JUDICIAL CONDUCT REPORTER

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

VOLUME 44, NO. 1 • SPRING 2022

INSIDE THIS ISSUE

JUDICIAL CONDUCT REPORTER Spring 2022

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300 Newport Avenue
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ISSN: 0193-7367

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

NCSC
NATIONAL CENTER FOR STATE COURTS
Center for Judicial Ethics

Judges and firearms

In the courtroom

The Wisconsin Supreme Court found that a judge committed misconduct by twice displaying a handgun as a "prop" in the courtroom, one time during a sentencing hearing and the second time during a visit by a group of students. *In the Matter of Woldt*, 961 N.W.2d 854 (Wisconsin 2021). The judge was suspended without pay for two weeks for this and unrelated misconduct.

The judge presided over a sentencing hearing after a defendant pled no contest to stalking based on an incident in which he had entered his neighbors' house and taken some of the wife's underwear. The defendant was in his mid-20s and had cognitive deficiencies.

During the sentencing hearing, the judge told the victims that he understood their fear and then gave "a rather lengthy soliloquy about his views on courthouse security . . . ." He stated that the courthouse was not the "safest place in the world," and "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."

At that point, the judge removed his Glock handgun from the holster under his judicial robe, ejected the loaded magazine and the bullet from the chamber, held up the handgun, and explained that he kept it "up here on the bench" to protect himself. He added: "Now, I'm not saying you should do that but if I was . . . in your situation, I'd have it on my side all the time."

To the defendant, he said, for example, "With today's laws with the Castle Doctrine, you're lucky you're not dead because, if you would have come into my house, I keep my gun with me and you'd be dead, plain and simple, but that's what makes this so scary."

The Court found that the judge's "undignified, discourteous, and disrespectful language . . . demeaned the solemnity of the court proceeding and his role as the person imposing a just sentence on behalf of society." The Court explained that his comments encouraged "the victims to take matters into their own hands and use a gun, as he would do" and his display of the gun "menace[d] and frighten[ed]" "a young man with substantial cognitive limitations."

The second incident took place the next year during a visit to the judge's courtroom by a group of high school students as part of a Government Day event. A student asked the judge a question about court security, which was the topic for a debate before the county board that the students were scheduled to participate in. In response, the judge took his loaded handgun out of the holster, removed the magazine and the round in the chamber, and briefly displayed the gun to those in the courtroom.

The Court explained that, although the gun was not loaded when he displayed it, the judge had not disclosed that to the students: "All they knew

The Court emphasized that, in both incidents, the judge had used the gun as a "prop" with no judicial purpose . . . .

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was that an adult judge in a black robe sitting on a judicial bench in a courtroom suddenly pulled out a gun, which for all they knew could have been loaded. . . ."

The Court emphasized that, in both incidents, the judge had used the gun as a "prop" with no judicial purpose, inappropriately and dramatically "personalizing" a sentencing proceeding and an educational discussion. In neither incident, it found, did the judge act as a dispassionate, reasoned, or impartial representative of the judicial branch. The Court stated that the judge's license to carry a concealed weapon did not resolve whether he violated the code, comparing it to disciplining a judge for impatient, undignified, and disrespectful speech in the courtroom that would be protected by the First Amendment in most other circumstances.

Two justices concurred in the suspension and the unrelated findings of misconduct but dissented from the conclusion that displaying the handgun violated the code of judicial conduct, criticizing the majority for its political correctness and "its personal policy preferences, which appear to be grounded in 'hoplophobia,' i.e., an irrational fear of guns." The partial dissent argued that the majority "weaponize[s] the Code, brandishing it as a 'blunderbuss' that may be used by 'any lawyer or any pundit' with a political agenda."

See also Judicial Conduct Commission v. Woods, 25 S.W.3d 470 (Kentucky 2000) (judge openly displayed a handgun during a court session); *Commission on Judicial Performance v. Vess*, 227 So. 3d 952 (Mississippi 2017) (judge threatened to use a weapon on a defendant, interrogated the defendant about drug use, which was irrelevant to the charge before the court, and interrogated, demeaned, and intimidated the defendant's mother about the defendant's drug use and her parenting skills); *Public Reprimand of Harper* (Texas State Commission on Judicial Conduct June 28, 2000) (judge disassembled and reassembled two revolvers on the bench while presiding over the voir dire in a capital murder case involving a firearm); ***In re Sampson*, Order** (Utah Supreme Court December 19, 2009) (judge, in the courtroom although not when court was in session, jokingly removed his firearm from the holster and pointed it at the bailiff for several seconds after the bailiff threatened to throw water on him, alarming court staff who were concerned that the weapon might accidentally discharge); *In the Matter of Breitenbach*, 482 N.W.2d 52 (Wisconsin 1992) (on at least two occasions, judge went into courtroom with a loaded revolver, placed it in the wastebasket near the bench, and forgot it so that it was discovered by maintenance staff).

In the courthouse

The Delaware Court on the Judiciary sanctioned a magistrate for displaying a weapon in court offices in a way that made two clerks feel that their personal safety was threatened and for persistently carrying his weapon while at work in a way that it was clearly visible to the public and employees. *In re O'Bier*, 833 A.2d 950 (Delaware Court on the Judiciary 2003). The

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Court suspended him for three months without pay, publicly censured him, and permanently banned him from carrying a weapon at work.

According to the deputy chief magistrate, magistrates began carrying weapons at work in the 1960s in response to their concerns about the lack of court security. Over the years, his supervisors and other magistrates had to remind Magistrate O'Bier several times that he was required to lock his gun away or to keep it out of sight if he was carrying it, but he persisted in displaying his weapon both on his desk in chambers and on his person.

The magistrate had begun working midnight to 8 a.m. shifts because he wanted to work four days on and four days off, a feature of that shift, and because he wanted to assist the other magistrates, none of whom wanted that shift. He was also having difficulty sleeping at night and thought working the graveyard shift might help him sleep during the day.

The magistrate was sanctioned for an incident that took place one night, a few minutes before midnight, as he began his shift and Kathy Carlisle relieved Denise Baker as court clerk. There are discrepancies in the testimony about what happened.

Baker recalled that the magistrate had been talking non-stop in an agitated manner about a beating in the news when he suddenly drew his weapon, pointed it a couple of feet to her left, and then immediately returned the gun to its holster. Baker testified that she had "yelped" in fear. Carlisle testified that the magistrate had rapidly pulled his gun out of his holster and pointed it approximately two feet from Baker's side. Carlisle said that she had been surprised and Baker had been very frightened.

In contrast, the magistrate testified that he had not been excited or angry when he drew his weapon. Instead, he explained, he had slowly and calmly removed his gun from the holster with one hand and displayed it in the palm of his other hand, possibly in response to a question from Carlisle about gun safety. The magistrate had testified that he had not intended to frighten Baker and Carlisle. Nonetheless, he recognized in hindsight that he had made a mistake in judgment, and he was remorseful.

