

JUDICIAL CONDUCT REPORTER



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Social media posts on controversial issues *by Cynthia Gray*

Judges have been disciplined for Facebook posts, reposts, shares, or reactions expressing views about controversial issues or endorsing political candidates. The cases demonstrate that this type of social media commentary is broadly restricted for judges regardless of privacy settings or whether their judicial position is evident. (This analysis would apply to analogous actions on Twitter, Instagram, and other social media, but, so far, Facebook has been the platform for virtual judicial misconduct.)

Although many different provisions in the code of judicial conduct are cited, the decisions most often rely on the requirement that “a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” [Rule 1.2, American Bar Association Model Code of Judicial Conduct \(2007\)](#). All of the judges in these cases acquiesced in the sanctions, often expressing remorse, apparently recognizing on reflection that thoughtless clicking and virtual outbursts by judges can damage the judiciary’s reputation.

For example, the Tennessee Board of Judicial Conduct found that the issue-related images a judge had shared on Facebook clearly violated the code of judicial conduct. [Lamme](#) (Tennessee Board of Judicial Conduct November 15, 2019). The posts were about:

- The credibility of certain federal agencies,
- Professional athletes kneeling during the national anthem,
- The effect of undocumented immigrants on the economy,
- The Democratic party platform,
- Support for or opposition to presidential candidates,
- The Black Lives Matter movement,
- Media bias,
- Fatal shootings by police officers,
- Anti-Jihadist sentiment,
- Transgender bathrooms and boys in girls’ locker rooms, and
- Undocumented immigrants voting in Virginia.

Agreeing to a public reprimand, the judge acknowledged that he had erred by sharing these types of posts and that public confidence in the judiciary is undermined when a judge creates the perception that they have a political bias, regardless whether the bias exists.

See also [In the Matter of Clarkin, Decision and order](#) (New York State Commission on Judicial Conduct December 8, 2017) (based on the judge’s resignation and agreement not to serve, closing investigation of judge who made statements on Facebook criticizing public officials and a state gun

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regulation and conveying bias in favor of law enforcement and against a political organization, a social activist group, and members of a religious group); *In the Matter of Canning, Decision and order* (New York State Commission on Judicial Conduct September 12, 2019) (based on the judge's resignation and agreement not to serve, closing investigation of judge who posted a picture of a noose with the annotation, "IF WE WANT TO MAKE AMERICA GREAT AGAIN WE WILL HAVE TO MAKE EVIL PEOPLE FEAR PUNISHMENT AGAIN").

Accepting an agreed statement of facts, the New York State Commission on Judicial Conduct publicly admonished a judge for Facebook posts expressing support for law enforcement. *In the Matter of Peck, Determination* (New York State Commission on Judicial Conduct March 19, 2021). On July 21, 2020, the judge posted on his page, which was public to anyone on Facebook:

Today, my daughter ... and I stood at the side of the road and watched in appreciation as hundreds of motorcycles and other vehicles passed by ... It was the Back the Blue ride in support of law enforcement ...

I always tell her that she and her brothers and sisters in blue are still appreciated in OUR community. Today's event, and the overwhelming number of participants is a true example of that appreciation. We both had tears streaming down our cheeks as folks waved and honked, acknowledging our sign thanking them for their support.

It is a tough time for law enforcement. To those of my friends who served or continue to, always remember that you have chosen the noblest of professions and you ARE making a difference ...

The post also included a picture of the judge in a county sheriff's uniform (he was a former member of the county sheriff) with his daughter, who was wearing a similar uniform. That photo was also his profile picture in July 2020.

Memes

Judges can be sanctioned for their reactions to and re-posting of others' social media content, not just their own original comments. As an advisory committee explained: "'Liking' an offensive post could cast reasonable doubt on the judge's capacity to act impartially and could demean the judicial office. There simply is no place for judges engaging in that type of conduct on an inherently public platform." *California Judges Association Formal Opinion 78* (2020). The committee emphasized that even "hitting the thumbs up symbol or the heart symbol" just because something is interesting can reasonably be "perceived as an explicit endorsement of the content," and, therefore, is subject to judicial discipline if the judge's direct advocacy of the content would be inappropriate.

Accepting an agreed statement of facts and recommendation, the New York Commission publicly admonished a judge for re-posting conspiracy theories and similar memes on his Facebook page while a candidate, in addition to other inappropriate comments. *In the Matter of Schmidt, Determination* (New York State Commission on Judicial Conduct November 3, 2020).

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Merriam-Webster defines “meme” in this context as “an amusing or interesting item (such as a captioned picture or video) or genre of items that is spread widely online especially through social media.”

The judge posted memes that:

- Implied that former President Bill Clinton had killed Jeffrey Epstein, the well-connected financier who died in his jail cell in 2019 after being arrested on federal sex trafficking charges;
- Depicted a witch trial hanging with the caption, “JUST A REMINDER... SALEM, MASSACHUSETTS HAD ‘RED FLAG’ LAWS, TOO;”
- Read “WHAT DOES THE SHEEP SAY? WE NEED COMMON SENSE GUN CONTROL;” and
- Displayed a photograph of a Nazi book burning with the text, “BOOK BURNINGS DON’T JUST LOOK LIKE THIS,” above a social media platform warning that posts in violation of guidelines will be removed, with the text, “THEY ALSO LOOK LIKE THIS.”

The judge had not secured the posts behind privacy settings, and anyone on Facebook could view them, until he removed them after a letter from the Commission. In the discipline proceeding, the judge stated: “I cringe as I review the [posts] presented and have no explanation as to why I felt that it would be appropriate to put them on my Facebook page” The judge acknowledged that his conduct was “beneath anyone who is privileged to wear a robe and is trusted with representing our judicial system to the public.”

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for posting on his Facebook page a meme endorsing the extermination of Muslims and statements “railing” against liberals. *Public Reprimand of Burkeen* (Texas State Commission on Judicial Conduct February 21, 2018). In the discipline proceedings, the judge acknowledged that the posts were “improper and inappropriate,” that the wording “was tack[y] and insulting,” and that “there is no excuse for the way [he] phrased these posts.” The judge’s page identified him as a judge and was publicly viewable.

In December 2016, the judge shared a meme that featured a picture of retired Marine Corps General James Mattis with the text, “Fired by Obama to please the Muslims, hired by Trump to exterminate them.” The judge deleted the meme the same day.

In response to the Commission’s inquiry, the judge stated that he thought the meme “showed an interesting contrast” between the two presidents. The judge also explained that he would not have shared the post “if [he] thought it would be taken as an endorsement of genocide. [He] realized afterwards that [he] should not have posted it, because it’s not just about how [he] interpreted it, but how others might.”

In January 2017, the judge posted on his Facebook page:

The best part of Trump’s election has been that it has revealed once again how hateful, intolerant, arrogant and divisive liberals are, not

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to mention the fact that they have taken the word hypocrisy to new extremes...

