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# JUDICIAL CONDUCT REPORTER

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## Decision Offers Guidance on Private Sanctions and Discipline for Legal Error

Responding to a writ of prohibition filed by a judge to whom the Commission on Judicial Performance had issued a confidential advisory letter, the California Supreme Court affirmed the Commission's authority to issue an advisory letter without holding a hearing and to sanction a judge for a legal error that clearly and convincingly reflects bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty. *Oberholzer v. Commission on Judicial Performance*, 975 P.2d 663 (1999).

The Commission had invited the

judge to comment on whether his dismissal of criminal charges against a defendant in *People v. James* when the prosecution refused to proceed was incorrect in light of *People v. Ferguson*, an appellate opinion that had reversed the judge's dismissal of an earlier case. The prosecutor had drawn the judge's attention to the decision in *Ferguson* before the judge dismissed *James*. (The People appealed the judge's order in *James* and also sought writ relief but abandoned the appeal after the Court of Appeal summarily denied the writ.)

In his response to the Commission's letter, the judge explained that, in his view, the earlier appellate deci-

sion was distinguishable. The judge contended that his dismissal of the charges in *James* was correct because the deputy district attorney had failed to comply with a statute requiring that a motion for a continuance be filed at least two court days prior to the hearing sought to be continued and within two court days of learning of a conflict. The statute provides that if a party is unable to demonstrate good cause for failing to comply with the time limits, the continuance shall not be granted, and the court may impose sanctions. The judge made a similar response to a second letter from the Commission informing him that it had

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## Giving Legal Advice to Family Members

by Nancy Biro

Canon 4G of the 1990 American Bar Association Model Code of Judicial Conduct prohibits full-time judges from practicing law, and all states have similar or identical restrictions. The comparable prohibition in the 1972 model code was enacted because the "likelihood of conflicts of interest, the appearance

of impropriety, and the appearance of a lack of impartiality—all have their greatest potential in the practice of law by a full-time judge." Thode, *Reporter's Notes to [1972] Code of Judicial Conduct* at 91 (ABA 1973). The practice of law includes rendering services that are legal in character, call for the skill and expertise of a lawyer,

and constitute part of a lawyer's professional services. *Michigan Advisory Opinion J-2* (1989).

The 1990 model code allows two exceptions to the prohibition on practicing law. First, a judge "may act for himself or herself in all legal matters, including matters involving

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## Giving Legal Advice to Family Members *(continued)*

litigation and matters involving appearances before or other dealings with legislative and other governmental bodies.” Thus, judges may always act pro se and represent themselves in personal matters before tribunals or in negotiations to the same extent other persons may. *Michigan Advisory Opinion J-2* (1989). For example, the Texas judicial ethics committee stated that a judge who is sued individually may represent himself or herself in the suit as attorney of record. *Texas Advisory Opinion 226* (1998). Moreover, the Alabama advisory committee stated that a judge may prepare a contract and deed as part of a joint business venture with a realtor regarding land owned by the judge and the judge’s cousin. *Alabama Advisory Opinion 88-327*. The judge’s preparation of the documents was appropriate, the committee stated, because the judge was among the parties whose rights were secured by the documents even though the documents would be executed by the realtor, a third party who was not a family member.

### Legal advice to family members

Under the second exception to the prohibition on practicing law, a judge “may, without compensation, give legal advice to and draft or review documents for a member of the judge’s family.” This exception was added to the 1990 model code to acknowledge that “judges are almost inevitably drawn to some degree into the legal affairs of their families...” while still “prohibiting the evils of appearance of impropriety and neglect of judicial duties.” Milord, *The Development of the ABA Judicial Code* at 43 (1992). Under this exception, a judge may:

- provide limited legal advice or counseling to a son-in-law con-

cerning a real estate transaction (*Michigan Advisory Opinion J-2* (1989));