The Court concluded that the magistrate's mishandling of his weapon demonstrated "gross unconcern for his conduct and for the safety of others" and that his persistence in carrying and displaying his weapon while at work so that it was clearly visible to the public and employees constituted willful misconduct.

Accepting an agreed statement of facts, the New York State Commission on Judicial Conduct publicly censured a judge for (1) accidentally discharging his gun in his chambers and (2) approving his own application for a pistol permit. ***In the Matter of Sgueglia*, Determination** (New York State Commission on Judicial Conduct August 10, 2012).

The judge, who sits in family and surrogate court, began carrying a firearm to court after he was threatened several times. The judge kept the firearm in a drawer in his chambers. There was no administrative policy that prohibited judges from bringing firearms into their chambers.

One day, the judge brought to work a .38 caliber Smith and Wesson revolver that had a faulty mechanism. During a break in court proceedings,

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while alone in his chambers, the judge tried to repair the mechanism, pointing the revolver at a concrete wall.

While he was manipulating the revolver, it accidentally discharged. The judge did not know what caused the gun to discharge. He had not checked to determine if the gun was loaded and had believed it was unloaded. Immediately after the revolver discharged, the judge emptied the remaining bullets from the revolver.

The judge's court assistant, who had been in the courtroom next to his chambers, notified court security that the gun had accidently discharged and that no one was hurt. A sheriff's department investigation found the bullet embedded close to the floor in a wall next to an elevator shaft. The judge was not prosecuted. The judge stopped bringing a firearm to the courthouse.

The Commission concluded:

> Respondent should have recognized that his chambers was not an appropriate location for him to have been repairing a weapon that has the capacity for causing serious physical harm or death to himself or another. Thus, he is responsible even for the "accidental" discharge of the gun, which, as stipulated, was contrary to a local ordinance prohibiting the discharge of a firearm within village limits; the ordinance does not distinguish between intentional and accidental discharge.

In September 2005, the judge completed an application for a state permit to carry concealed pistols. The sheriff's department recommended approval and, as it does with all applications, returned the application to the judge because he was the sole licensing officer in the county as there was no other judicial officer of a court of record. The judge approved his own application for a "have-and-carry concealed" license, authorizing himself to possess the pistols with no restrictions.

The Commission concluded:

> Approving a pistol permit involves the exercise of discretion; it is not ministerial, and there is no inherent right to carry a concealed weapon. Even if respondent's application would likely have been approved by any other licensing officer, especially since the Sheriff's Department raised no objection, respondent's approval of his own application was inappropriate.

The Commission noted that the judge should have consulted his administrative judge or other court officials or sought an advisory opinion about how to submit the application when he was the only licensing officer in the county.

See also Inquiry Concerning Peters, 715 S.E.2d 56 (Georgia 2011) (in the courthouse, judge pointed a firearm at himself and stated to another judge, "I am not scared. Are you all scared?"); ***In the Matter of Fletcher*, Stipulation and order** (Nevada Commission on Judicial Discipline September 27, 2014) (judge possessed a firearm and was intoxicated, appeared to be intoxicated, or smelled of alcohol while conducting judicial duties and in the county justice complex).

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Road rage

The Pennsylvania Supreme Court found that a judge committed misconduct in a road rage incident during which he showed his handgun to another driver. *In re Carney*, 79 A.3d 490 (Pennsylvania 2013). The judge was publicly reprimanded. *In re Carney*, Order (Pennsylvania Court of Judicial Discipline January 29, 2014).

While on the way home from a Pittsburgh Steelers game, the judge drove up behind a vehicle driven by Nico Baldelli, a college freshman. Both cars were in the left-hand lane. The judge flashed his high beams to indicate that he wanted to pass, then moved into the right-hand lane. While passing Baldelli's vehicle, the judge gave Baldelli the finger.

Baldelli moved into the right-hand lane behind the judge and flicked his high beams, and the judge reduced his speed. Baldelli returned to the left-hand lane, drove up alongside the judge, turned on his inside light, raised his middle finger, and yelled obscenities.

The judge increased his speed until his vehicle was alongside Baldelli's car. He rolled his window half-way down, retrieved a handgun from the console, and held it with his thumb and index finger out the window for two to three seconds, so that Baldelli could see it. Baldelli backed off and continued at a slower speed.

Baldelli called his parents, who notified the state police. The state police stopped the judge 75 to 80 miles from where he had shown his handgun to Baldelli. Subsequently, pursuant to a plea agreement, the judge pled guilty to two summary offenses of disorderly conduct and was ordered to pay fines and costs.

The judge had a concealed weapon permit to carry the handgun. He explained that he got the handgun because he had to take the large amounts of cash collected by his court to the bank through a neighborhood of "drug dealers, prostitutes and crazy bars."

The Court of Judicial Discipline had originally dismissed the complaint based on its conclusion that the judge's display of his handgun "to cause Baldelli to 'back off' was objectively reasonable" and "not extreme." Reversing that dismissal, the Pennsylvania Supreme Court held that the CJD had not sufficiently considered the public's likely perception of the incident. The Court explained:

> In this dispute between motorists, appellee was the initial aggressor; he continued the difficulty with his obscene gesture; and he escalated the encounter to a more dangerous level, after Baldelli initially responded to his provocation by returning the very same digital insult, by displaying his gun out the window. (For all appellee knew, Baldelli could have been armed, too, and matters could have "escalated" more.)
>
> Whatever "de-escalation" appellee achieved was not by virtue of his own conduct, reasonable or not, but by Baldelli's fortunately reasonable response. Baldelli "backed down," just as appellee intended; but, appellee never backed down. To the contrary, he proceeded toward home, ahead of Baldelli, at the pace of travel he preferred.

The Court stated that "this sort of incident invites the view that judges appear to believe that they are above the law . . . ."

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The Court emphasized that, even if the judge subjectively believed that his conduct was reasonable, the "ultimate question" was the public's perception and viewed objectively, his conduct "was unreasonable and extreme." The Court stated that "this sort of incident invites the view that judges appear to believe that they are above the law . . . ."

In personal disputes

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for displaying a handgun during a public confrontation in a residential neighborhood, contrary to state law. ***Public Reprimand of Williams*** (Texas State Commission on Judicial Conduct September 8, 2020).

On September 18, 2018, the judge drove his vehicle on a public street in front of the house of Matthew Cannon at a speed that Cannon believed was excessive. After the judge stopped and rolled down his windows, Cannon approached and asked the judge to slow down, and the judge responded that he would be back and drove away. During the exchange, Cannon could see that the judge was holding a gun in the palm of his hand against the steering wheel.

