

Judicial Behavior On And Off The Bench: Ways The Wheels Fall Off

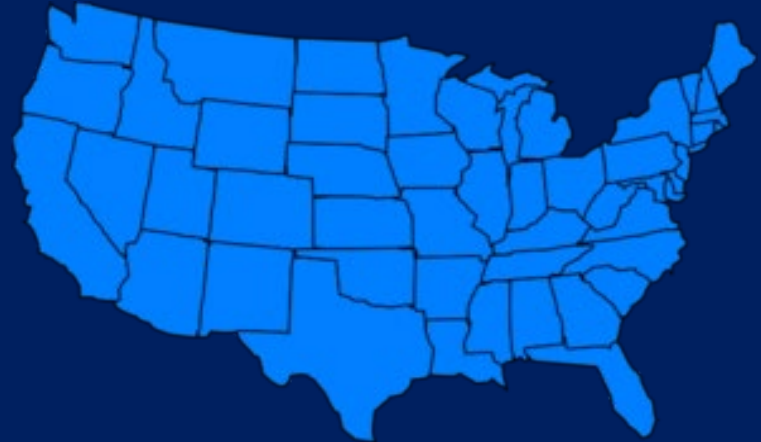
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**Administrative Law Judges
December 2, 2022**

Judicial Behavior

Judicial discipline 2021

- 13 removals from office
- 49 resignations or retirements in lieu of disciplinary action
- 28 suspensions
- fines \$1,000 to \$2,500



Judicial Behavior

Judicial discipline in 2021

- 136 public censures, reprimands, admonishments, warnings (many more nonpublic)
- mentoring, training, education, stress/anger management



Do ethics rules apply to *personal* activities?

“Judges should maintain the dignity of judicial office at **all times**, and avoid both impropriety and the appearance of impropriety in their professional **and personal lives**.” Preamble, Model Code of Judicial Conduct.

What They Said In Their Personal Lives

In the Matter of David Ferguson (West Virginia Sup. Ct., April 22, 2020) (90-day suspension).

Judge Ferguson was fishing with his father and received a citation for catching too many fish.

- threw down his court ID
- exclaimed “these charges ain’t going nowhere” and he would be contacting the officers’ supervisors
- defense – incident was “entirely personal”

What They Said In Their Personal Lives

In the Matter of David Ferguson (West Virginia Sup. Ct., April 22, 2020) (90-day suspension).

Held: “This case is about much more than catching extra fish. . . . [The judge] acted in a completely inappropriate, belligerent, and coercive manner.”



What They Said In Their Personal Lives

In Re Sandra Plaster (Texas Commission on Judicial Conduct, Aug. 12, 2020) (public warning).

Judge Plaster complained to law enforcement about commercial truck traffic associated with a farm next to property owned by her family.

- requested state troopers “target” the truck drivers
- “None of them have driver’s licenses since they are Mexican.”

What They Said In Their Personal Lives

In Re Sandra Plaster (Texas Commission on Judicial Conduct, Aug. 12, 2020) (public warning).

Held: The judge's "racially insensitive comments about people of Mexican descent . . . demonstrated an **extra-judicial** activity which cast reasonable doubt on her capacity to act impartially as a judge."

What They Said In Their Personal Lives

In Re Paul Foley (Texas Commission on Judicial Conduct, Aug. 12, 2020) (public admonition).

Judge Foley called a middle school teacher at her place of employment insisting that she speak with him about the whereabouts of a horse belonging to a family member. The teacher informed the judge that she was in class and could not talk.

- identified himself as a judge
- raised his voice

What They Said In Their Personal Lives

In Re Paul Foley (Texas Commission on Judicial Conduct, Aug. 12, 2020) (public admonition).

“I know where you are!” in a “rude and hateful manner.”

Held: The judge “exhibited **poor demeanor** during the call.”

Do ethics rules apply to *personal* activities?

- Guiding principle: Judges are prohibited from engaging in “**personal or extrajudicial** activities . . . that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” Rule 3.1
- “Can I still have friends outside of my judicial circle?”



Do ethics rules apply to *personal* activities?

United States v. Murphy, 768 F.2d 1518, 1537
(7th Cir. 1985).

“In today’s legal culture friendships among judges and lawyers are common. They are more than common; they are desirable. A judge need not cut himself off from the rest of the legal community. . . . Social interactions also make service on the bench, quite isolated as a rule, more tolerable to judges.”