- attend a deposition or hearing with a family member to offer moral support (*Michigan Advisory Opinion JI-15* (1989));
- discuss a real estate arbitration proceeding with the judge’s spouse who is a real estate broker and with the spouse’s attorney and attend the proceeding if the judge’s role is limited to that of a spectator and the judge does not directly or indirectly lend advice or assistance (*Missouri Advisory Opinion 117* (1985));
- represent the judge’s spouse in settlement negotiations against their insurance company for claims arising from an automobile accident (*Louisiana Advisory Opinion 81* (1990));
- offer informal legal advice to family members and friends as long as there is no attorney-client relationship (*New York Advisory Opinion 91-5*); and
- give incidental counseling regarding the probate of a family member’s will (*Texas Advisory Opinion 47* (1979)).

Moreover, a judge may draft or review documents for members of the judge’s family so long as it is without compensation. Thus, a judge may:

- draft wills for family members (*Michigan Advisory Opinion J-2* (1986)); and
- draft or review documents incidental to a real estate transaction in which the judge is advising the judge’s son-in-law (*Michigan Advisory Opinion J-2* (1989)).

However, noting that drafting of wills for close family members may raise attorney-client conflicts of interest, the Michigan advisory committee stated that a “judge engaged

in permitted legal work is governed by the same rules as a lawyer and should proceed accordingly.”

### Appearing as counsel/negotiator for family members

While a judge may give legal advice to members of the judge’s family, that exception does not allow a judge to make an appearance as counsel or function as an advocate or negotiator in a legal matter on behalf of a family member. *Commentary, Canon 4G*. That proscription applies even if the representation takes place in a different state and the judge receives no compensation. *Michigan Advisory Opinion J-2* (1989). The Michigan judicial ethics committee reasoned that advocacy is inconsistent with the judicial office except in pro se matters.

Judges have been disciplined for acting as advocates for family members. For example, the Washington Commission on Judicial Conduct publicly censured a judge who had appeared on behalf of his sister-in-law at a motion hearing before a family law commissioner during regular court hours and at the same courthouse in which the judge performed his judicial duties. *In re Chow*, No. 95-2066-F-59, Stipulation and Order of Admonishment (Washington Commission on Judicial Conduct February 2, 1996). The judge had informed the commissioner that he was not appearing as an attorney for his sister-in-law but as a fact witness. However, the judge personally addressed the court concerning several disputed issues, contending, for example, that his sister-in-law was not properly served.

The Supreme Court of New Jersey censured a municipal court judge who represented his son in a traffic violation. The judge cross-examined witnesses, presented legal arguments, and, after a verdict of guilty, filed an

appeal. He had not advised the presiding judge that he was a judge. The court cited as mitigating factors that the judge had not attempted to use the power of his office to influence the outcome of the proceedings, that his conduct was motivated by concern for his son rather than by desire for remuneration as he had received no fee, and that his record was previously unblemished. *Matter of DiSabato*, 385 A.2d 234 (New Jersey 1978).

The Supreme Court of Virginia censured a judge for appearing in court to represent his son at trial on charges he had committed traffic violations and, in another instance, threatening to sue a defendant for an accident involving the defendant and the judge's son-in-law, sitting at the counsel table with and advising the state's attorney during the defendant's

trial, and causing a civil warrant to be served on the defendant for damages from the automobile accident. *Judicial Inquiry and Review Commission of Virginia v. Jordan*, Record No. 730725 (Supreme Court of Virginia 1973).

Under the rule prohibiting a judge from acting as an advocate for a family member, a judge may not:

- act as a legal advisor for an adult son in negotiating with an insurance carrier (*Illinois Advisory Opinion 95-19*);
- act as an attorney for the executors of a parent's estate (*Kansas Advisory Opinion JE-17* (1986));
- file documents or appear as a legal representative for a daughter and her husband in connection with the adoption of a child (*Nebraska Advisory Opinion 92-2*);

- represent his or her daughter in a real estate purchase (*New York Advisory Opinion 92-118*);
- act as counsel in the probate of the will of a family member (*Texas Advisory Opinion 47* (1979)); or
- act as counsel for a spouse or a corporation owned by the judge and the judge's spouse in a suit even if the judge is representing himself/herself in the suit (*Texas Advisory Opinion 226* (1998)).