Hope apparently is defined by liberals as hatred and intolerance, persecution of Christians, embracing criminals, murdering police officers, racial violence, and of course, a welfare state financed by borrowed money...

A good example of the shallowness of liberal thinking is the fact liberals have convinced themselves that the norm is the lunacy we have gone through in the last eight years, and that anything else is not survivable. In the last eight years, police officers and fire fighters became the bad guys, criminal conduct was justified if not glorified, the Bible became 'hate speech,' Christians became targets of private and public discrimination, and the government began telling us where to go to bathroom, and who our children have to go to bathroom with.

In February 2017, the judge posted:

Do the morons claiming Trump is another Hitler not know who Hitler was? I realize liberals have not been much blessed with brains, but surely they can figure out that Hitler was a SOCIALIST. It was the National Socialist Party. He was one of you! His goals were your goals.

Posts and re-posts

In *In the Matter Concerning Gianquinto, Decision and order* (California Commission on Judicial Performance August 22, 2018), the California Commission on Judicial Performance found that a court commissioner's "egregious" conduct on Facebook was "the type of conduct that inherently undermines public confidence in the judiciary and that brings the judicial office into disrepute." The commissioner's activity reflected, among other things, anti-Muslim sentiment, anti-immigration sentiment, anti-Native American sentiment, anti-gay marriage and transgender sentiment, anti-liberal and anti-Democrat sentiment, anti-Black sentiment, opposition to then-presidential candidate Hillary Clinton, accusations against President Barack Obama, a lack of respect for federal law enforcement agencies, and contempt for the poor. His page was public, said that he worked for the county, and included photos of him, but did not identify him as a court commissioner. The commissioner had represented to his presiding judge and the Commission that he had taken the posts down but that was not accurate, although he believed that the posts were no longer publicly viewable.

There were at least three dozen items referred to in the Commission decision, which includes screenshots of many of them. For example, the commissioner posted or reposted:

- "When [Obama] said he was going to 'fundamentally transform' this nation, he was gaining success. He was going to transform it from a primarily Judeo-Christian nation into Islam. Got it now? Thank God for Trump."

- “For the Indian Rez that will not permit the wall built on 75 miles of border on their land — how about building the wall around that rez, fencing them into Mexico? That should please them.”
- “As I drove to the gym this morning, my route goes past several low income housing units recently built, and some apartment buildings that are also low income. I did not see a single light on at 6:00. That is when people going to work arise.”
- “Democrats are consistent, and they proved that at President Trump’s address in Congress!” with reposted photos with the text, “Democrats haven’t changed in 250 years. They just left their hoods in their office.”
- “LIBERALS ARE AMERICA’S CANCER. Any doubt in your mind?”
- A list entitled “The Blacksphere:” “Let criminals out. Let illegals In. Let boys in girl’s locker rooms. Let women kill their offspring. Prosecute innocent officers. Persecute Christians. Accept barbarity in the form of Islam. Over tax the hard working. Coddle the lazy. This Is what Democrats have created In America.”
- “ILLEGALS should not get welfare benefits! Like and share if you agree.”
- Pictures of Hillary Clinton and James Comey with the caption: “IF YOU FEEL BETRAYED BY THE JUSTICE DEPARTMENT AND THE FBI PLEASE LIKE AND SHARE.”
- “MEN DON’T belong in the ladies room. Period.”
- “One man, one woman . . . Say ‘I Do’ to supporting traditional marriage!”

As noted, the judicial officer in *Gianquinto* was sanctioned even though his judicial status was not evident in his Facebook profile. As an advisory committee emphasized, there are certain types of online conduct – for example, racist posts or political activity – that “a judge may not engage in . . . , period,” regardless whether they use the judicial title or might not otherwise be identifiable as a judge. [*California Judges Association Formal Opinion 78*](#) (2020). (In contrast, the committee suggested that whether writing a review on a crowd-sourced site such as Yelp constitutes abuse of the prestige of office may depend on whether a reader can identify the post as having been written by a judge.)

No shield

In some cases, the judges were disciplined even though they had chosen the Facebook privacy setting that allowed only their Facebook friends to directly view their profiles, excluding other users. Those cases demonstrate that, regardless of a judge’s attempts to maintain privacy, judicial conduct commissions treat everything a judge does on social media as public and subject to the stricter restrictions that apply to judges’ public

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actions. The cases recognize that, although a judge can limit who has access to their social media account, they cannot control what those individuals do, innocently, inadvertently, or maliciously, to disseminate the judge's posts beyond the intended, limited audience. As [Facebook notes in its FAQs](#), "If other people share info about you, even if it's something you shared with them but did not make public, they can choose to make it public." Moreover, as Facebook explains, "when you comment on other people's public posts, your comment is public as well."

For example, the Minnesota Board on Judicial Standards publicly reprimanded a judge for posts and reactions endorsing or opposing candidates for public office on Facebook, where his account settings were set to private, he had approximately 70 Facebook friends, and he did not use his judicial title. [In the Matter of Quinn, Public reprimand](#) (Minnesota Board on Judicial Standards March 9, 2021). The Board stated that "maintaining a private Facebook page, especially when a judge has a large group of Facebook friends, does not provide a shield for a judge who violates the Code."

The judge was tagged on Facebook in numerous photographs showing him wearing a MAGA hat and piloting a boat displaying at least two Trump flags in the Trump Boat Parade on the Mississippi River in September 2020. He also included a screenshot of photographs of himself in the parade published in the *St. Cloud Times*, with the comment, "Here we are!"

The judge also "liked" Donald J. Trump's Facebook page. On that page, he commented: "Trump will steam roll this election. Those who's [sic] eyes are closed move their mouths more to make up for their insecurities. Stay strong; pray against evil." In addition, he also "liked" posts by Trump that stated, for example:

- "I was thrilled to be back in WISCONSIN tonight with thousands of loyal, hardworking American Patriots! 47 days from now, we are going to win Wisconsin, and we are going to win 4 more years in the White House! #MAGA."
- "Joe Biden is a disgrace. A 47 year career waste. Wake up people do we need someone like this as president."

The judge commented, "Dips**t Biden. Oops," in response to an image posted on Facebook that stated, "I've decided to cut back on political posts for a bit . . . instead I will share some word scrambles. MURPT0022." He "liked" a post regarding a newspaper's endorsement of the Republican candidate for U.S. Senate and commented on another post regarding the endorsement.

The Board noted that, even though the judge "maintained a private Facebook page, not all of his activity remained private:" his "like" of the Trump page was public, and his approximately 70 Facebook friends, some of whom were lawyers and judges, were able to view and publicize his social media activity. After being notified that the Board was investigating, the judge immediately deactivated his Facebook account and admitted that his conduct had been "imprudent, indecorous and contrary to the spirit of the Canons."