Approximately 10 minutes later, the judge returned to Cannon's home and got out of his vehicle. The judge and Cannon had a heated exchange near the street end of Cannons' driveway. The judge asked Cannon what he needed, and Cannon expressed concern about the judge's driving and the safety of his 12-year-old son. The judge advised Cannon that he had been responding to an emergency, and Cannon asked if he was a cop. The judge initially told Cannon that he was a cop but immediately corrected himself and said that he was a judge. Cannon told the judge that he objected to the judge "brandishing" his firearm during their earlier interaction. The judge then removed a handgun from his pocket and asked, "Is this what you are talking about?" and displayed the handgun in plain view of Cannon and his wife.

See also In the Matter of Pfaff, 838 N.E.2d 1022 (Indiana 2005) (judge entered a residence without invitation while searching for his daughter and forcibly restrained and threatened a male at gunpoint); ***Public Admonition of Day*** (Indiana Commission on Judicial Qualifications December 29, 2017) (in two incidents involving his estranged wife, judge made "missteps" that escalated the situation and led to police involvement; while in his pick-up, which had a loaded shotgun in it, judge confronted a man he thought his estranged wife was romantically involved with; during an argument, judge picked up a rifle and got in a tug-of-war with his estranged wife until their daughter interceded); ***In the Matter of Gloss,*** **Determination** (New York State Commission on Judicial Conduct July 27, 1993) (judge, over the course of three days, used a shotgun, physical threats, vulgarities, and verbal intimidation in a personal dispute over property rights, which led to his conviction on menacing, trespass, and criminal mischief).

Pursuant to an agreed statement of facts and joint recommendation, the New York Commission publicly admonished a part-time judge for firing a handgun several times towards the rear of his law office to scare a wild

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turkey off the road. ***In the Matter of Ciganek*, Determination** (New York State Commission on Judicial Conduct March 29, 2001). The judge was arrested and charged with reckless endangerment, but the criminal case was dismissed pursuant to an agreement. The Commission stated that the judge's "actions, despite his belief that the turkey was endangering motorists, were contrary to law and showed a lack of good judgment and a notable disregard for the safety of bystanders and motorists. Firing a gun under such circumstances created a dangerous situation, as respondent should have recognized."

See also ***In re O'Shea*, Order** (Illinois Courts Commission September 27, 2019) (judge made false and misleading statements to detectives investigating the discharge of a firearm in his apartment); *In the Matter of Koethe*, 922 N.E.2d 613 (Indiana 2010) (during an investigation into a shooting at her home, judge asked a law enforcement officer to dispose of potential evidence); ***In the Matter of Petucci*, Determination** (New York State Commission on Judicial Conduct January 30, 2020) (judge's arrest for driving while ability impaired by alcohol was aggravated by the fact that he was carrying a loaded handgun and had another full magazine of ammunition in a pocket).

Based on an agreed statement of facts and joint recommendation, the New York Commission publicly admonished a judge for, on three occasions, asserting the prestige of judicial office while attempting to enter a government building with a firearm, in violation of an ordinance. ***In the Matter of Moskos*, Determination** (New York State Commission on Judicial Conduct October 3, 2016).

For example, in one incident, the judge entered a county office building and started to walk around the metal detector without going through it. A security officer stopped him and advised him that he had to empty his pockets and walk through the metal detector. The judge replied that he was not required to do so because he was a judge. Eventually, the judge emptied some items from his pockets and walked through the metal detector, setting off the alarm. Using a hand-held metal detector, the security officer discovered a pistol in the judge's pocket. The judge twice told the security officer that he was permitted to bring the pistol into the building because he was a judge. The security officer directed the judge's attention to the "No Weapons Permitted" sign and the posted law, which only exempted law enforcement officials. The judge left the building, returned several minutes later without the pistol, and was permitted to enter.

The Commission found that the judge's actions "created at least the appearance that he was attempting to use the prestige of his judicial office to enter the building with his pistol," contrary to a local law. The Commission noted that, even if he was not abusive or discourteous to the security officers, the judge "should have recognized that his repeated insistence that his judicial status entitled him to special treatment would place them in a more difficult position in carrying out their assigned responsibilities." It also stated that, if the judge "believed that he should not be subjected to the same procedures and standards required of the general public, he could have pursued the subject within the law by appealing to officials who

The Commission found that the judge's actions "created at least the appearance that he was attempting to use the prestige of his judicial office to enter the building with his pistol," contrary to a local law.

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might have given him an exception to the law, rather than by confronting the security personnel on subsequent occasions with the same arguments and assertions of his judicial status."

Establishment and membership of judicial conduct commissions

Depending on the state, the judicial discipline agency is called a commission, board, council, court, or committee, modified by conduct, inquiry, discipline, qualifications, disability, performance, review, tenure, retirement, removal, standards, advisory, fitness, investigation, ethics, or judiciary. A table on the Center for Judicial Ethics website shows how each state's judicial conduct commission is established, the membership composition, who appoints the members, and the length of the members' terms. The CJE page also has links to commission websites.

Establishment and procedures

- In 32 states, the commission was established by the state constitution.
- In 10 jurisdictions, the commission was established by statute.
- In nine states, the commission was established by supreme court rule.

Some commissions created by constitution also have implementing legislation.

In addition, commissions have procedural rules that set out their processes in more detail. In some states, the commission adopts its own rules. For example, the Florida constitution provides: "The [Judicial Qualifications Commission] shall adopt rules regulating its proceedings." In other states, the state supreme court promulgates the rules for the commission. For example, the Alabama constitution provides: "The Supreme Court shall adopt rules governing the procedures of the [Judicial Inquiry Commission]."

Members

Types

Most commissions have seven, nine, or 11 members. In most states, the commission is comprised of judicial officers, lawyers, and members that are neither judges nor attorneys, called public members, lay members, or citizen members.

- In seven states, the commission has an equal number of judges, lawyers, and public members.
- In five states, judges comprise the majority of the members.

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- In eight states, the majority are public members.
- In Hawaii and New Jersey, there are no judge members (although in New Jersey, three retired judges are members).
- In West Virginia, there are no attorney members on the Judicial Investigation Commission or the Judicial Hearing Board.
- In Utah, four members of the Judicial Conduct Commission are state legislators.

In some states, the types of judicial officers to be appointed are specifically designated. For example, the Maryland constitution provides that, in addition to three attorneys and five public members, three members of the Commission on Judicial Disabilities "shall be appointed from among the judges of the State, with one member representing the appellate courts, one member representing the circuit courts, and one member representing the District Court." In Arizona, two judges of the court of appeals, two judges of the superior court, one justice of the peace, and one municipal court judge are appointed to the Judicial Conduct Commission, which also has two attorney members and three public members.