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## Indiana and Maryland Share Complaint and Budget Data

The following statistics for Indiana and Maryland should have been included in the tables published in the winter 1999 issue of the *Judicial Conduct Reporter*.

The Indiana Commission on Judicial Qualifications reported 14 complaints pending on January 1, 1997. In 1997, the Commission received 199 complaints and dismissed 173 complaints summarily and 14 after an initial inquiry. Twelve judges were privately cautioned. Eight complaints were pending on December 31, 1997.

In 1998, the Commission received 252 complaints and dismissed 196 complaints without informal or formal action. One judge agreed to retire during an investigation. Thirty-four judges were privately cautioned. One judge voluntarily resigned after a pub-

lic hearing had been held and findings were submitted to the Indiana Supreme Court; the court permanently enjoined him from seeking judicial office, disbarred him, permanently enjoined him from seeking reinstatement, and fined him \$100,000. (Fines are usually paid to the court, but in this case it went to the county). See *In the Matter Edwards*, 694 N.E.2d 701 (1998). Sixteen complaints were pending on December 31, 1998.

The Commission is staffed by one full-time director, who is an attorney, and one part-time administrative assistant. The Commission is funded through the Supreme Court's budget. Approximately 500 individuals are subject to its jurisdiction, including judicial candidates and pro tem judges.

The Maryland Commission on Ju-

dicial Disabilities reported 61 complaints pending on July 1, 1997. Between July 1, 1997, and June 30, 1998, the Commission received 145 complaints and dismissed 158. The Commission took informal action involving 13 judges. One judge vacated office during an investigation. Two judges were privately reprimanded. Thirty-eight complaints were pending on June 30, 1998. The Commission is staffed by one part-time director, who is an attorney, one full-time investigative counsel, one part-time assistant investigative counsel, one full-time administrative assistant, and one part-time paralegal. The Commission had an annual budget of \$241,692. There are 320 judges subject to its jurisdiction.

# Kentucky and Virginia adopt new codes of judicial conduct

**K**entucky and Virginia have adopted new codes of judicial conduct. The new Kentucky code became effective on December 3, 1998. The new Virginia code became effective on July 1, 1999. Both codes are based on the 1990 ABA Model Code of Judicial Conduct, with the major changes noted below.

## Kentucky

In the preamble to its new code, Kentucky has added the emphasized phrase to the model code language: "The [Canons and Sections] should be applied...in the context of all relevant circumstances, *including the varying degrees of responsibility and administrative functions of different levels of court.*" The Kentucky code also adds: "This Code is intended to apply to every aspect of judicial behavior except purely legal decisions made in good faith in the performance of judicial duties. Such decisions are subject to judicial review."

The new Kentucky code expressly allows a judge to "lend the prestige of the judge's office to advance the public interest in the administration of justice" and to "actively support public agencies or interests or testify voluntarily on public matters concerning the law, the legal system, the provision or legal services, and the administration of justice." Where the model code provides that "judicial letterhead must not be used for conducting a judge's personal business," the Kentucky codes provides that a "judge should be careful in the use of the judge's letterhead."

In the Kentucky code, the provision that requires a judge not to permit staff to manifest bias is limited to "proceedings before the judge." In its version of the rule prohibiting ex parte

communications, the Kentucky code permits consultation with disinterested legal experts only "as a part of legal research."

Under the model code, a judge must "require" court officials (as well as staff and others subject to the judge's direction and control) to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties; under the Kentucky code, a judge must "encourage" court officials to do so.

The Kentucky code limits a judge's immunity from civil and criminal liability for exercises of disciplinary responsibilities to acts taken "in good faith."