Public concept

Even though only her friends and family could view her page, a West Virginia judge was publicly admonished for comments she made on Facebook about the arrest of a pharmacist for destroying dosages of the COVID-19 vaccine and about the siege at the U.S. Capitol. [*In the Matter of Jackson, Public Admonishment*](#) (West Virginia Judicial Investigation Commission February 24, 2021).

In January 2021, the judge made negative comments on Facebook about a Wisconsin pharmacist who had allegedly destroyed multiple doses of the COVID-19 vaccine, also posting a news story about his arrest. On the same day, Disciplinary Counsel told the judge that her comments violated the prohibition on public comments about pending cases, and the judge agreed to take the comments down. Reminding the judge that she had previously been asked to take other posts down, Disciplinary Counsel explained that an ethics complaint would be opened if she did it again.

Despite that warning, the judge repeatedly posted stories and/or comments about the siege at the U.S. Capitol. For example, some of the comments were about a former member of the West Virginia House of Delegates, Derrick Evans, who allegedly participated in the siege and had been charged with federal crimes.

Facebook friend: As the video ends, Evans shouts “Our house! And then, “I don’t know where we’re going, but I’m following the crowd.” What is he? 12?

Respondent: [Name] that is very disrespectful . . . to 12-year olds!

* * *

Facebook friend: It sad, but I’m glad he was [arrested]. No one is above the law!

Respondent: [Name] it’s not sad!

Facebook friend: It’s sad that delegates or any elected official would do this is what I mean. I’m not sad he was arrested. I’m sad and mad about what they all did!

Respondent: YES

Each of the judge’s posts elicited numerous responses.

In her response to Disciplinary Counsel’s complaint, the judge reported that she had deactivated her account and stated:

I am embarrassed by my actions and sincerely apologize. I must point out in my defense that my Facebook page was not accessible to the public but was viewable only by my friends and family. I was expressing my feeling to friends, not the general public. My second point is that nothing on my page identified me as a judge, although of course, my friends know that. . . .

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The Commission stated:

The concept of a “public comment” applies to Facebook whether a judicial officer opens their personal page only to family and friends or to the public at large. For purposes of the term “public,” the [Commission] believes the portion of the definition contained in Black’s Law Dictionary which states that the “word does not mean all the people nor most of the people nor very many of the people of a place but so many of them as contradistinguishes them from a few” is appropriate

The Commission cautioned:

At all times when engaged on social media judges should remember the immortal words of industrialist Henry Ford that “[u]nder pressure, the mouth speaks when the brain is disengaged and sometimes unwittingly, the gearshift is in reverse when it should be in neutral.” Judges can never go wrong when they limit their Facebook posts to comments about family, pets, sports or the weather. In all other respects, a judge must maintain his/her impartiality particularly when commenting about issues that may come before the court.

No exemption

Based on the findings and recommendation of the Judicial Conduct Commission, the Utah Supreme Court suspended a judge for six months without pay for, in addition to other misconduct, a Facebook post about then-presidential candidate Donald Trump. *In re Kwan*, 443 P.3d 1228 (Utah 2019). The night of the first campaign debate between Trump and Hillary Clinton, the judge had written, rhetorically addressing Trump: “Is the fact that the IRS has audited you almost every year when your peers hardly ever or never have been, something to be proud of? What does that say . . . about your business practices?” The judge conceded that post was an inappropriate comment on a political candidate and could be sanctioned.

The Court explained that its primary concern was that the judge “implicitly used the esteem associated with his judicial office as a platform from which to criticize a candidate for elected office.”

Fulfillment of judicial duties does not come without personal sacrifice of some opportunities and privileges available to the public at large. And as a person the public entrusts to decide issues with utmost fairness, independence, and impartiality, a judge must at times set aside the power of his or her voice—which becomes inextricably tied to his or her position—as a tool to publicly influence the results of a local, regional, or national election.

The judge’s Facebook account was private, but the judge did not argue that this exempted his comments from discipline. The Court noted that the judge had not disclosed how many Facebook friends could view his account, did not suggest that “those individuals would not share his comments or postings more widely,” and acknowledged that “his posts [might] be reposted by his friends.”

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The Commission had also found that other posts by the judge violated the code. For example, after the presidential election, the judge had posted: “Think I’ll go to the shelter to adopt a cat before the President-Elect grabs them all” Shortly after Trump’s inauguration, the judge had written, “Welcome to the beginning of the fascist takeover.” However, the judge argued that these other comments “were largely ‘social commentary or humor;” reflected his “views on issues such as racism, civil rights, the plight of refugees, and constitutional limits on the executive branch;” and were protected by the First Amendment, unlike his comment during the campaign. The Court did not address the “interesting and important constitutional issues” the judge raised because it has “held that a judge may not raise a constitutional challenge for the first time in a judicial disciplinary proceeding” – a rule probably unique to Utah.

Even though a judge’s profile was set on private, her support on Facebook for candidates in partisan elections for county commissioner and county attorney was treated as a public and, therefore, prohibited political endorsement. *Inquiry Concerning Harada*, 461 P.3d 869 (Montana 2020) (30-day suspension without pay for this and other misconduct). The judge admitted the violation but noted that she had chosen privacy settings for her page that meant her personal views could not be read by Facebook users generally, as suggested by the ABA Standing Committee on Ethics and Professional Responsibility in *American Bar Association Opinion 462* (2013). The judge acknowledged that the state Judicial Standards Commission’s interpretation of what was a public endorsement was “more stringent” than the ABA’s guidance. The ABA opinion states:

Judges may privately express their views on judicial or other candidates for political office, but must take appropriate steps to ensure that their views do not become public. This may require managing privacy settings on [social media] sites by restricting the circle of those having access to the judge’s [social media] page, limiting the ability of some connections to see others, limiting who can see the contact list, or blocking a connection altogether.

“Wholly outside the judge’s control”

Contradicting that statement, elsewhere in the opinion, the ABA advice is stricter and emphasizes:

Judges must assume that comments posted to [a social media] site will not remain within the circle of the judge’s connections. Comments, images, or profile information, some of which might prove embarrassing if publicly revealed, may be electronically transmitted without the judge’s knowledge or permission to persons unknown to the judge or to other unintended recipients. Such dissemination has the potential to compromise or appear to compromise the independence, integrity, and impartiality of the judge, as well as to undermine public confidence in the judiciary.

Other advisory opinions also reinforce the lesson of the discipline decisions that judges should act as if all of their social media activity is public. For example, the Massachusetts committee noted that a judge’s social media

In some cases, the judges were disciplined even though they had chosen the Facebook privacy setting that allowed only their Facebook friends to directly view their profiles, excluding other users.