Appointments

Depending on the state and the category of membership, members are appointed by the supreme court, the chief justice, judges' groups, the state bar, the governor, the attorney general, or members of the legislature.

- In five states, the judge members are chosen by the supreme court, the lawyer members by the state bar, and the public members by the governor.
- In eight states, all members are chosen by the supreme court.
- In three states (Connecticut, Maryland, and Minnesota), all members are appointed by the governor.
- In nine states, some members are appointed by legislative leaders. In Virginia, all members of the Judicial Inquiry & Review Commission are appointed by the general assembly.
- For the District of Columbia Commission on Judicial Disabilities & Tenure, the appointing authorities include the President of the United States, the Chief Judge of the U.S. District Court for the District of Columbia, the D.C. Bar, the mayor of D.C., and the city council.

In some states, some or all of the appointments by the supreme court or governor are subject to confirmation by or the consent of the senate. For example, the statute governing the Georgia Judicial Qualifications Commission provides: "The commission shall consist of ten members who shall be subject to confirmation by the Senate."

Past issues of the *Judicial Conduct Reporter* and an index are available on the CJE website.

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Diversity

Some states have provisions that require or encourage diverse commission membership. The Maryland constitution provides: "The composition of the Commission [on Judicial Disabilities] should reflect the race, gender, and geographic diversity of the population of the State." The statute that created the Tennessee Board of Judicial Conduct states: "The appointing authorities, in making their appointments, shall do so with a conscious intention of selecting a board that reflects a diverse mixture with respect to race, including the dominant ethnic minority population, and gender."

Geographic diversity is required in several states. For example:

- In Idaho, appointments to the Judicial Council are required to be "made with due consideration for area representation."
- In Nevada, an appointing authority is prohibited from appointing more than one resident of any county to the Commission on Judicial Discipline.
- In Massachusetts, no two judges of the three judges appointed to the Commission on Judicial Conduct "shall be from the same department of the trial court."
- In Tennessee, one "current or former trial judge" and one "current or former general sessions court judge" must be appointed from each of the three grand divisions into which the state is divided.
- In Utah, the two attorney members appointed to the Judicial Conduct Commission cannot reside in the same judicial district.
- In Mississippi, the two lay members of the Commission on Judicial Performance may not be residents of the same supreme court district.

In several states, there are membership restrictions based on political party. For example:

- In Illinois, the governor appoints three lawyer members and four non-lawyer members to the Judicial Inquiry Board; no more than two of the lawyers and no more than two of the non-lawyers may be members of the same political party.
- In Iowa, the seven-member Commission on Judicial Qualifications "consists of one district judge and two members who are practicing attorneys in Iowa and who do not belong to the same political party, to be appointed by the chief justice; and four electors of the state who are not attorneys, no more than two of whom belong to the same political party, to be appointed by the governor, subject to confirmation by the senate."

Terms

The terms for commission members range from three years to six years. In some states, the number of terms a member can serve is limited. For example, the Virginia constitution provides: "No member of the [Judicial

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Inquiry and Review] Commission shall be eligible to serve more than two consecutive terms." In other states, there is no term limit for commission members.

An individual's membership can terminate before the end of their term if they no longer meet the qualifications for the appointment. For example, the Maryland constitution provides:

> A member's membership automatically terminates: (1) When any member of the Commission on Judicial Disabilities appointed from among judges in the State ceases to be a judge; (2) When any member appointed from among those admitted to practice law becomes a judge; (3) When any member representing the public becomes a judge or is admitted to the practice of law in this State or has a financial relationship with or receives compensation from a judge or a person admitted to practice law in this State; or (4) When any member ceases to be a resident of the State.

Alternates

In some states, there are provisions for an alternate to replace a member who is unable to participate in a proceeding.

- In some states, each member has a permanent alternate. For example, the provision for the Mississippi Commission on Judicial Performance states: "An alternate for each member shall be selected at the time and in the manner prescribed for initial appointments in each representative class to replace those members who might be disqualified or absent."
- In other states, an alternate is only appointed as required. For example, the provision for the New Hampshire Committee on Judicial Conduct provides: "Whenever a member is disqualified from participating in a particular proceeding, or is unable to participate by reason of prolonged absence or physical or mental incapacity, the [supreme] court, upon written request of the chair, may appoint an alternate to participate in any such proceeding or for the period of any such disability, any such alternate to have the same qualifications as those required for the selection of the member who is being replaced."

Charitable fundraising

Under Rule 3.7 of the 2007 American Bar Association *Model Code of Judicial Conduct*, a judge may participate in the activities of non-profit organizations devoted to the law, the legal system, or the administration of justice and those devoted to educational, religious, charitable, fraternal, or civic purposes. Comment 2 reminds judges that, like all of their activities, their

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membership, association, or other participation in a non-profit organization, even a law-related organization, cannot "conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality."

A judge may serve as an officer, director, trustee, or nonlegal advisor for a non-profit organization:

- Unless the organization is likely to "be engaged in proceedings that would ordinarily come before the judge," or
- Unless the organization will frequently be engaged in adversary proceedings in the judge's court or in any court subject to the appellate jurisdiction of the judge's court.

For example, judicial ethics committees have advised that judges cannot serve on the boards of legal aid societies or non-profit organizations that provide court-ordered services such as sentencing alternatives, counseling, or substance abuse treatment. *See, e.g.,* ***Connecticut Formal Advisory Opinion JE 2009-10*** (a judge may not serve on the Greater Hartford Legal Aid Board of Directors); ***Ohio Advisory Opinion 2021-1*** (a municipal judge may not be a member of the board of directors of a non-profit corporation that contracts with the city to provide re-entry services to the court as an alternative to incarceration).

Judges' participation in fundraising for charitable organizations is limited to address concerns that people may feel pressured to donate to an organization when a judge is asking or may expect future favors from a judge in return for their donations. The restrictions also ensure that the prestige of judicial office is conserved for its essential purpose—maintaining public confidence in the independence, impartiality, and integrity of judicial decisions. The limits apply regardless how worthy or popular the cause may appear to the judge or others.

The limits apply regardless how worthy or popular the cause may appear to the judge or others.

The limits are not complete bans, and a judge may participate in a non-profit organization by:

- Helping plan fundraising;
- Participating in the management and investment of the organization's funds;
- Personally soliciting funds from judges over whom they do not have supervisory or appellate authority;
- Personally soliciting funds from members of their family; and
- Being identified on organization letterhead used for fundraising or membership solicitation:
  - If the letterhead lists only their name and office or other position in the organization, or
  - If the letterhead includes their judicial designation only if comparable designations are listed for others.

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In addition, for non-profit organizations devoted to the law, the legal system, or the administration of justice, a judge:

- May solicit individuals to join the organization even if "the membership dues or fees generated may be used to support the objectives of the organization or entity," and
- May make recommendations to public or private fund-granting entities in connection with the organization's programs and activities.