Commentary to the Kentucky version of the disqualification provision states that "dislike of a party or a party's lawyer does not, by itself, constitute a personal bias or prejudice." The Kentucky code requires that a remittal of disqualification be signed by all parties and lawyers, rather than simply incorporated in the record of the proceeding.

The Kentucky code allows a judge to "accept appointment to a governmental committee or commission where a judicial appointment is authorized or required by law." The Kentucky code prohibits a judge from serving in a leadership position for an organization that "by reason of its purpose, will have a substantial interest in other proceedings in the Court in which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member."

Instead of the model code provision that allows a judge to participate only in family businesses, the Kentucky code allows a judge to "serve as an

officer, director, manager, general partner, advisor or employee of any business entity" unless the business is:

(i) generally held in disrepute in the community, or (ii) likely to be engaged in proceedings that would ordinarily come before the judge, or (iii) likely to be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

The Kentucky code allows a judge to assist a business in planning fund-raising activities and to participate in the management and investment of the business's funds, but prohibits a judge from personally participating "in the solicitation of funds, the raising of capital or the selling of stock in such a manner as to permit the use of the prestige of judicial office for promotion of the business entity."

Kentucky adds to the model code's list of permitted gifts "customary expressions of sympathy."

Unlike the model code, the Kentucky code does not prohibit a judge from attending political gatherings or purchasing tickets for political gatherings at any time. The Kentucky code does provide:

A judge or candidate shall not identify himself or herself as a member of a political party in any form of advertising, or when speaking to a gathering. If not initiated by the judge or candidate for such office, and only in answer to a direct question, the judge or candidate may identify himself or herself as a member of a particular political party.

Under the Kentucky code, a judicial candidate is required to encourage members of his or her family to adhere to the same standards of political conduct that apply to the candidate, without the model code's limitation to when acting "in support of the candidate."

The Kentucky code does not prohibit a judicial candidate from soliciting public statements of support, although, like the model code, it does prohibit a judicial candidate from soliciting campaign contributions. The model code suggests that a candidate's campaign committee be prohibited from raising funds earlier than one year before an election and later than 90 days after; the limits in Kentucky are 180 days before and no solicitation after an election. The Kentucky code omits "knowingly" from the prohibition on a candidate making misrepresentations.

### Virginia

Virginia has omitted from Canon 2B the provision that a "judge must not testify voluntarily as a character witness...." The Virginia commentary adds: "When using court stationery for letters of reference an indication should be made that the opinion expressed is personal and not an opinion of the court."

To the model code requirement that a judge "require order and decorum in proceedings before the judge," the Virginia code adds "civility." The Virginia code notes that the prohibition on a judge manifesting bias in proceedings "does not preclude proper

judicial consideration when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or similar factors, are issues in the proceeding." The Virginia code extends the model code requirement that judges require lawyers to refrain from manifesting bias to "all persons appearing in proceedings before the judge."


The Virginia code adds an exception to the prohibition on ex parte communications that allows a judge to "consult with the Legal Research Assistance Project of the Supreme Court of Virginia for aid in carrying out the judge's adjudicative responsibilities." The Virginia code qualifies the model code provision that a "judge should encourage and seek to facilitate settlement" by adding that "parties should not feel coerced into surrendering the right to have their controversy resolved by the courts."

Under the Virginia code, a judge's obligation to take appropriate action against a judge or lawyer is triggered by receipt of "reliable information" indicating a substantial likelihood of a violation of the code of judicial conduct or the rules of professional responsibility, whereas under the model code the obligation is triggered simply by "information."

Like the model code, the Virginia code allows a disqualified judge to ask the parties to consider waiver but adds that the judge may "have the clerk of court ask" about waiver.

The Virginia code omits much of the model code commentary to the rules about participation in governmental, civic, or charitable activities and moves the prohibition on a judge being a speaker or guest of honor at a fund-raising event from the commentary to the text.