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posts “may be transmitted without the judge’s permission or knowledge to unintended recipients and may be taken out of context, relayed incorrectly, or saved indefinitely,” concluding that a judge must consider all “Facebook communications to be potentially public and, once made, wholly outside of the judge’s control.” [*Massachusetts Advisory Opinion 2016-1*](#). Accord [*California Expedited Opinion 2021-42*](#) (“Judges must assume that all statements made on social media platforms will reach the widest possible audience regardless of whatever viewing restrictions or privacy settings a judge applies”); [*New York Advisory Opinion 2008-176*](#) (“A judge should . . . recognize the public nature of anything he/she places on a social network page and tailor any postings accordingly”); [*Utah Informal Advisory Opinion 2012-1*](#) (“even if a Facebook page has restricted access, the page should be considered as potentially available to the public,” and the rules apply that govern other public conduct by judges).

That said, although it might not make a difference in applying the code, a judge should attempt to reduce the chances of unintended distribution by using privacy settings to protect their online presence insofar as possible. *State v. Thomas*, 376 P.3d 184 (New Mexico 2016). That means that a judge should “not participate in an online social networking site without being familiar with that site’s privacy settings and how to modify them.” [*California Judges’ Association Advisory Opinion 66*](#) (2010). Accord [*Ohio Advisory Opinion 2010-7*](#) (a judge should be familiar with a social networking site’s policies and privacy controls).

Reporting

A judge asked the Massachusetts judicial ethics committee whether they were required to report to the appropriate disciplinary authority that another judge’s Facebook page had political posts, memes, links, and exchanges. [*Massachusetts Advisory Opinion 2021-1*](#). The inquiring judge had noticed the apparently public personal Facebook profile of a person they recognized from the name and photograph as a sitting Massachusetts judge, although the profile did not refer to the posting judge’s judicial status. The posts included:

- “Expressions of support for one of the major party candidates for president;
- References and links to negative coverage of the opposing major party’s candidate;
- Statements that the opposing party’s candidate and his family are ‘corrupt;’
- Posts ridiculing and demeaning two female politicians of the opposing party;
- Derogatory comments about immigrant parents who were separated from their children at the southern border;
- Complaints about media bias in election reporting;” and
- Claims the 2020 election had been a “mess.”

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The committee concluded that the inquiring judge was required to report the posting judge. First, the committee stated, the inquiring judge had actual knowledge of the other judge's conduct, which triggers the reporting requirement. Second, the committee explained, "the content on the judge's Facebook profile violates several provisions of the Code that require judges to avoid conduct in their personal and professional lives that creates an appearance of bias." Third, the opinion found that "the violations raise a substantial question regarding the judge's fitness as a judge because, by publicly posting and/or tolerating the presence of the materials in question, the judge failed to act in a manner that upholds the public's confidence in the impartiality of the judiciary and maintains the dignity of judicial office." The opinion explained:

The Facebook posts at issue here expressed favor for a specific political candidate and for specific political viewpoints; denigrated and demeaned opposing political figures and viewpoints; contained content that gave the appearance of bias based on gender, ethnicity, and immigration status; and promoted a claim that the election had been manipulated for the political benefit of the opposing party. The judge's conduct in posting such materials, regardless of the particular political viewpoints expressed, calls into question the judge's impartiality and "undermines public confidence in the judiciary," . . . and therefore raises a substantial question regarding the judge's fitness as a judge.

Statements about the administration of justice

Although the caselaw and advisory opinions establish that judges may not make statements on political or controversial social issues on Facebook, judges may use social media to make statements relating to the law, the legal system, or the administration of justice, as part of the code's general permission to engage in activities concerning those issues. [*California Expedited Opinion 2021-42*](#). However, as the California advisory committee acknowledged, the code "does not precisely define" the phrase, and "an overly broad interpretation could sweep nearly any sociopolitical topic within its ambit. . . . The distinction between permissible statements concerning the law, the legal system, or the administration of justice and prohibited political statements may not be a bright line." Law-related issues, of course, can be as controversial as other topics.

The committee noted that, on virtual as well as traditional forums:

[C]onduct is more likely to fall within the scope of the law, the legal system, or the administration of justice when it pertains to "purely administrative issues, such as court budgets, facilities, and docketing impacts" rather than "the more substantive end of the policy spectrum." . . . Thus, statements regarding court impacts are more likely to fall within the safe harbor of the law, the legal system, or the administration of justice than general policy-related statements not directly linked to the courts.

The committee urged judges to exercise caution with law-related activity on social media platforms as well as in real life formats.

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In addition to evaluating their own statements before posting, the committee stated, judges “must monitor reactions to their statements and the social media forums they use.” It explained:

For example, if a judge’s social media posts trigger online posts or comments that devolve into discussions undermining the judge’s impartiality or demeaning the judicial office, the judge must use his or her best efforts to delete those posts. . . . While it may not be feasible to track every social media page they have commented on or change the conduct of online contacts, a judge must make reasonable efforts to monitor social media pages or threads associated with the judge and take action to remedy any statements that compromise the integrity of the judiciary. . . .

The committee also warned that, “just as in physical public forums, if the social media site itself suggests bias or impropriety, a judge may need to leave that site entirely.”

Private dispositions of judicial conduct complaints

Most judicial conduct commissions can resolve a grievance against a judge with a private, informal sanction or disposition when, following an investigation, there is some evidence of misconduct, but the misconduct is minor and does not warrant formal proceedings or a public sanction. These confidential remedies are generally used if:

- The misconduct is isolated and not likely to be repeated,
- The misconduct reflects a lack of experience or knowledge rather than an intentional violation,
- The misconduct did not involve dishonesty, deceit, fraud, or misrepresentation,
- The misconduct did not substantially prejudice a litigant or other person,
- The judge has acknowledged the misconduct, shown remorse, and agreed to comply with the code of judicial conduct in the future,
- The judge has not previously been disciplined for the same type of misconduct, and
- The judge has not recently been disciplined for other misconduct.

Some commission rules expressly establish criteria for private resolutions. For example, the rule for the Nevada Commission on Judicial Discipline provides that a complaint cannot be dismissed with a letter of caution if:

Most judicial
conduct
commissions
can resolve a
grievance against
a judge with a
private, informal
sanction or
disposition

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(a) The misconduct of the judge involves the misappropriation of money, dishonesty, deceit, fraud, misrepresentation or a crime that adversely reflects on the honesty, trustworthiness or fitness of the judge;

(b) The misconduct of the judge resulted or will likely result in substantial prejudice to a litigant or other person;

(c) The misconduct of the judge is part of a pattern of similar misconduct;
or

(d) The misconduct of the judge is of the same nature as misconduct for which the judge has been publicly disciplined or which was the subject of a deferred discipline agreement entered into by the judge within the immediately preceding 5 years.

In a private disposition, a commission:

- Reminds the judge of their ethical responsibilities,
- Gives authoritative advice,
- Expresses disapproval of the behavior,
- Warns that further complaints may lead to more serious consequences,
- Suggests that other actions would have been more appropriate in the situation,
- Cautions the judge not to engage in specific behavior in the future, and/or
- Recommends or requires that the judge obtain counseling or education.