Do ethics rules apply to *personal* activities?

- Use good judgment when attending holiday parties, birthday parties, lake outings, sports events, lunches, trips/vacations with attorneys and others having court business.
- Disclose the relationship.



What They Said to Litigants

In Re William Watkins, 757 S.E.2d 594 (West Virginia 2013) (four-year suspension without pay).

- told a woman seeking an order of protection against her husband to “Shut Up!” because she was “shooting off [her] fat mouth”
- “You stupid woman.”

Held: “When a judge insults, ridicules, or disparages counsel, the parties, jurors, or witnesses, it is clearly misconduct.”

What They Said to **Litigants**

In the Matter of Kenneth Gorski, 937 N.W.2d 609 (Wisc. 2020) (reprimand).

Judge Gorski “lost his temper” with a pro se litigant and said: “Stop, now, just stop with that! Jesus. Come on. That’s getting old, that’s really getting old. . . . Why can’t you just be quiet?”

Held: “We trust that the reprimand we impose today will cause [the judge] to . . . treat those who come before him with patience, dignity, and courtesy.”

What They Said to **Litigants**

E.K. v. J.R.A., 237 A.3d 509 (PA Superior Court, Aug. 7, 2020).

In a child custody case involving physical abuse committed by the father against the mother, Judge Alan Rubenstein stated to the father, “you’re a punk. You beat on women. Tough guy.”

To the mother – “Little blond honey, you’re too dumb to leave” the father and asked “how can you stay with this knucklehead?”

What They Said to **Litigants**

E.K. v. J.R.A., 237 A.3d 509 (PA Superior Court, Aug. 7, 2020).

Held: “We find these comments to be shocking, sexist, offensive, and egregiously inappropriate. *** [T]he parties, the public, and the institution of law deserve better.”



What They Said About **Politics**

In the Matter of Matthew Quinn (Minn. Board of Judicial Standards, Mar. 9, 2021) (reprimand).

Judge Quinn posted and reacted to Facebook posts endorsing and opposing candidates for President.

- Posted photographs of himself wearing a MAGA hat and piloting a boat displaying Trump flags in a “Trump Boat Parade” on the Mississippi River.



What They Said About Politics

In the Matter of Matthew Quinn (Minn. Board of Judicial Standards, Mar. 9, 2021) (reprimand).



What They Said About **Politics**

In the Matter of Matthew Quinn (Minn. Board of Judicial Standards, Mar. 9, 2021) (reprimand).

- “Liked” a Facebook post that stated “I will never support Biden ever . . . he’s been in politics for 49 years . . . no wonder why the U.S. has so many problems.”
- “Liked” a post that stated “Joe Biden is a disgrace.”
- Commented “Dipshit Biden. Oops.”

What They Said About **Politics**

In the Matter of Matthew Quinn (Minn. Board of Judicial Standards, Mar. 9, 2021) (reprimand).

Held: Judge Quinn's Facebook activities: (1) endorsed and opposed nonjudicial candidates for public office and (2) abused the prestige of judicial office to advance the personal or economic interests of others, i.e., participation in the Trump Boat Parade was a "flagrant example."

What They Said About **Politics**

In the Matter of Robert Pratt (complaint dismissed July 26, 2021, after public apology).

Judge Pratt of the Eighth Circuit during an interview with a reporter regarding pardons by President Trump in the final days of his presidency: “It’s not surprising a criminal like Trump pardons other criminals. But apparently to get a pardon, one has to be either a Republican . . . or a turkey.”

Judge Pratt publicly apologized and acknowledged that his comments constituted “cognizable misconduct” and were “inappropriate partisan statements.”

What They Said to **Criminal Defendants**

In Re Jeffrey Bennett (CA Commission on Judicial Performance, Mar. 25, 2020) (censure).

Judge Bennett was addressing an African-American defendant in court whom he believed was being evasive in his answers.

“Stop shucking and jiving.”

What They Said to **Criminal Defendants**

Disciplinary Counsel v. Burge, 134 N.E.3d 153 (Ohio 2019) (six-month suspension).

Judge James Burge referred to Caucasian defendants as “crackers” and African-American and Latino defendants as “homeboys.”

“I’m sick of you boy. . . . I would have paid 50 bucks to give you a beating before [sending you] to the pen.”

“If I were to believe you were that stupid, I would just have [the deputy] shoot you right now.”