A judge may participate in a non-fundraising event for a non-profit organization by:

- Being a speaker, receiving an award or other recognition, or being featured on the program, and
- Permitting their title to be used in connection with the event.

Even if an event is designed to raise funds, a judge may:

- Attend the event;
- Serve as an usher, food server, cook, or a similar role; and
- If the event concerns the law, the legal system, or the administration of justice, appear, speak, receive an award or other recognition, be featured on the program, and permit their title to be used in connection with the event.

However, if a fundraiser does not concern the law, the legal system, or the administration of justice, a judge cannot be a speaker, receive an award, or otherwise be featured on the program by, for example, acting as the master of ceremonies, being an auctioneer, being the subject of a roast, or presenting an award. Advisory opinions have defined a fundraiser as an event designed to raise money to support an organization's activities beyond the event itself. An event is a fundraiser if the cost of a ticket to attend the dinner, for example, is more than the cost of the dinner and related expenses, with the surplus constituting a contribution to the organization's work. An event is also considered a fundraiser if there is a fundraising component such as a raffle, a drawing for prizes, an auction, pledge cards, sponsorships, tiered pricing, or a program book with paid advertisements and dedications. *See* "Defining charitable 'fundraising event,'" *Judicial Conduct Reporter* (Spring 2014); "Participating in fundraising events," *Judicial Conduct Reporter* (Summer 2014).

Note that:

- As with all extra-judicial activities, a judge cannot use court premises, staff, stationery, equipment, or other resources in even otherwise permitted charitable activities, "except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law." Rule 3.1(E).
- As with all of a judge's activities, the code's rules regarding charitable activities apply on social media.

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- The limits on judges' participation in charitable activities are a frequent topic of inquiries to ethics advisory committees.
- Rule 3.7(B) allows a judge to "encourage lawyers to provide pro bono publico legal services." *See* "Encouraging pro bono services," *Judicial Conduct Reporter* (Fall 2020).
- Requiring a charitable contribution as part of a sentence has been held to violate the prohibition on a judge soliciting funds for charities, even if it is part of a plea bargain. *See* "Judges ordering charitable contributions," *Judicial Conduct Reporter* (Fall 2021).

Examples of charitable fundraising for which judges have been disciplined:

- A judge solicited donations to an auction to raise funds for medical relief missions in Kenya and Tanazania, sold auction tickets, and acted as an auctioneer. *In the Matter of Quall*, Decision and order (California Commission on Judicial Performance June 2, 2008) (admonishment for this and related misconduct).
- While telling counsel for a utility company on the phone that he wanted to dismiss his personal lawsuit against their client, a judge urged counsel to donate $12,500 for playground equipment to his children's elementary school. *Alred v. Judicial Conduct Commission*, 395 S.W.3d 417 (Kentucky 2012) (removal for this and other misconduct).
- A judge served as honorary co-chair of a fundraising dinner for the state chapter of the National Multiple Sclerosis Society. *In the Matter of Coffey*, Public reprimand (Nebraska Commission on Judicial Qualifications September 29, 2006).
- A judge allowed a non-profit organization that recruits, trains, and oversees volunteer court-appointed special advocates for children to use his name, title, and photograph in a brochure that solicited funds and to put his official telephone numbers on its stationery. *In the Matter of Castellano*, 889 P.2d 175 (New Mexico 1995) (removal for this and other misconduct).
- A judge asked a town code enforcement officer and assistant district attorney to purchase $100 raffle tickets to benefit her son's wrestling club and allowed her vehicle, which bore a judicial license plate, to be displayed to promote a car wash to benefit the women's softball team on which she played. *In the Matter of Post*, Determination (New York State Commission on Judicial Conduct October 12, 2010) (admonition for this and other misconduct).
- A judge participated in a "Jail Bail for Heart" fundraiser in which the sheriff brought participants to the courthouse where the judge "fined" them in the amount of money they had collected for the American Heart Association. *In the Matter of Harris*, 529 N.E.2d 416 (New York 1988) (admonition).

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- A judge prepared flyers for fundraising events for local non-profit organizations benefiting women and families, handed out the flyers to court employees and attorneys, and encouraged attendance at the fundraisers. ***In the Matter of McNulty*, Determination** (New York State Commission on Judicial Conduct March 16, 2007) (admonition).
- A judge was a guest of honor with family members at a dinner dance that benefited a Catholic schools foundation. ***In the Matter of Paris*, Determination** (New York State Commission on Judicial Conduct September 16, 1999) (admonition).
- In his chambers, a judge gave order forms for advertisements for a synagogue's fundraising journal to attorneys who had been solicited by his wife and accepted the completed forms to deliver to her. ***In the Matter of Kaplan*, Determination** (New York State Commission on Judicial Conduct May 17, 1983) (admonition).
- A judge solicited attorneys to purchase jewelry for the benefit of the Franciscan Missionaries of Mary and sold over $5,000 in raffle tickets to several judges and approximately 40 attorneys who practiced in his court for a spring weekend in Washington, D.C. that included a memorial regatta in honor of his deceased son. *In re Arrigan*, 678 A.2d 446 (Rhode Island 1996) (censure).
- A judge became involved in fundraising for a "Citizens Heritage Display" at the Justice Center. ***In re Taylor*, Public reprimand** (Tennessee Court of the Judiciary June 6, 2011).
- A judge prepared a flyer for his church's Christmas toy drive that stated, "Help me help little ones have a good Christmas. We will be having a toy drive at Judge Nicholds Office. Anything would be greatly appreciated. Thank you for the help. Judge Nicholds." ***Public Reprimand of Nicholds and Order of Additional Education*** (Texas State Commission on Judicial Conduct 2014).
- A judge failed to carefully review the invitations for a fundraising golf outing for the non-profit Coalition for Family Preservation, which stated that the judge was sponsoring the event. *In re Brown*, 662 N.W.2d 733 (Michigan 2003) (censure for this and other misconduct).
- In a newspaper ad, a magistrate-elect solicited donations for a charitable organization that bought Christmas gifts for children and was named for him in his prior role as sheriff. ***Public Admonishment of Headley*** (West Virginia Judicial Investigation Commission December 15, 2021).
- A judge acted as an auctioneer at a fundraiser for a local chamber of commerce, encouraging the audience to provide more funds to support the chamber. **Michigan Judicial Tenure Commission Annual Report** (2020) (letter of caution).
- While speaking at a public event honoring another person, a judge extemporaneously announced a new scholarship in the honoree's

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name and then solicited contributions to the scholarship. ***Michigan Judicial Tenure Commission Annual Report*** (2020) (letter of caution).

