorer, a Hispanic cartoon character, tied to a rocket and Wile E. Coyote attempting to light the fuse.



The judge shared a link on Facebook to an article titled “Scientologist’s Facilities Closed After Police Find People Held Prisoner Inside,” with her comment, “Scientology is not a church. It is an evil scam.”

During the 2018 election cycle, during which she was not a candidate, the judge made several posts to her Facebook page lauding judicial candidates or criticizing their opponents. For example, the judge defended one judge/candidate against accusations that he was a “gun grabber” and a “RINO” and had abused his first wife; urged the public to ignore the political attacks and vote for him because of his experience and qualifications; and made negative comments about his opponent. The judge also posted about attending a “Meet and Greet Luncheon” hosted by a second judge/candidate, “liked” a post about the event, and shared screenshots of campaign flyers.

In addition, the judge posted “Robert Francis O’Rourke. #fakemexican” about the then-candidate for U.S. Senate. The judge also remarked “Finally Gone!!!” about the loss in the primary of Texas State Representative Jason Vallalba and later responded with two laughing emojis to the comment, “I’m sure [Vallalba] will find a job, there are lots of local opportunities in both the hotel and food service industry.” See also [Public Reprimand of Alvarez and Order of Additional Education](#) (Texas State Commission on Judicial Conduct October 29, 2021) (maintaining a Facebook page with materials supporting his wife’s campaign for county commissioner, erecting signs for her campaign, and discussing her candidacy at campaign events and elsewhere, in addition to other misconduct); [Fernandez, Voluntary agreement to resign from judicial office in lieu of disciplinary action](#) (Texas State Commission on Judicial Conduct October 22, 2021) (justice of the peace allegedly had posts on her Facebook page promoting the campaigns of several candidates for public office; supporting law enforcement, the Blue Lives Matter movement, and the U.S. Border Patrol; and promoting consumer products, businesses, and other commercial endeavors, in addition to other misconduct); [In the Matter of Knutsen, Decision and order](#) (New York State Commission on Judicial Conduct June 10, 2021) (based on judge’s resignation, concluded investigation of allegations judge had numerous public Facebook posts with partisan political content; expressions of bias in favor of law enforcement and against criminal defendants; expressions of anti-LGBTQ and anti-Muslim bias; and commentary on pending cases, including the murder trial of former Minneapolis Police Officer Derek Chauvin).

### “Like” means “like”

The California Commission on Judicial Performance publicly admonished a judge for (1) participating in a Facebook group about recalling the district attorney and (2) Twitter activity that expressed partisan views on controversial issues, suggested bias against particular classes of people, and were undignified and indecorous. [In the Matter Concerning O’Gara, Decision and order](#) (California Commission on Judicial Performance September 14, 2021).

On December 10, 2020, three days after George Gascón was sworn in as the new District Attorney of Los Angeles County, the judge joined a

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The Commission stated that, “‘Likes’ are, on their face, indicia that a person likes content.”

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recently created Facebook group called “Recall George Gascón” and added family members to the group. The judge posted on the group page: “[George Gascón] took an oath to uphold and defend the constitution of the state of California ... He is blatantly violating [the state constitution] in dismissal of any prior enhancements.” The judge also posted, then later removed, comments that engaged with group members in response to other members’ posts and “liked” two comments by other group members. The comments were visible to at least 16,000 group members at the time they were made.

The judge maintained a public Twitter account with the username @mjogara and the display name “Michael J. O’Gara.” Between 2014 and 2021, the judge posted tweets, re-tweeted content, or liked tweets by others that appeared “to reflect strong political points of view and opinions on controversial issues” such as police reform, the death penalty, and immigration; were seemingly critical of those exercising their First Amendment right to protest, such as supporters of the Black Lives Matter movement and participants in the Women’s March; and appeared to convey bias against people of Chinese descent, Muslims, and immigrants. For example:

- The judge liked a tweet by a political commentator that stated: “I don’t approve of storming the Capitol but isn’t it a fact that if Antifa and BLM did it, the media would be in raptures about the passionate demonstration of commitment to racial justice?”
- The judge liked a tweet from the Media Research Center that stated, “Liberal media pundits want you to think referring to the coronavirus as the ‘Wuhan’ or ‘Chinese’ virus is racist.”
- The judge liked a tweet that showed a picture of women in burqas and chains and stated, “These are the #women we should be fighting for. This @womensmarch is an abomination.”
- The judge liked a 2019 tweet by President Trump that stated, “Much can be learned!” from “Australia’s policy on illegal immigration.”