What They Said to **Criminal Defendants**

In the Matter of Hector Rodriguez (N.J. Sup. Ct. Oct. 15, 2021) (public reprimand).

During a bond hearing in which there was confusion over whether money needed to be posted, Judge Rodriguez was asked by the female defendant, “do I owe you anything?”

“Not that you can do in front of all these people.”

Defense – the comment was an attempt at humor and that proceedings in his court have “a somewhat informal air.”

What They Said to **Criminal Defendants**

In the Matter of Hector Rodriguez (N.J. Sup. Ct. Oct. 15, 2021) (public reprimand).

Held: “Such remarks have no place in our judicial system . . . [as the judge’s comment] impugned the integrity of the judiciary, sullied the dignity of those seeking redress in court, and tainted the solemnity of the courtroom proceedings.”



What They Said To Court Staff

In the Matter of Pineda-Kirwan (N.Y. Commission on Judicial Conduct, Aug. 12, 2020) (censure).

To a law clerk in a raised voice: “I’ll talk to you the way I want. If you weren’t so incompetent I wouldn’t talk to you like that.”

“Screamed” at a facility supervisor who asked the judge to return a loaned folding table she used in her courtroom: “You treat me like Sh*t!”

Held: “Self-evidently, breaches of judicial temperament are of utmost gravity.”

What They Said To Court Staff

In the Matter of Barbara Roberts (CA Commission on Judicial Performance, Feb. 18, 2021) (admonition).

When her internet service went down during court, Judge Roberts yelled to staff: “This is ridiculous! This isn’t working! This isn’t working! Fix it immediately!”

She left the bench and stomped down the hallway and went into her office and slammed the door.

Held: The judge “engaged in significant and repeated abusive conduct toward staff.”

What They Said To Court Staff

Judicial Commission v. Kachinsky, 930 N.W.2d 252 (Wisc. 2019) (three-year suspension).

A court manager complained about Judge Kachinsky's obsessive conduct concerning whether she liked him as a friend.

The judge sent her an email that said, "Feel free to report me to HR. I feel spunky this morning."

Held: The judge's "obsessive conduct about whether [the court employee] liked him as a friend clearly passed well over the line."

What They Said To Court Staff

In Re William Cullins (Kan. Sup. Ct., Feb. 26, 2021)
(one-year suspension).

To a court clerk who asked to discuss a poor work evaluation with the judge: “Go sit down in that f**king chair and don’t you say a f**king word.”

When the clerk tried to speak – “Keep your f**king mouth shut. Don’t say another f**king word. Get the f**k out of my sight and shut the f**king door on your way out.”

What They Said To Court Staff

In Re William Cullins (Kan. Sup. Ct., Feb. 26, 2021)
(one-year suspension).

Defense – “cussing is so common in Kansas” and the language was “just salty.”

Held: The judge’s defense “defies logic” and is “quite troubling.” The use of “f**k is unprofessional and . . . undignified for a judge,” violating the rule requiring a judge to treat everyone with patience, dignity, and courtesy.

What They Said About Other Judges

In the Matter of Devy Russell, 211 A.3d 426 (Maryland 2019) (six-month suspension).

Judge Russell “repeatedly yelled” at fellow judges and told court staff that a colleague was “a complete and utter incompetent vicious coward.”

Held: “Such conduct lacks dignity, courtesy, and patience, and erodes the public trust and confidence in the judiciary.”

What They Said About Other Judges

In the Matter of Nakita Blocton (Ala. Ct. Jud., Dec. 10, 2021) (removed from office).

To a colleague: “Uncle Tom.”

To another colleague: “Fat bit**h.”

To a court employee: “Heifer.”

Ordered staff to give her their personal cellphones and passwords so she could delete information relevant to her investigation by disciplinary authorities.

What They Said About Other Judges

In the Matter of Guy Williams (Texas Commission on Judicial Conduct, May 17, 2019 (reprimand)).

Following an event to honor another judge at which a group picture was taken, Judge Williams texted the picture to a female colleague and wrote, “nice body for a 70-year-old.”

Held: The judge “failed to be dignified and courteous [to his colleague] when he sent her an offensive text message.”

What They Said About Other Judges

In the Matter of Laurie Booras (Colo. March 11, 2019) (public reprimand and resignation).

Following oral argument, Court of Appeals Judge Booras emailed a man she met online: “We had oral argument. . . . The little Mexican is going to write [the court’s opinion] in favor of the plaintiffs and it looks like I am dissenting.”