The Virginia code omits the model code provision allowing a judge to "engage in other remunerative activity" in addition to holding and managing investments of the judge and members of the judge's family. Commentary to the Virginia code cautions judges against participating in a closely held family business if such participation would "subject the judge to public criticism or give the appearance of impropriety."

The Virginia code omits the provision that allows a judge to accept any other gift, bequest, favor, or loan not specifically listed only if "the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge." 


## Kansas changes judicial discipline procedures

**O**n May 1, 1999, the membership and procedures of the Kansas Commission on Judicial Qualifications was changed pursuant to rules adopted by the Kansas Supreme Court. Resulting in an increase in Commission membership from nine to fourteen, the number of judge members will increase from four to six; the number of non-lawyer members will increase from two to four; and the number of lawyer mem-

bers will increase from three to four.

The Commission will be divided into two seven-person panels (designated Panel A and Panel B), each consisting of three judges, two non-lawyers, and two lawyers. Each panel will meet every other month, alternating such meetings with the other panel. The Commission will establish a process to assign a complaint to either Panel A or Panel B for initial review and investigation. If a panel to which a

complaint is assigned concludes that formal proceedings should be instituted, it will file a formal complaint, and the other panel will sit as the hearing panel to conduct the formal proceedings.

The hearing before the hearing panel is public. The panel may admonish a judge, issue an order to cease and desist, or recommend to the Supreme Court that the judge be censured, suspended, removed, or retired. 

# Judicial Conduct Commissions on the World Wide Web

by Peter M. Lantka

**M**ore than 15 state judicial conduct commissions currently maintain websites, and 11 plan to create sites within the next six months. Over half of these sites are maintained through outside agencies such as state supreme courts or universities. The remaining sites are maintained by the commissions' staffs.

The commission sites contain a wide variety of information and services ranging from judicial advisory opinion postings to online complaint forms. The Arizona Commission on Judicial Conduct site ([www.supreme.state.az.us/cjc](http://www.supreme.state.az.us/cjc)), for example, is one of the more interactive sites: Users can access the Arizona code of judicial conduct, a breakdown of complaint and review processes, and links to conduct-related organizations such as the State Bar of Arizona and AJS. The site also provides a public email address ([cjc@supreme.so.state.az.us](mailto:cjc@supreme.so.state.az.us)) and a phone number to field inquiries, as well as instructions for filing a complaint and "complaint" and "statement of facts" forms that can be downloaded. Similar to other commission sites, Arizona's complaint forms are available in .pdf (portable document format), a compact document type viewable with the Adobe Acrobat Reader that allows web browsers to view documents in their original format. Free copies of the Reader can be obtained at Adobe's website and downloaded directly to a user's PC. The Arizona site also allows visitors to view in .pdf the most recent issue of the "Arizona Judicial Conduct and Ethics Bulletin," a joint publication of the Commission and the Judicial Ethics Advisory Committee.

The Alaska Commission on Judi-

cial Conduct site ([www.ajc.state.ak.us/CONDUCT.htm](http://www.ajc.state.ak.us/CONDUCT.htm)) is also readily accessible to users. The Alaska Commission offers information on the Commission's role and function, an explanation of the Commission's rules and procedures, and a complaint form that can be downloaded in .pdf (the Alaska site provides a link to Adobe's website to access the Reader). The site also provides formal ethics and advisory opinions accessible through links at the top of the Commission's page or by scrolling through the site itself. Within the ethics opinions on the Alaska site, referenced canons within the Alaska Code of Judicial Conduct can be accessed through links within

The AJS website has links to conduct commission sites.


the opinions. The site also provides information on contacting the Commission via phone, mail, or email ([103176.2012@compuserve.com](mailto:103176.2012@compuserve.com)).