Depending on the state, the available confidential dispositions may include:

- Dismissals with caution, admonition, explanation, concern, or warning,
- Letters of admonition, counsel, caution, advice, or correction,
- Private censures, reprimands, admonitions, or warnings, and
- Informal adjustments, informal conferences, remedial actions, or deferred discipline agreements.

Private resolutions may require the judge to take corrective action. For example, the Arkansas rule provides:

If [the Judicial Discipline & Disability Commission] finds that there has been conduct that is cause for discipline but for which an admonishment or informal adjustment is appropriate, it may so inform or admonish the judge, direct professional treatment, counseling, or assistance for the judge, or impose conditions on the judge's future conduct . . .

Some states have more than one category of private disposition. For example, the Arizona Commission on Judicial Conduct may under its rule

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“dismiss a complaint with confidential comments, including, but not limited to, an advisory letter reminding a judge of ethical obligations or recommending changes in behavior or procedures, or a warning letter alerting a judge to the potential consequences of conduct that creates an appearance of impropriety.” The Idaho Judicial Council can issue:

- An education order “when an accused judge shows lack of knowledge in a particular area of the law, or lacks the ability to maintain proper judicial temperament, or for any other reason determined by the Council . . .,” which can be combined with other remedies.
- A private admonition “for minor infractions committed by less experienced judges where the Council has determined that the public can be adequately protected without public disclosure of the misconduct.”
- A private warning “for less serious infractions, especially when the accused judge has enough experience to have known the conduct is prohibited, and where the Council has determined that the public can be adequately protected without public disclosure of the misconduct.”
- A private reprimand “for infractions where the Council has determined that the public can be adequately protected without public disclosure of the misconduct, but a strong message needs to be sent to the accused judge that the conduct is prohibited.”

Deferred discipline agreements

One confidential option available in some states allows the commission to suspend proceedings if the judge agrees to participate in treatment, counseling, education, or other corrective action. The commission then monitors the judge’s compliance with the agreement, resuming the discipline process if the judge fails to complete the program. For example, the rule for the Tennessee Judicial Conduct Board provides:

“Deferred discipline agreement” means a response to misconduct that is minor and can be addressed through treatment, training or a rehabilitation program under which the judge agrees with the recommendation of the investigative panel of the board to undergo evaluation or treatment, or both, participate in educational programs or take any other corrective action.

Other disciplinary sanction arising from the same conduct is suspended during the term of a deferred discipline agreement, and no further sanction will be imposed upon the successful completion of the deferred disciplinary agreement by the judge. Failure to comply with the disciplinary agreement authorizes the disciplinary counsel to proceed with other appropriate action.

In its [annual report for 2020](#), the Minnesota Board on Judicial Standards described a deferred disposition agreement it entered that year.

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A Board investigation showed that a judge yelled and swore at the judge's law clerk for minor errors on at least three separate occasions. The Board found violations of Rules 1.1 (Compliance with the Law), 1.2 (Promoting Confidence in the Judiciary), 2.3(B) (Bias or Harassment), and 2.8(B) (Demeanor). The Board and the judge entered into a deferred disposition agreement. The judge agreed to consult with a judicial mentor, continue therapy, and refrain from the use of profanity directed at persons in the courtroom and chambers. If the Board does not learn of any further violations within two years, the judge will receive a private admonition.

In its [annual report](#), the New Mexico Judicial Standards Commission summarized inquiries involving three judges that were resolved through informal remedial measures to which the judges consented in fiscal year 2020. For example:

A judge failed to recuse from a case in which the judge's impartiality might reasonably be questioned and created an appearance of impropriety when the judge issued an arrest warrant with a no bond hold for a defendant charged with larceny, accepted a guilty plea and sentenced the defendant to 90 days in jail when the judge was the victim in the larceny case. The judge entered into a Consent Decree with the Commission and agreed to participate in an informal mentorship, which the judge successfully completed.

Procedure

Some commissions allow judges to object to a private sanction. For example, before issuing a private admonition, the Minnesota Board on Judicial Standards notifies a judge that they have 14 days to make "a written demand for a private hearing" or to comment or criticize the proposed admonition in writing. If the judge does not ask for a hearing, the Board "may consider the comments and criticisms, if any, but may in its discretion issue the private admonition as originally prepared." In Alaska, "within 15 days after service of an informal and private admonishment . . . , the judge may request reconsideration, by filing a written motion with the commission [on judicial conduct]. Upon receipt of the motion, the commission will dismiss the complaint, deny the motion for reconsideration, make further investigation, or institute a formal charge" At the judge's request, a private admonishment by the Mississippi Commission on Judicial Performance is subject to a confidential review in the state supreme court.

Some states require the judge's consent to a private disposition. For example, the Massachusetts rule provides: "If [the Commission on Judicial Conduct] finds that there has been misconduct for which a private reprimand constitutes adequate discipline, and if the judge consents, it shall issue the reprimand." In Pennsylvania, when the Judicial Conduct Board determines that, "even if the alleged conduct occurred, it was not conduct which requires that formal charges be filed," the Board may issue a letter of counsel when it dismisses the complaint if the judge "(a) consents in writing; (b) stipulates that the letter of counsel may be used during proceedings

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involving new complaints against the Judicial Officer; and (c) agrees to and satisfies any conditions required by the Board”

Redactions and summaries

If a commission disposes of a complaint with an informal, confidential disposition such as a dismissal with caution or a private sanction, the complainant is informed of that action in general, but is not necessarily told the specific action that was taken. For example, in North Carolina, the rule states: “In cases in which a complaint is dismissed with a private letter of caution . . . , the complainant shall be notified that the matter has concluded and that the [Judicial Standards] Commission has taken appropriate action within its authority to address the complainant’s concerns of judicial misconduct.” The Georgia rule provides: “When final disposition is by private admonition or deferred discipline agreement, the complainant should be notified that action was taken on the matter without specifying the nature of the disposition.”

Although informal dispositions and private sanctions are confidential, several commissions publish redacted versions on their websites without identifying the judge. For example, [in a recent order](#), the Arizona Commission on Judicial Conduct explained:

The complainant alleged a superior court judge made improper comments in a family law matter.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The Commission approved sending the judge an advisory letter reminding him that hyperbolic comments can present an appearance of impropriety and not inspire confidence in the judiciary. The complaint is therefore dismissed

An [order of private reprimand](#) published on the Kentucky Judicial Conduct Commission website reads:

The Commission issues this order of private reprimand to a judge for violation of the Code of Judicial Conduct, SCR 4.300, Rules 2.8 and 2.10.