- A judge sent an email to other judges and court staff about a planned event that included the statement: "If you would like to donate or be a sponsor please contact me or Judge ___." ***Advisory letter*** (Arizona Commission on Judicial Conduct June 10, 2020).
- A judge allowed his name to be used in a flyer soliciting funds for a charity. ***New York State Commission on Judicial Conduct Annual Report*** (2021) (letter of dismissal and caution).

Examples of use of court resources for charitable activities for which judges have been disciplined:

- A judge allowed his wife to use his chambers and telephone to solicit funds, including from lawyers who regularly appeared before him, for a non-profit organization for which she was executive director, that recruited, trained, and oversaw volunteer court-appointed special advocates for children and that regularly appeared before him. *In the Matter of Castellano*, 889 P.2d 175 (New Mexico 1995) (removal for this and other misconduct).
- A judge permitted his office and courtroom to be used for organizational meetings for the area Halloween Parade; personally collected money, on occasion "over the counter," for charitable activities, including the 50th Anniversary of the Lions Club, the Lions Club Community Steak Fry, and the Great Slatington Duck Race; and personally collected money for T-shirts sold to raise funds. *In re Hartman*, 873 A.2d 867, 873 A.2d 875 (Pennsylvania Court of Judicial Discipline 2005) (reprimand for this and other misconduct).
- A judge permitted his chambers to be used for the sale of sweaters for the benefit of an immigrant group. *In re Arrigan*, 678 A.2d 446 (Rhode Island 1996) (censure).
- A judge had his court secretary spend the equivalent of approximately 24 work days on tasks for a charity, such as creating a 94-page mailing list, generating a fundraising letter, and typing labels, envelopes, by-laws, and personnel policies. ***Inquiry Concerning Hyde,*** **Decision and order** (California Commission on Judicial Performance May 10, 1996) (censure for this and other misconduct).
- A judge had his court staff sell tickets to an auction to raise funds for medical relief missions in Kenya and Tanazania and used his judicial secretary to create documents connected with the missions. ***In the Matter of Quall,*** **Decision and order** (California Commission on Judicial Performance June 2, 2008) (admonishment for this and related misconduct).

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Examples of charitable activities on Facebook for which judges have been disciplined:

- A judge made 11 public Facebook posts with photos and copies of flyers and captions such as "I am happy to be supporting Ray of Hope Pregnancy Center again at their fundraising dinner. Even if you didn't attend, consider donating to this wonderful organization;" "Taking time out from my re-election campaign to help the Flywheel Reunion by selling tickets at the front gate—at Macon County Fairgrounds;" "In celebration of the 20th Anniversary of Tri-County Christian School, supporters are being asked to commit to giving $20 a month for the next 20 months to help pay for two new teachers next year. I've already committed to one of these partnerships. How about you?;" "Enjoying good friends, food and entertainment at the Macon County Relay for life tonight. Come out and bid on me at the Choose Your Torture auction—at Macon High School;" "It was my pleasure to once again donate items in support of Relay for Life of Macon County—MO. Please come out and support our effort against cancer at the events on Saturday June 14, starting at 6 p.m. at the Macon R-1 parking lot;" "Macon Youth Football Cheerleaders are having a bake sale fundraiser at Walmart. Come out and support them and get some really good food like we did—at Walmart Macon—E Briggs Dr;" and "Having a good time at the art show and auction in support of Timeless Treasures. Come out and support a good cause and see neat art work—At Macon Elks Lodge #999." ***In re Prewitt*, Order** (Missouri Supreme Court November 24, 2015) (reprimand for this and other misconduct).
- A judge posted on his Facebook page: "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." *In the Matter of Johns*, 864 S.E.2d 546 (South Carolina 2021) (18-month suspension for this and other misconduct).
- A judge engaged in fundraising for a local church in a Facebook post. *In the Matter of Johns*, 793 S.E.2d 296 (South Carolina 2016) (six-month suspension).
- In Facebook posts, a judge advertised a school supply drive organized using court staff and advertised his donation of a rifle to a charitable organization's raffle. ***Public Admonition of Metts*** (Texas State Commission on Judicial Conduct October 3, 2018).
- On social media, a judge posted about the activities of a non-profit boxing gym called "The Judge's Chambers" that he and his wife created "to invite the public and youth into a judge's home" and solicited donations for equipment and rent. ***Public Warning of Black*** (Texas State Commission on Judicial Conduct April 7, 2022).

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- A judge posted to his Facebook page photos with text that read: "The Burlington Fire Department Pancake Feed is happening now and 100% of the proceeds go to benefit the families of the victims of the recent tragedy at Cascade Mall. Please consider attending, it runs until noon today." ***In re Svaren*, Stipulation, agreement, and order** (Washington State Commission on Judicial Conduct December 7, 2018) (admonishment).
- On her Facebook page, a supreme court justice (1) encouraged participation in "Dining Out For Life!" an event in which restaurants donate part of their proceeds to a non-profit organization that provides recovery assistance for persons suffering from drug abuse and addiction and (2) encouraged people to buy *Real Change*, a weekly newspaper that employs homeless and previously homeless people as vendors. ***In re Yu*, Stipulation, agreement, and order** (Washington State Commission on Judicial Conduct December 7, 2018) (admonishment).
- A judge re-posted on a social media site an advertisement for a fundraising event for a charitable institution. ***Pennsylvania Judicial Conduct Reporter Annual Report*** (2017) (letter of caution).

Recent cases

Prestige and partiality

Reversing the **admonition of the State Commission on Judicial Conduct**, the Washington Supreme Court held that a judge did not abuse the prestige of his judicial office or violate his duty to be and to appear to be impartial when he allowed a community college to run a bus advertisement with his picture and the statement: "A Superior Court Judge, David Keenan got into law in part to advocate for marginalized communities. David's changing the world. He started at North." *In the Matter of Keenan*, 502 P.3d 1271 (Washington 2022).

The judge grew up in poverty, had been a juvenile defendant, and had dropped out of high school. At 17, he was working at a fast-food job when he took the GED exam through North Seattle College. He did very well, and the dean encouraged him to continue his education. The judge studied for his high school diploma through the College and then earned his two-year degree there, attending classes during the day and working full-time at night as a security guard. After graduating, he transferred to the University of Washington. He earned his law degree from Seattle University. He has a long history of doing pro bono legal work, and he remains involved with North Seattle College.

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In July 2019, the judge was asked to appear in a bus ad as part of the College's student recruitment campaign. The judge reviewed the code of judicial conduct and advisory opinions but did not ask the judicial ethics committee or the Commission whether the ad violated the rules. The College sent the judge a copy of the proposed ad. Because he had concerns about appearing in the ad wearing a robe, he asked them to use a photo of him in a coat and tie. After that change, the judge approved the ad.