The Commission’s decision includes screenshots of the judge’s inappropriate Twitter activity, most of which was responses to tweets by other users.

Rejecting the judge’s defense that he had not intended to endorse any specific partisan positions, the Commission stated that, “‘Likes’ are, on their face, indicia that a person likes content.” The Commission noted that “Twitter is a forum with over three hundred million active monthly users, each of whom may, if they wish, screenshot or share content generated by another user.” By tweeting or re-tweeting content, the Commission explained, the judge “effectively distributed material to an unlimited number of persons, over whose actions he had no control.”

### **Profane communications**

Links to overtly political and partisan content were some of the inappropriate communications to a court reporter on Facebook and by text and phone calls that resulted in a six-month suspension without pay for a judge, although the suspension was stayed conditioned on the judge receiving

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training on sexual harassment and refraining from further misconduct. *Disciplinary Counsel v. Berry* (Ohio Supreme Court November 3, 2021). The discipline was based on stipulations.

For example, the judge sent the court reporter links to:

- An edited video from the Late Show with Stephen Colbert showing the crowd at a baseball game singing for the removal of President Trump.
- An edited video in which Trump begins to smoke and then catches on fire during a prayer session.
- An image of Trump saying “APPREHEND THAT CAT!” with an image of a cat responding, “YOU AIN’T GRABBING THIS P\*\*\*Y, YOU TANGERINE LOOKING MF!”
- A parody video entitled “The Donald Trump Prayer,” calling for the divine removal of Trump.
- A video graphically and profanely insulting Trump supporters by Trae Crowder, the “Liberal Redneck.”

The judge also sent the court reporter messages with links to offensive and sexually explicit videos, for example:

- “How to Build a Resume for a Hoe” featuring comedian Tiffany Haddish joking about helping female prostitutes build their resume; the video contains profanity and crude, sexually explicit language.
- “How to End a First Date,” a viral YouTube video with crude, sexually explicit language in which a woman is negotiating sexual favors in exchange for gifts with a man who is seeking commitment-free sex from her.

The communications began after the court reporter, referred to as Jane Doe in the discipline proceedings, liked pictures of the courthouse’s 100-year celebration on the judge’s Facebook page. In a private Facebook message, the judge thanked Doe and asked how she was associated with the courthouse. Doe replied that she was a court reporter assigned to a different judge’s courtroom. The judge encouraged her to “stop by [his] Chambers in Room 226 [because he] look[s] forward to meeting [her]!!” The judge sent Doe another private message that said, “Have a Great Weekend. You’re ‘Lurking’ and didn’t come down to my Chambers to visit.” After a lengthy conversation on Facebook, the judge asked Doe for her cell phone number. The parties stipulated that, if called to testify, Doe would state that she felt she could not refuse his request because he was a judge.

The judge asked Doe out for lunch or drinks on Facebook.

Happy Sunday!! Thank God We don’t have to Watch & Witness our Horrid Bengals today!! A true Blessing. FYI, I’m on “Staycation” all this coming week, and Girl do I need it. The irony of “Staycation” is that you run errands and spend more \$\$ while off work than while . . . at work. So, I’ll do all the things, couldn’t do during a normal work week, and I’d like to

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has [links](#) to  
judicial conduct  
commissions  
and judicial  
ethics advisory  
committees

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invite you to accompany me for lunch or for drinks after work. I Hope I'm not being too forward or pushy in inviting you to do something. So, simply le [sic] me know if you'd like to meet for lunch or drinks this coming week or otherwise. I'm a "Big boy" so I know how to accept and respect the word, "NO". So please be Honest in your response. Again, I hope you're not offended because this is not my intent whatsoever. So, kindly RSVP either way. TY!!

The Facebook communications between the judge and Doe became increasingly one-sided: After asking her out, the judge sent her 72 Facebook messages; she replied to only 15. Most of his messages were links to videos, photographs, or quotes from the internet, not personal messages.