In the wake of high-profile events involving the roles of law enforcement and the judiciary, many members of the legal community felt the need to publicly comment on the matters. A lawyer authored an op-ed in a newspaper criticizing the local judiciary, certain judicial process, and a local judge. The following week, another local judge authored a responsive op-ed in the same newspaper. In his opinion piece, the judge criticized the lawyer’s perspective, referring to the lawyer’s commentary as misleading, false, based on ignorance, bogus, falsehoods, misstatements, nonsense, and “a lie.” The judge also defended the judicial process both in general and as involved in the events in question, and the judge who was

Although informal dispositions and private sanctions are confidential, several commissions publish redacted versions on their websites without identifying the judge.

criticized in the lawyer's op-ed. In doing so, the judge opined on the events at issue, including how the certain judicial process occurred in regard to those events and the other judge's actions related to that judicial process.

Rule 2.8 requires judges to be patient, dignified and courteous to lawyers and others with whom the judge deals in an official capacity. The judge violated this rule in some of his comments in his opinion piece that were directed toward the attorney who wrote the previous op-ed, even if his comments were true. Rule 2.10 prohibits members of the judiciary from making public statements which might reasonably be expected to impair the fairness of a matter impending in any court. The Commission acknowledges the judge's expressed intent of publishing the op-ed to educate the public on the judicial process in issue, which is permitted by Rule 2.10(D). However, all judges must be sensitive to the need to remain impartial and refrain from making public commentary that might reasonably be expected to affect the outcome or impair the fairness of an impending court matter, which violates Rule 2.10(A). The judge violated this rule when he commented on the particular event and the judge involved with that event.

The Texas State Commission on Judicial Conduct website describes conduct that resulted in the [private admonition of a county court at law judge](#):

The judge engaged in social media activities which cast reasonable doubt on his capacity to act impartially as a judge and cast public discredit upon the judiciary, when he made several Twitter comments critical of the district attorney's office and local law enforcement agencies.

The judge was also ordered to obtain additional education. Similarly, the Commission describes a [private warning issued to a justice of the peace](#):

The judge failed to comply with the law, and cast public discredit upon the judiciary, when he appeared in public while intoxicated to a degree to which he might endanger himself or the public.

Many commissions briefly summarize private dispositions in their annual reports "to educate judges and the public, and to assist judges in avoiding inappropriate conduct," as the California Commission on Judicial Performance annual report explains, although "to maintain confidentiality," details of the cases are "omitted or obscured." Thus, the [California Commission's most recent annual report](#) summarized the nine advisory letters and 10 private admonishments (which are for more serious misconduct), issued in 2020. For example, the Commission privately admonished a judge who "made false statements to litigants that tended to harm public confidence in the integrity and impartiality of the judiciary" and sent an advisory letter to an appellate justice who "delayed decision in an appeal by finalizing an opinion in the case several years after the case was fully briefed and assigned to the justice."

Similarly, the [annual report of the New York State Commission on Judicial Conduct](#) described the 34 letters of dismissal and caution it issued in 2020. For example, the Commission cautioned one judge for "allowing his name to be used in a flyer soliciting funds for a charity" and a second judge for

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“neglecting his administrative and adjudicative duties which delayed the remittal of \$6,000 in court funds to the Village and the Justice Court Fund as required, and for making incomplete notifications to the Department of Motor Vehicles to suspend licenses as the Vehicle and Traffic Law requires.”

Subsequent use

Most commissions can use a private disposition in subsequent proceedings. For example, the rule for the Utah Judicial Conduct Commission provides that “any letter of admonition, comment, or caution, that the commission issued against the judge” shall be included in the record sent to the state supreme court with a recommendation for a public sanction in a subsequent matter.

Several recent cases have relied on prior private sanctions in determining the appropriate sanction. For example, the Mississippi Supreme Court cited a judge’s “history with the Commission [on Judicial Performance] over her short tenure of three years on the bench” – a private admonition – when it suspended her for 30 days without pay, publicly reprimanded her, and fined her \$1,000 for initiating ex parte communications to investigate a civil matter, failing to comply with statutory limitations on money judgments in justice court, and retaliating against a clerk who had filed a complaint about her with the Commission. *Commission on Judicial Performance v. Bozeman*, 302 So.3d 1217 (Mississippi 2020) (granting a joint motion for approval of a recommendation).

In a 2020 public admonishment of a judge for discourteous and undignified comments in several hearings in a family law case, the California Commission stated that his “misconduct was significantly aggravated” by the 2014 advisory letter he had received for inappropriate demeanor in two family law matters. In the case underlying the latest, public discipline, the judge had made comments that demonstrated embroilment, bias, and pre-judgment; accused the parents of damaging their child; made discourteous remarks to and about the child’s grandmother; initiated a discussion about religion with a witness; made comments about the father’s bankruptcy petition; and disparaged the father’s attorney. *In the Matter Concerning Gary, Decision and order* (California Commission on Judicial Performance May 14, 2020) (based on an agreement).

The New York Commission explained when it publicly admonished a judge that its prior confidential letter of dismissal and caution should have caused the judge “to be particularly attentive” to her obligation to comply with the code of judicial conduct. In 2005, the Commission had privately cautioned the judge for personally preparing and approving a radio advertisement for her judicial campaign that misrepresented facts about her opponent. In 2021, the Commission publicly admonished the same judge for editing political opinion essays and letters to the editor by a candidate for a non-judicial elected town office and offering advice to the candidate about issues raised in his proposed submissions. *In the Matter of Rana, Determination* (New York State Commission on Judicial Conduct March 19, 2021) (accepting an agreed statement of facts and recommendation).

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Failure to comply with conditions imposed in private resolutions can lead to public charges as illustrated by a recent case from Maryland. The Maryland rule provides for “a conditional diversion agreement if, after an investigation by Investigative Counsel: (1) the Commission [on Judicial Disabilities] concludes (A) that any alleged sanctionable conduct was not so serious, offensive, or repeated as to justify the filing of charges or, if charges already had been filed, the imposition of any immediate discipline, and (B) that the appropriate disposition is for the judge to undergo specific treatment, participate in one or more specified educational or therapeutic programs, issue an apology to the complainant, or take other specific corrective or remedial action.” The judge must agree that the “agreement may be revoked for noncompliance” and “admitted in any subsequent disciplinary proceeding against the judge to the extent that it is relevant to the allegations at issue or the sanction that may be imposed.” The Commission may also privately reprimand a judge.

In November 2019, based on a judge’s conviction following a trial on charges of driving a vehicle while impaired by alcohol and related offenses, the Commission and the judge entered into a conditional diversion agreement that required her to verify that she had successfully completed the terms of the probation imposed in her traffic case and to verify that she was complying with her doctors’ recommendations for the treatment and management of her diabetes. Also in November 2019, the Commission privately reprimanded the judge for failing to file income tax returns or pay income taxes. The private reprimand, which the judge did not oppose, was conditioned on the judge providing proof that she had filed income tax returns for 2013 through 2018 and that she had paid all federal and state tax obligations.