After the ad started to appear on buses, the presiding judge of his court told Judge Keenan that some of the other judges on the court "expressed concerns . . . about the bus ad," in part because it "could be read as Judge Keenan advocating for a particular group of people." Judge Keenan said that he believed that the ad did not violate the code, but he asked the College to discontinue the ad. It ran for three weeks.

(1) Concluding that the judge violated Rule 1.3, which prohibits abuse of the prestige of judicial office to advance the interests of others, the Commission had found that the ad was "aimed at increasing student enrollment which, in turn, would advance the economic interests of the college." The Commission found that the judge's argument that his actions were permitted because the ad would encourage people to go to law school after community college was "too tenuous or strained to be persuasive" and opened "the flood gates to allow judges to promote any activity that could possibly encourage students to attend law school."

On review, the Court emphasized the 2011 update to the state code of judicial conduct that changed the language from a prohibition on a judge "lending" the prestige of judicial office to a prohibition on a judge "abusing" the prestige of office, adopting the change in the 2007 American Bar Association *Model Code of Judicial Conduct*. The Court noted that the model code does not define "abuse" but that *Black's Law Dictionary* defines it, in part, as "[t]o depart from legal or reasonable use in dealing with (a person or thing); to misuse." Based on comments to the code, the Court noted that a judge using judicial letterhead to provide a recommendation letter is not an abuse but that the "classic" examples of Rule 1.3 violations are a judge "alluding to their judicial status to gain favorable treatment in encounters with traffic officials" and "using judicial letterhead to gain an advantage in conducting personal affairs, such as inquiring into automobile registrations or real property assessments."

To distinguish between unreasonable "abuse" of judicial office and appropriate "use" of judicial office, the Court noted that Canon 3 encourages judges to participate in extrajudicial activities and permits judges to "participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice," specifically those "sponsored by or undertaken on behalf of *public or private not-for-profit educational institutions*" (emphasis added by the Court), with "no distinction among legal, nonlegal, postgraduate, and undergraduate types of not-for-profit educational institutions." The Court also noted that the code permits judges to allow "an organization to use their title 'in connection with an event of such an organization or entity, but

The Court also emphasized that the bus ad had "a broad and non-discriminatory, rather than a narrow and targeted, reach."

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if the event serves a fundraising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice.'"

Concluding that the judge "did not 'misuse' his title or the prestige of his office" in the ad, the Court explained that, "while recruitment has an incidental economic benefit, just about anything that a judge would do for a college would incidentally benefit it economically. This incidental economic benefit is permissible under Canon 3 because a judge's prestige *should* be used to encourage education. Using one's judicial title for such a purpose does not constitute an abuse" (emphasis by the Court).

Agreeing with the judge that the ad was related to the administration of justice, the Court stated that "supporting community colleges may be one important way to increase diversity and access to the legal community—certainly an impact that improves the 'administration of justice.'" The Court noted with approval that judicial ethics advisory opinions from the state recognize that judges contribute "to the improvement of justice by helping get 'the most qualified individuals into the legal profession.'" Further, it explained:

> [M]any of "the most qualified individuals" for "the legal profession"—and probably many from marginalized communities—might start at community colleges. It necessarily follows that a judge may contribute to the improvement of justice by helping get "the most qualified individuals into the legal profession" by promoting the educational opportunities afforded by their own former community college. . . .

The Court also emphasized that the bus ad had "a broad and nondiscriminatory, rather than a narrow and targeted, reach."

(2) Concluding that the judge violated Rule 1.2, which requires a judge to be impartial, the Commission had found that a reasonable person could read the ad to "suggest that Judge Keenan has a leaning, or preference, and would advocate accordingly for marginalized communities" and that a person who was not from a "marginalized community" could "reasonably be concerned about being treated unfairly by Judge Keenan."

Disagreeing with that finding, the Court held that "an objective, reasonable person would not infer" from the judge's description of his reasons for attending law school that he lacks 'an open mind in considering issues that may come before [him]' as a judge." The Court noted that "all judges decide to join the legal profession for one reason or another, and stating why you got into the law does not mean that you cannot rule impartially in a case."

Noting the Commission's concern about the use of "advocate" in the ad, the Court acknowledged that "a judge should not advocate for particular partisan causes." But, the Court explained, "a judge certainly should advocate for and 'promote' access to justice and improvements to the administration of justice. . . . Thus, the word 'advocate' alone does not show inappropriate partisanship. If anything, stating that you got into law to advocate for communities that have been 'marginalized' from the benefits of the justice system might counter widespread perceptions that the law has historically treated marginalized members of our community unfairly." The Court concluded that, "viewed in context," the judge's statement in the

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ad "impartially promotes respect for marginalized communities" and "is best interpreted as a comment on a general justice system issue, not as a comment on how he would rule in a case."

Dissatisfaction

Accepting a discipline by consent agreement, the Georgia Supreme Court ordered that a judge be publicly reprimanded for periodically dismissing cases without the legal authority to do so. *Inquiry Concerning Baker*, 870 S.E.2d 356 (Georgia 2022).

The judge acknowledged that, from time to time, when she was dissatisfied with the factual basis provided for a guilty plea, instead of rejecting the plea, she would dismiss the case. For example, at one plea hearing, an assistant city solicitor presented a negotiated guilty plea, the defendant orally announced his plea of guilty to driving with an expired tag, and the assistant solicitor recited a brief factual basis for the plea, including when and where the offense occurred and the make and model of the car for which the tag had previously been registered. However, when the judge asked when the tag had expired, the assistant solicitor did not know. Without further discussion or comment, the judge dismissed the case over the solicitor's objection.

No exigent circumstances

Based on the findings of a referee following a hearing, the New York State Commission on Judicial Conduct publicly admonished a judge for (1) allowing her secretary to help plan her daughter's Bat Mitzvah and perform other personal tasks for her and (2) allowing her daughter to frequent the security checkpoint at the courthouse. ***In the Matter of Polk*, Determination** (New York State Commission on Judicial Conduct January 24, 2022).

(1) In the fall of 2015, the topic of the judge's daughter's Bat Mitzvah came up in conversation while the judge, her secretary, and her court attorney were having lunch in chambers. Her secretary told the judge that she could help with the planning. At some point, the judge accepted her offer.

Using her "@nycourts.gov" email address, the judge's secretary sent numerous emails related to the Bat Mitzvah to vendors for the event and to the judge. The emails discussed menu options with caterers; discussed venue set-up issues; gathered information and ideas for centerpieces; created and updated a spreadsheet for guest RSVPs; and contacted a hotel regarding room reservation rates and a booking issue. Many of the emails to vendors identified her at the end as "Secretary to Honorable Jill S. Polk" and included the court address. Most of the emails related to the Bat Mitzvah were sent during non-lunch hours on weekdays.