Held: Judge Booras “obviously impaired harmony and trust among her co-workers, and particularly her relationship with the colleague at whom her ‘little Mexican’ comment was directed.”

What They Said to **Women**

In Re Howard Gerber (N.Y. Commission on Judicial Conduct, June 27, 2020) (admonition).

Judge Gerber said to a female prosecutor assigned to his court: “[I]f you wear yoga pants to court, it’s okay with me.”

“Oh, I should not have said that. Are there cameras in here?”



What They Said to **Women**

In Re John Laettner (CA Commission on Judicial Performance, Nov. 6, 2019) (removed from office).

While presiding over a domestic violence case, Judge Laettner said, “I can take judicial notice that women can drive you crazy. You know, a judge could get in trouble for [saying] something like this.”

Told female litigants they were “pretty” or “beautiful.”

What They Said to **Women**

In Re John Laettner (CA Commission on Judicial Performance, Nov. 6, 2019) (removed from office).

To a court reporter: “You are hot.”

To jurors: They “would enjoy looking at” the court reporter instead of the “heavyset, pudgy” public defender.

To a litigant with tattoos: “I always wonder what fat people are thinking when they get tattoos.”

What They Said About **Family**

Disciplinary Counsel v. William Marshall (Ohio Sup. Ct., Feb. 28, 2019) (six-month suspension).

Judge Marshall commented to a prosecuting attorney in court about a state trooper who had ticketed his daughter for speeding:

- “There used to be a code in this county – I’m a judge and he shouldn’t have written my daughter [a ticket].”
- “wanted to get the trooper in trouble”

What They Said About **Family**

Disciplinary Counsel v. William Marshall (Ohio Sup. Ct., Feb. 28, 2019) (six-month suspension).

- threatened to hold the trooper's actions against other troopers in other cases before him
- saw the trooper in the hallway of the courthouse and called him an "a**hole"

What They Said About **Family**

In Re Joyce Tomlinson (TN Board of Judicial Conduct, Feb. 1, 2021) (resigned in lieu of formal charges).

Judicial Commissioner Tomlinson engaged in a “tense and angry discussion” with sheriff’s deputies about a pending criminal case involving her granddaughter.

- sarcastic, argumentative, raised her voice, and banged her hands on the table

What They Said About **Family**

In Re Joyce Tomlinson (TN Board of Judicial Conduct, Feb. 1, 2021) (resigned in lieu of formal charges).

- threatened to call the investigating officer's family
- dared the officer to stop her on the street
- taunted the officer by commenting that he was afraid of her even though he had a gun

What They Said To **Police** During Traffic Stops

- “Big mistake . . . I’m a judge. I’m not trying to play that up, but.” (Ohio)
- “This will substantially impair my career.” (CA)
- “Don’t you know who I am?” (CA)
- “How can I sit up on the bench and pass judgment on people when I’m being convicted of the same thing?” (Ill.)
- “I am so intoxicated!” (Ohio)

What They Said To **Police** During Traffic Stops

- “This will kill me more than the average guy. I’m a judge.” (N.J.)
- “I’m a f**king judge. . . . Come on man.” (N.J.)
- “I’m a judge in this county.” (TX)
- “What do you think you’re doing pulling me over? You better check the registration on this plate soon, mister.” (PA)
- “Is this the way you treat a Supreme Court Justice?” – returning from a judicial conference (N.Y.)

What They Said To **Police** During Traffic Stops

In Re Jessica Recksiedler (Fl. Sup. Ct., April 9, 2015)
(reprimand).

Judge Recksiedler, who had a poor driving record, appeared before the Judicial Nominating Commission and stated that she took the Commission's concerns about her driving history seriously.

She failed to disclose that she received another speeding ticket on her way to her interview with the Commission which made her late for the interview.



What They Said to **Attorneys**

In Re John Murphy (Fl. Sup. Ct., Dec. 17, 2015)
(removed from office).

Judge Murphy stated to a public defender who was a “highly unlikeable lawyer,” “if I had a rock I would throw at it you right now. Stop pissing me off. Just sit down.”

When the lawyer refused to sit down, the judge shouted: “If you want to fight, let’s go out back and I’ll just beat your ass.”

What They Said to **Attorneys**

In Re John Murphy (Fl. Sup. Ct., Dec. 17, 2015)
(removed from office).