The Alabama Judicial Inquiry Commission ([www.alalinc.net/jic](http://www.alalinc.net/jic)) provides an interactive search engine to retrieve full-text versions of ethics advisory opinions since 1976. The search engine utilizes Boolean query terms (an interactive search method using "and," "or," and "not") in both simple and explicit modes that are explained in detail by accessing the "Search Tips" link on the Commission's page. The site also provides phone, fax, and postal information for contacting the Commission.

The Judicial Investigation Commission of West Virginia website ([www.state.wv.us/wvsca/jic/cover.htm](http://www.state.wv.us/wvsca/jic/cover.htm)) includes advisory opinions that can be accessed through an alphabetical index of advisory opinion syn-

opses listed by subject. For example, accessing the "Gifts" link transfers visitors to advisory opinions discussing the types of gifts a judge can and cannot accept. The West Virginia Commission's complaint form is available through the site as well. The form may be downloaded in .pdf, viewed as an .html (hyper-text markup language) document on a web browser, or downloaded in Word Perfect format. The West Virginia Commission also provides contact information at the top of its site.

The Indiana Commission on Judicial Qualifications website ([www.state.in.us/judiciary/admin/judicial](http://www.state.in.us/judiciary/admin/judicial)) also provides visitors with information on the Commission's jurisdiction and authority, organization, and a brief synopsis of recent activities. Full-text advisory opinions can also be accessed through the site and are listed in chronological order along with canons referenced and brief synopses.

The AJS website ([www.ajs.org](http://www.ajs.org)) has links to conduct commission sites on its directory of judicial conduct commissions. To access the commission directory from the AJS homepage, click on the "Judicial Conduct and Ethics" link. From the Judicial Conduct and Ethics page, click on the "Directory of Judicial Conduct Organizations" link. Within the directory, commissions that provided website and public email information to AJS may be accessed through their corresponding links. 

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## Decision Offers Guidance on Private Sanctions and Discipline for Legal Error *(continued)*

ordered a preliminary investigation and affording him another opportunity to respond in writing.

Subsequently, the Commission determined to close the matter but sent the judge a “severe advisory letter” that stated:

[T]he commission strongly disapproved of your handling of the felony child molestation case of *People v. James*. Your dismissal of the case...occurred under circumstances equivalent to those in the earlier case of *People v. Ferguson*, in which the Court of Appeal reversed your dismissal of the case in a published opinion in 1990. When a judge’s order is reversed in a published decision, and the judge repeats the action, such conduct necessarily raises concerns about a reckless disregard of the law, diminishing public confidence in the judiciary in contravention of Canon 2A. When the conduct is repeated against the same party, concerns of bias or a lack of impartiality may also be raised.... As respects your conduct in dismissing the *People v. James* case, the commission was also particularly disturbed that the *People v. Ferguson* decision was brought to your attention by counsel before you dismissed the case.

The judge filed a writ of prohibition with the state supreme court.

Rejecting the judge’s argument, the court held that the Commission had jurisdiction to issue advisory letters even though the constitutional provision establishing the Commission does not include advisory letters in its list of disciplinary options. The court did find that advisory letters may fairly be characterized as “disciplinary” because the Commission may consider them in subsequent proceedings and provides them upon request to public officials who are considering appointing the judge to another position.

### Due process

The judge argued that, before the Commission issued an advisory letter, he was entitled by due process to a


hearing, the right to examine the evidence the Commission had reviewed, the right to confront adverse witnesses or evidence, and the right of review—“in other words, the functional equivalent of a trial.” “Balancing the judge’s private interest in maintaining a judicial career free of the infliction of disciplinary measures, and the Commission’s interest in the effective and efficient safeguarding of the public from aberrant action by judicial officers,” the court held that due process does not require the additional protections urged by the judge and that the Commission’s procedures sufficiently protect a judge from the unreasonable issuance of an advisory letter.