The judge failed to meet any of the deadlines imposed in the diversion agreement or reprimand. In April 2020, the Commission revoked the conditional diversion agreement.

In March 2021, granting the [recommendation of the Commission based on the judge’s admissions](#), the Maryland Court of Appeals removed the judge from office for (1) the conduct underlying the diversion agreement, that is, her conviction on charges of driving while impaired by alcohol, speeding, negligent driving, reckless driving, and throwing, dumping, discharging, or depositing refuse on highway; (2) injecting her position as a judge when she was stopped by a sheriff’s officer, mentioning the officer’s superior to try to influence the officer not to charge her or to consult with his superior before charging her, and failing to be truthful and cooperative during the traffic stop; and (3) failing to comply with the terms of the conditional diversion agreement, failing to comply with the conditions of the reprimand, and failing to cooperate with the investigative counsel and the Commission. *In the Matter of Nickerson*, 248 A.3d 298 (Maryland 2021).

Noting that the traffic violations alone did not justify removal, the Commission emphasized the “patterns of lack of transparency, accountability, and cooperation.” The Commission explained:

Most
commissions can
use a private
disposition in
subsequent
proceedings.

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Orphans' Court judges oversee complex transactions with many required deadlines. Judge Nickerson did not meet deadlines and did not cooperate with the Commission. The judge did not even extend the courtesy of advising the Commission she could not meet the deadlines or request extensions. She had no regard for the Commission and her obligations to it, the judiciary and the public. She did not and does not set a good example for the litigants who appear before her. . . .

Recent cases

Zoom problems

Based on a stipulation and agreement, the Washington State Commission on Judicial Conduct publicly reprimanded a judge for, in addition to other misconduct, declining to determine who was attempting to appear in court via Zoom videoconferencing at the end of a calendar. [*In re Burchett, Stipulation, agreement, and order of reprimand*](#) (Washington State Commission on Judicial Conduct April 23, 2021). The judge also agreed to work with a mentor judge and to participate in at least four hours of ethics training.

At the conclusion of the afternoon calendar one day in February 2021, just after 3:15 p.m., the court clerk told the judge that there was one more person in the Zoom "waiting room" and asked if they should be "let in" so that the judge could speak with them. Apparently tired, the judge said that she "just can't." The clerk explained that they needed to see who it was and set the case over. The person in the Zoom waiting room had renamed themselves "Help I couldn't log in at 2 p.m.," and the clerk surmised that it could be the one person from the 2:00 p.m. docket who had failed to appear and for whom a warrant had been issued. The judge said, "You almost hate to not talk to them if they can figure that out," referring to the way the person had renamed themselves, but the judge again declined the clerk's request to bring the person in from the waiting room and said that they "would have to do the bench warrant docket."

The Commission found that the judge had displayed a "disregard for an individual attempting to navigate technology and appear in court" that violated the code of judicial conduct rules requiring a judge to "accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law;" to "comply with the law;" and to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and . . . avoid impropriety and the appearance of impropriety."

The reprimand was also for the judge's failure to advise defendants at probation review hearings of their rights; conducting an ex parte investigation into whether a defendant had performed community service hours and stating on the record that she intended to recommend significant jail time and further charges; asking two defendants when they were

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arraigned in traffic offense cases whether they had a valid driver's license; regularly recommending specific businesses to defendants for re-licensing and insurance purposes related to their charges; and regularly presiding over cases in which a notice of disqualification had been filed against her.

Juror intimidation

Based on a stipulation, the Nevada Commission on Judicial Discipline publicly reprimanded a judge for, during voir dire in a criminal case, throwing a book against the wall and cursing, berating, yelling at, and threatening a prospective juror, which had led to reversal of the jury's verdict on appeal. [*In the Matter of Scotti, Stipulation and order of consent to public reprimand*](#) (Nevada Commission on Judicial Discipline March 15, 2021).

From March 23 through May 1, 2017, the judge presided over a jury trial that resulted in the conviction of the defendant on 29 counts of charges such as lewdness with a child under 14; child abuse, neglect, or endangerment; indecent exposure; and kidnapping and sexual assault of a minor under 14. The defendant appealed, and the Nevada Supreme Court reversed and remanded for a new trial because, during voir dire, the judge, according to the Court, "threw a book against the wall, cursed, and berated, yelled at, and threatened a prospective juror for expressing her belief that she could not be impartial." *Azucena v. State*, 448 P.3d 534 (Nevada 2019). The Commission decision quotes the Court's finding that the judge's "statements and conduct with the prospective juror may have discouraged other prospective jurors from responding honestly about their own biases out of fear of repercussions," adding that, "the judge created an atmosphere of intimidation and did nothing to alleviate the impact of his behavior." The Commission quoted the Court's conclusion that "such behavior and statements constitute judicial misconduct and may have discouraged other prospective jurors from answering candidly about their own biases" and that an impartial jury could not have been "selected under these circumstances where the judge did nothing to alleviate the intimidating atmosphere that he created."

In the discipline proceeding, the judge noted that, "in his perception, the conduct in question amounted in the tossing of a small pamphlet (i.e., a 'pocket' U.S. Constitution) rather than throwing a book against a wall, and that his demeanor toward the prospective juror was not threatening." Nevertheless, the judge stipulated that the Commission could establish a violation of the code by clear and convincing evidence and that it was an aggravating factor that his words and actions led to reversal of the jury verdict.

No excuses

In two recent cases, the California Commission on Judicial Performance rejected several arguments the respondent judges raised to defend their discourteous conduct.

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In one case, the judge had interrupted and spoken sharply, irritably, sarcastically, and impatiently to two defense attorneys who had appeared for an arraignment by phone the day after the governor had issued the COVID-19 stay-at-home order. The attorneys had asked for and received the judge's permission to appear by phone because they were concerned about having been exposed to the virus and the possibility of spreading it at the courthouse. They had tried but failed to get another attorney to appear for them at short notice.

The attorneys argued for the defendants' release on their own recognition based on health concerns that made them vulnerable to the virus if in custody. In response to one attorney's reliance on a letter from his client's doctor, the judge asked, "How am I going to see that letter, if you're not in my courtroom?" and made other similar comments. Imposing bail of \$150,000, he said, "if you have those letters, you can bring those in at" the preliminary hearing. To the second defendant's attorney as well, the judge stated: "If you wished to present this evidence, you should have been here or had someone represent you," before imposing bail of \$100,000.

In the judge's response to the Commission, he acknowledged that he "should not have demonstrated irritation or impatience with defense counsel" and that he "spoke too sharply" to them. However, he asked the Commission to consider "the highly unusual circumstances present at that time:" the court had not yet implemented remote operations; it was not clear how long the stay-at-home order would be in effect; and there was no clear guidance about how to handle a request to appear telephonically at a criminal proceeding.