The two men left the courtroom and fought in the hallway, after which the judge returned to the courtroom and resumed calling his docket.

Held: “Judge Murphy’s total lack of self-control and grievous misconduct became a national spectacle, an embarrassment not only to himself but also to Florida’s judicial system. . . . [He] is unfit to serve.”

Responding to the difficult/ disrespectful lawyer or litigant

You will encounter *that* person.

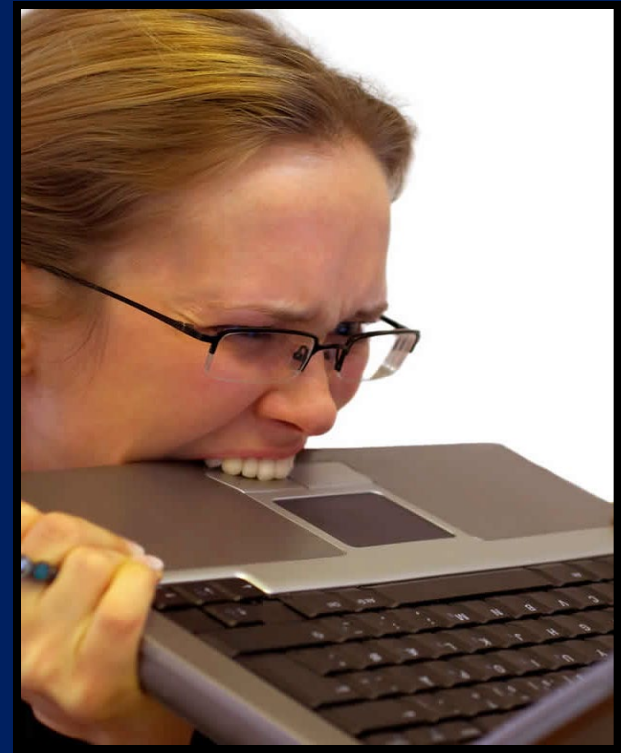
Rule: “A judge shall be **patient, dignified, and courteous** to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity. . . .” Rule 2.8



Responding to the difficult/ disrespectful lawyer or litigant

Best practices

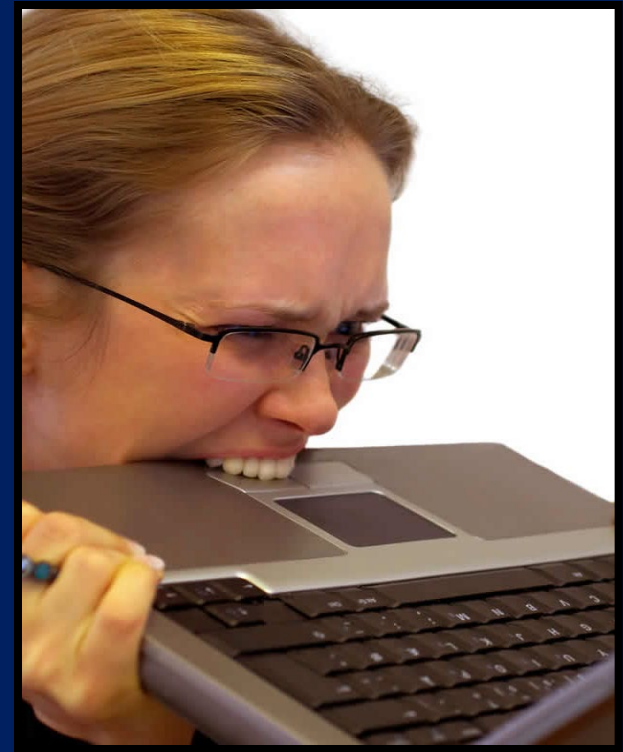
- ✓ actively listen/pay attention
- ✓ know your triggers
- ✓ refuse to be manipulated
- ✓ be patient
- ✓ do not overreact
- ✓ take a recess when necessary



Responding to the difficult/ disrespectful lawyer or litigant

Best practices

- ✓ do not swear/curse
- ✓ do not pound the bench
- ✓ do not yell
- ✓ do not disparage
- ✓ do not personalize the encounter
- ✓ do not refer to personal characteristics



Judicial Behavior



“[E]very time a judicial officer engages in misconduct, he or she spends the goodwill of the judiciary as a whole.” In re Kwan, 443 P.3d 1228, 1238 (Utah 2019).