From January 2015 through the early part of 2017, the judge also permitted her secretary to perform other personal tasks for her, including emails about a quote from a landscaper for her home, options for vacation rentals, and service options for the judge's car; emails making appointments for the

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judge with doctors, a dentist, and a hair salon; and emails making appointments for her daughter.

The Commission stated that the friendship the judge and her secretary had developed did not excuse the judge's use of her secretary to regularly perform her personal tasks. The Commission found that the personal work done for the judge was "not limited to situations where there were exigent or compelling reasons" and that the tasks performed in planning the Bat Mitzvah were more than "professional courtesies or occasional acts of personal assistance that might ordinarily be provided in emergency situations by subordinates to supervisors, or vice versa." The Commission noted that there was no indication that the judge had coerced her secretary into performing the tasks or that performing these tasks prevented her secretary from completing her court duties.

(2) The judge's daughter was 12 in 2015 when the judge took office. Beginning in 2015 and through part of 2017, the judge's daughter was at the courthouse during work hours at least once a week and as often as two or three times a week, approximately 50 to 100 times total.

The judge's daughter frequently approached the court officers on duty at the magnetometer station at the family court security checkpoint and spoke with them about her life and interests, some days multiple times. Occasionally, she went up to the X-ray screen and asked the court officers about the objects being scanned. The officers were concerned that she would be injured if there was an altercation among litigants in the security area. At times, her presence impeded their security work.

The court officers felt uncomfortable bringing their concerns directly to the judge, but they raised the issue with their superiors, one of whom spoke to the judge. The judge said that she understood and would speak with her daughter. For a week or two, the visits stopped, but then her daughter began to drop by the security checkpoint again.

Noting the testimony of the court officers, the Commission found that the regular presence of the judge's daughter "at the security checkpoint was inappropriate and a further instance of respondent using the prestige of her office for her personal benefit." The Commission noted that "this was not a situation where respondent's child came to respondent's chambers in the event of an emergency or other unforeseen situation" and "there were no extenuating circumstances."

"Mindless action"

The California Commission on Judicial Performance publicly admonished a judge for meeting with two police detectives who were being investigated for misconduct in a case over which she had presided and sending two letters to the police chief on official court stationery, the first supporting the detectives and the second retracting her earlier statements. ***In the Matter Concerning Meyer*, Decision and order** (California Commission on Judicial Performance April 5, 2022).

On May 15, 2017, the judge presided over a pretrial hearing in *People v. Daniel Delatorre*. During the hearing, Deputy Public Defender Alison Hudak

The Center for Judicial Ethics has links to judicial conduct commissions and judicial ethics advisory committees

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challenged the admissibility of evidence obtained by Long Beach Police Department Detectives Malcolm Evans and Todd Johnson, alleging that they had engaged in misconduct when they, through the district attorney, provided incorrect information regarding a witness, including misspelling his name, and used improper tactics when obtaining an identification from another witness. Deputy District Attorney Angie Christides did not contest the allegations or call the detectives to provide rebuttal testimony. The judge responded on the record that the detectives' behavior "is appalling and unethical and inappropriate" and that "the prosecution, unfortunately, has been the victim, as well, of their own detectives." As a result, the judge ruled that the prosecution was prohibited from calling two of their three eyewitnesses, and Christides dismissed the case against Delatorre.

Almost a year later, Detectives Evans and Johnson visited the judge in her chambers and showed her excerpts of the preliminary hearing transcript in the Delatorre matter. The transcript apparently addressed some of the evidentiary issues raised at the pretrial hearing and seemed to indicate that the detectives had not engaged in misconduct.

Immediately following the meeting, feeling "compelled to write … on behalf" of the detectives, the judge drafted a letter to the police chief describing the "difficult position" she had been put in when the representations of a "well-respected and trusted" DDA caused her to question the ethics of detectives whom she had known for nine years and felt were credible. The judge explained that she had since learned that those representations were inaccurate, characterized the allegations against the detectives as an "unfortunate misunderstanding," and concluded that "it appears that both detectives conducted themselves appropriately in this case, and I find no fault with their investigation." She signed the letter, which was on official stationery, with a typeface signature and her title and emailed it to Detective Johnson, stating, "Please review. If you like it, I'll send a copy to DA and Chief." Detective Johnson forwarded the letter to the police chief.

After learning that the District Attorney's Office and the Public Defender's Office had been provided with a copy of her letter, the judge sent a second letter to the police chief, also on official court stationery, explaining that her earlier letter had been a draft. The judge's second letter attempted to retract the statements she made in the first letter, stating that, "as [she] feared . . . that draft seems to have caused some issues and misunderstandings" and clarifying that she did not have a relationship with the detectives and had not intended to represent that she had "an overall feeling about their general character." In closing, the judge wrote that she intended for the second letter to "dispel any concerns anyone may have" about her integrity, adding that, "It distresses me greatly to think anyone considers me unfair or biased."

In at least one unrelated case involving the same detectives, the prosecution disclosed the judge's letters to defense counsel as *Brady* material. The *Long Beach Post* published an article entitled, "Judge stirs controversy with secret letters to police in Long Beach murder case."

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The Commission found that the judge's meeting with the detectives gave the appearance that law enforcement had special access to her and were in a special position to influence her conduct and judgment. In her response to the Commission, the judge noted that it is customary for law enforcement officers to have access to chambers to request warrants and other orders and that she had not known in advance why the detectives were visiting her. However, she acknowledged that she should have ended the meeting as soon as the detectives began to discuss the Delatorre matter. Even before being contacted by the Commission, the judge had instituted new screening procedures to prevent similar meetings, requiring that her bailiff or clerk obtain the officers' names, agency, and what they are seeking before they are allowed into her chambers.

The Commission also found that the judge's first letter "lent the prestige of her judicial office and used her judicial title to advance the personal interests of the detectives by attempting to rehabilitate their reputations," and that the second letter "advanced her personal interests by attempting to retract her earlier statements in order to rehabilitate her own reputation."

The Commission did not disagree with the judge's argument that "while she erred in attempting to right a perceived wrong, she was well-intentioned," but it concluded that the judge "acted impulsively, without stopping to consider the potential consequences of her actions." It quoted the *California Judicial Conduct Handbook*: "The antidote for jumping from emotion to mindless action is reflection. Reactions based on anger, sympathy, and other emotions have a high likelihood of being unproductive and unwise."

Recent posts on the blog of the Center for Judicial Ethics

Recent cases (February)

Recent cases (March)

Recent cases (April)

A sampling of recent judicial ethics advisory opinions (February)

A sampling of recent judicial ethics advisory opinions (April)

"In the performance of their official duties or in the presence of the judge"

Interrupt, advise, end, and notify

Zoom, Facebook, and symptoms

"Rabid," "grave," and "apoplectic"

Use of judicial letterhead for letters of recommendation

More Facebook fails

Thin skin