Facebook was also the way a North Carolina judge engaged in inappropriately flirtatious or sexually explicit conversations with at least 35 women, many of whom were litigants or witnesses in matters pending in his district and some of whom appeared or worked in his court in their professional capacities. His Facebook page identified him as the Chief District Court Judge in Marion, North Carolina and was public so anyone could see his posts and comments.

Through Facebook, the judge often asked the women for photographs or shared photographs of himself and routinely sought to arrange personal meetings with them. The judge and some of the women also had telephone conversations, exchanged texts, and met, sometimes for sexual encounters. The judge had *ex parte* discussions about their cases through Facebook with some of the women and used the prestige of his office to assist some with legal matters, including using his position as Chief Judge to direct an attorney to assist a litigant with whom the judge was having a sexual relationship. When one of the women attempted to extort him, the judge solicited assistance from law enforcement and made material misrepresentations to the State Bureau of Investigation.

A comparison of his Facebook records and official reports showed that the judge was often sitting on the bench when he was posting on Facebook, although the communications took place at times when he was not actively presiding and his direct attention was not required. The judge frequently took breaks from court proceedings and continued cases to have conversations or physical encounters with the women. Court personnel observed that the judge was frequently on his cell phone while on the bench, would often "disappear" during recesses and lunch breaks, and would continue or recuse from many cases for "very tenuous" reasons. The judge made material misrepresentations to the Judicial Standards Commission during its investigation.

The conversations took place from November 2018 to May 2019. The judge retired in December 2019. In early October 2020, he was diagnosed with early-stage frontotemporal dementia, which can manifest in a lack of control of sexual impulses. Following his retirement, the North Carolina Supreme Court publicly censured the now-former judge. *In re Pool*, 858 S.E.2d 771 (North Carolina 2021).

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### Ex parte communications.

Based on the report of the Board of Professional Conduct, the Ohio Supreme Court suspended a judge for six months without pay for communicating ex parte on Facebook Messenger and by phone with a litigant about four cases pending before him. *Disciplinary Counsel v. Winters* (Ohio Supreme Court August 18, 2021). The Court stayed the suspension conditioned on the judge completing additional education, refraining from misconduct, and paying the costs of the proceedings. (The summary below does not correct the grammatical, spelling, capitalization, and punctuation errors in the Facebook messages.)

In 2017, the judge presided over Keith Blumensaadt’s criminal case with the agreement of counsel following his disclosure that he knew Keith. Based on an agreement, Keith pleaded guilty to weapons and dangerous ordnance charges.

Sometime after conclusion of the criminal case, the judge and Keith became friends on Facebook.

In 2019, the judge and Keith exchanged ex parte messages on Facebook Messenger about four cases over which the judge was presiding: a drug possession case against a defendant whom Keith claimed had sold heroin to his daughter; Keith’s custody case with his ex-wife; a case in which Keith’s father and brother had obtained protection orders against him; and a criminal case against the other driver in a car accident in which Keith had been injured. During this time, they also discussed personal and professional matters in several phone conversations. The judge did not disclose the ex parte communications to the parties or counsel in any of the cases.

For example, via Facebook Messenger, Keith told the judge that Alberto Mendez had sold heroin to his daughter and requested that the judge not give Mendez a “bond he can make.” The judge arraigned Mendez and released him on a recognizance bond. A few days later, Keith messaged the judge, “I see Al Mendez moved in are neighborhood on 14th street, I can’t wait to get out of here.”

Keith sent the judge several Facebook messages with information relevant to his pro se motion for a change of parenting time in his divorce. The judge occasionally responded with comments such as, “Interesting!” or “That’s sad.”

On September 9, via Facebook Messenger, Keith invited the judge and his family to a dinner hosted by Keith’s brother where oysters, crab, lobster, and ribeye would be served, saying, “Your my guest if your interested.” The judge replied, “I don’t know what my schedule is tomorrow I’ll be in touch.” On September 10, the judge declined Keith’s offer, stating, “I guess I really shouldn’t since you have a case pending in my court. Thanks for asking. Let get this done. . . . Before your personal injury case gets filed. 😊”

Keith had been injured in a car accident on July 27. On September 9, the driver of the other car, Daniel Fishburn, was charged with operating while under the influence and aggravated vehicular assault. The judge presided over Fishburn’s criminal case. Keith and the judge exchanged multiple messages concerning Keith’s injuries and Fishburn’s criminal case.