The court found that although advisory letters may reduce a judge’s chance of being elevated to a higher court, they “do not inexorably subject a judge to public opprobrium or other inevitable consequences that might impair the [judge’s] freedom to pursue his or her chosen occupation.” The court noted that if the Commission provided information regarding an advisory letter to the President, a governor, or the Commission on Judicial Appointments, the judge must be informed and may fully respond to, rebut, or otherwise explain the subject of the letter and describe events occurring after the letter was issued.

The court concluded that the Commission’s procedures were adequate because they provided the judge with sufficient notice of the inquiry, specifically identified the focus of and evidentiary basis for the investigation, and granted the judge sufficient opportunities to address the Commission’s concerns and defend against the allegation. The court stated that the judge’s interest in avoiding a “relatively mild form of discipline” was not sufficient to justify the added time and expense of the safeguards he

proposed, and the consequences of an advisory letter were not so severe as to invoke the need for a higher level of process. The court also noted that the judge did not address the possibility that the safeguards he sought “could have a detrimental impact upon the Commission’s effectiveness by requiring a disproportionate use of the Commission’s resources.” The court also stated that the judge’s position that more formal proceedings must be held before an advisory letter may be issued might invoke the constitutional requirement that proceedings be made public, “thereby eliminating the confidentiality and informality of this form of discipline that makes it less onerous and detrimental to the judge.”

The judge contended that the advisory letter issued to him was invalid because it addressed a legal error, not judicial misconduct, and argued that a prohibition against “legal error investigation” was necessary to avoid abuse of the Commission’s powers by persons politically or philosophically opposed to a particular jurist. The court held that a judge who commits legal error that clearly and convincingly reflects bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty is subject to investigation and discipline.

However, with respect to the advisory letter regarding the judge’s dismissal of the charges in *People v. James*, the court found that, viewed against the backdrop of the prosecution’s unequivocal refusal to proceed, the judge’s order dismissing the case, even if legally incorrect, failed to raise any of these concerns. Therefore, the court granted the petition for a writ of mandate seeking the withdrawal of the Commission’s advisory letter. 



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## JUDICIAL CONDUCT REPORTER

### Recent AJS publications

#### ***Ethical Issues for New Judges***

by Cynthia Gray (1999)

Originally published in 1996, this paper has been recently revised to incorporate advisory opinions and cases that up-date its discussion of issues such as practicing law after being chosen as a judge, completing pending cases, disposing of an interest in a law practice, collecting fees for work done before becoming a judge, disassociation from a firm, and disqualification issues faced by new judges. *Ethical Issues for New Judges* (Order #845) is one of a set of six papers on key issues in judicial ethics that have been up-dated as needed since their original publication in June 1996. The other papers are *Recommendations by Judges* (5/97) (Order #841), *Political Activity by Members of a Judge's Family* (9/97) (Order #842), *Organizations that Practice Invidious Discrimination* (12/96) (Order #843), *A Judge's Attendance at Social Events, Bar Association Functions, Civic and Charitable Functions, and Political Gatherings* (8/98) (Order #844), and *Real Estate Investments by Judges* (5/97) (Order #846). The papers are \$7 each, \$35 for the set of six (Order #840).

#### ***Improving Citizen Response to Jury Summonses: A Report with Recommendations***

by Robert G. Boatright (1998)

This report, based on a nation-wide survey, addresses the effectiveness of policies designed to increase juror yield and the attitudes and characteristics of those citizens who do not respond to jury summonses. It identifies reasons for non-response and recommends steps that courts can take to increase response rates. Order #882. \$25.

#### ***Judicial Retention Evaluation Programs in Four States: A Report with Recommendations***

by Kevin M. Esterling and Kathleen M. Sampson (1998)

This report describes the structure and operations of judicial performance evaluation programs in Alaska, Arizona, Colorado, and Utah. It concludes with recommendations for establishing an effective judicial retention evaluation program. Order #84X. \$25.

Prices do not include shipping and handling. For further information, contact the AJS publications order department by telephone at 312-558-6900 ext. 147 or by email at [rwilson@ajs.org](mailto:rwilson@ajs.org).