The Commission acknowledged that the circumstances were challenging but noted that the defense attorneys were also affected and concluded that "the initial lack of clarity . . . did not excuse or explain the judge's mistreatment of the attorneys." The Commission emphasized that there was "no evidence of provocative conduct by counsel," noting that the judge had given the attorneys permission to appear by telephone and that they appeared polite and respectful. At his appearance before the Commission, the judge acknowledged that the transcript "looks bad," but he did not display contrition or admit that he had committed misconduct, arguing instead that he had not treated the "attorneys any differently because they were not in the courtroom."

In addition, in a case in 2018, the judge had made a gratuitous, undignified, and improper comment after a jury had acquitted defendant Eugene Germany but convicted his co-defendants, including Dalisha Jordan. After the jurors left the courtroom, the judge said to Germany:

Let me tell you, you've been given a gift from God because there's no question in my mind that you're guilty of this crime. . . . I'll tell you, chivalry is not dead. If you'd taken the deal, Ms. Jordan would have had that six year deal. She's going to get a lot more time than that. So, you know, take that into consideration. All right. But you've been given a gift. What you do with it is your choice. Fair enough?

Germany responded, "Yeah."

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At his appearance before the Commission, the judge asserted that what he said “was right” and “what [he] should have done” and that he had a “duty” and “responsibility” as a judge to advise Germany that he had been “given a gift from God” so that he “would take advantage of opportunities he has been given.” However, the Commission explained that “a judge does not have a duty to advise a criminal defendant that the defendant has been given the gift of an acquittal. While a judge may encourage a defendant to make better choices and take advantage of opportunities in the future, the judge must not do so at the expense of the jury and its verdict.”

The Commission publicly admonished the judge for his comments in these two cases. *In the Matter Concerning Connolly, Decision and order* (California Commission on Judicial Performance April 2, 2021).

* * *

The California Commission publicly admonished a retired judge for (1) a pattern of poor demeanor in 10 dependency hearings over which she presided in 2019 and 2020; and (2) on consecutive days, yelling at court staff, displaying frustration about an internet outage, and discourteously raising her voice to another judge. *Public Admonishment of Roberts* (California Commission on Judicial Performance February 18, 2021).

The Commission concluded that the judge’s “misconduct involved harsh and degrading treatment of multiple vulnerable and struggling parents,” finding that “the number and nature of these incidents indicate a pattern of misconduct.” For example, in four dependency hearings in the same case, the judge, among other comments and conduct, impatiently reprimanded the mother for something she did not do and accused the father of “talking out of both sides of his mouth,” failing to get reimbursed for transportation expenses “because he didn’t feel like doing it,” and “being uncooperative.” The judge also rolled her eyes, shook her head, argued with the parents, and declared that she could order the mother to do whatever she wanted. In addition, the judge incorrectly accused the mother of being on a very high dose of heroin every day; derisively discussed the mother’s drug treatment records; said, without evidence, that there was “extreme violence” in the parents’ home; and said that the parents had turned into “very nasty people.” The Commission also found that, during those four hearings, the judge abused her authority by substituting her own judgment for that of the mother’s doctor on the issue of prescription marijuana and methadone use; abandoned the role of a neutral arbiter and became embroiled when she argued with the parents about the mother’s marijuana use; and repeatedly and negatively commented on the mother’s prescription use of methadone.

In hearings in other cases, the judge made remarks to parents such as, “Don’t lie to me;” “appalling;” “That doesn’t help me at all. How can I remember when you came to court last?;” and “That’s baloney.” The judge called a father’s lack of alcohol treatment “pathetic;” told parents, “Both of you are doing terribly, and there isn’t a chance in the world these children are coming home if you continue doing what you’re doing;” and said to a mother, “You’re clean? And you expect me to believe that?”

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In response to the Commission's preliminary investigation, the judge blamed her frustration on the parents' behavior and explained that "she employed a 'tough love' approach that she also used while presiding in drug court, arguing that her approach was necessary to compel parents to gain awareness of the harm they were causing their children and to change their behavior." However, the Commission found that "belittling and demeaning litigants is not appropriate in any court, dependency, criminal, or otherwise. Such conduct violates the Code of Judicial Ethics."

Six of the hearings had taken place on January 8, 2020, the day after the dependency court was moved from the courthouse in Chico to the courthouse in Oroville, in a consolidation plan the judge disagreed with. Also on January 8, there was a court-wide internet outage that delayed the judge's already-full calendar.

Sometime during the morning, a court staff member entered the judge's courtroom to bring the courtroom clerk a message. The judge appeared frustrated and upset by the lack of internet service and yelled, "This is ridiculous!" Later that morning, another court employee heard the judge come out of her courtroom yelling, "This isn't working! This isn't working!" As the judge walked down the hall toward the clerk's office, her voice continued to be raised.

The judge approached a staff member's desk and yelled, "This is my worst nightmare coming to Oroville. I never wanted this to happen. Fix it immediately!" or words to that effect. The staff member offered to see if she could move the judge to another courtroom, but the judge yelled that she was not moving to another courtroom. Then the judge turned and loudly stomped down the hallway toward the courtroom and her chambers.

At some point during the lunch hour, the judge returned to the clerk's office and loudly demanded that a courtroom be opened in the Chico courthouse because a matter on her afternoon calendar had been incorrectly noticed for Chico. When the clerk told the judge that the court staff in Chico had decided not to open another courtroom, the judge appeared to be very upset and left the clerk's office.

Court staff heard the judge return to her chambers and slam both her outer and inner doors. Later, when a court supervisor repeatedly knocked on the judge's outer door, the judge refused to respond.

A few minutes later, the judge returned to the clerk's office. The judge was very upset and appeared to have been crying. She began screaming and pointing her finger at one of the supervisors, demanding that court staff open a courtroom in Chico. The supervisor attempted to calm the judge and explain the alternative plan. But the judge refused to listen, repeatedly interrupted, and continued to scream and point her finger. The judge yelled, "Fine! I'll just do this myself!" in front of a number of court employees.

Shortly thereafter, the judge emailed the presiding judge that she was sick and going home; she then left the courthouse. Court staff expressed concern for the judge and concern that the public may have overheard her outbursts.



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The following day, the judge returned to the courthouse and apologized to court staff for her behavior.

In a meeting with the assistant presiding judge, Judge Roberts asked why she could not be moved to a specific other courtroom. When the assistant presiding began to explain, Judge Roberts spoke to her with a raised voice. The assistant presiding judge told Judge Roberts that she was going to leave if Judge Roberts continued to yell and that yelling at her or at court staff was not acceptable. As the assistant presiding judge left her chambers, Judge Roberts said derisively, “Thanks for the support.”

The judge acknowledged her mistreatment of staff, her misconduct in the courthouse, and her discourtesy to the assistant presiding judge; sincerely regretted “her lack of composure;” and recognized that her behavior was not appropriate.

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