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Keith's father and brother had obtained civil stalking protection orders that required Keith to stay at least 500 feet away from them. The judge and Keith exchanged numerous messages via Facebook Messenger and spoke on the phone about modifying the protection orders to allow Keith to attend his mother's funeral. For example, on December 18, at 4:48 p.m., Keith asked the judge via Facebook Messenger, "Any word on what's going to happen with funeral[?]" At 9:25 p.m., the judge replied, "A deputy will accompany you. No need for consent, no need for a hearing and the Sheriff is onboard." Keith immediately replied, "You sure[?] Thank you Bruce."

### What they said off-the-bench that got them in trouble

- "Can I tell you something else? I'm a judge of the Orphans' Court. So please. I'm serious;" "Losing my whole f\*\*\*\*ing life;" and "Because if I lose my job with the courts, I'll lose my health insurance." Judge to sheriff's sergeant during traffic stop. *Nickerson*, 248 A.3d 298 (Maryland 2021), [granting recommendation](#) (removal for this and other misconduct).
- "Incidentally, [Mr. S.] has a reputation for truth, honesty, reliability and trustworthiness, and the court even waived bond because of this and its trust of [Mr. S.];" and "I am aware of the fact that there is a claim in New Jersey that [Mr. S.] has made fraudulent conveyances of his mother's money. THIS IS A COMPLETE AND UNADULTERATED LIE, AND COMPLETELY UNTRUE. There is NO VALIDITY TO THAT STATEMENT AT ALL." Judge in certification submitted in litigation pending in New Jersey. *Johns*, 864 S.E.2d 546 (South Carolina 2021) (18-month suspension without pay for this and other misconduct).
- "We have over forty children in need this year. Please help us meet our goal of bringing a Magical Christmas to each of these children. We can only do this through donations. . . . Santa will arrive on schedule this year!" Magistrate-elect in newspaper ad. *Headley* (West Virginia Commission 2021) (admonishment).
- "Do me a big favor;" "And we'll clear this all up tomorrow, trust me. (Laughs) and you've never had Judge Smith call you and say something like that;" and "But you do know who I am don't ya?" Judge asking county sheriff's dispatcher to throw papers for a specific person's divorce in a drawer so that they would not be served. *Smith* (Kansas Commission 2021) (cease and desist order).
- "He and I are gonna lock up before this is all over. . . . I'm gonna f\*\*\* him up before this is all over. Trust me. Just stay calm. Because he used to

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beat his wife like a broom. And it never got turned in. Oh no. He's a wife beater. I know all this s\*\*t. So I'm gonna f\*\*\* him up before this is over. . . . That smokey the bear hat I pretty sure I can shove that right up his a\*\* but that's for later. I've got to lay and wait—for all this. That's gonna be a while;" and "I could make all kinds of s\*\*t up. TV would love it. I'm not gonna do that. I'm not that kind of person." Judge to undersheriff about the county sheriff. [Smith](#) (Kansas Commission 2021) (cease and desist order).

- "[I might have to] let it ride." Judge about his failure to complete any of his required judicial education for several years. [Valdez](#) (Texas Commission 2021) (admonition).
- "[It would be] very bad...indeed." Judge to candidate for town supervisor about the possibility that her editing of his articles, political opinion essays, and letters to the editor would become public. [Rana](#) (New York Commission 2021) (admonishment).
- "Hi everybody, Watson here. I don't really fill this seat well but ya know who does? My human Judge Sean Hatfield. Thank you for supporting him. You can continue to support my human by making sure you're registered to vote! The last day to register is October 13<sup>th</sup>. You can find everything you need at this website. (It said it had cookies but I didn't see any- howrude!)" Campaign ad on Facebook with photo of judge/candidate's dog sitting behind the bench. [Hatfield](#) (Kansas Commission 2021) (cease and desist order for this and other campaign materials).
- "Socialist James Thompson." Judge in campaign flyer creating false impression of opponent's political position. [Hatfield](#) (Kansas Commission 2021) (cease and desist order for this and other campaign materials).

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[Recent cases \(November\)](#)

[Recent cases \(December and January\)](#)

["Absolutely nothing to justify"](#)

[Property issues](#)

[Providing feedback to attorneys](#)

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WINTER 2022