

January 12, 2011

The **Alaska Supreme Court** censured Judge Richard Postma for (1) strident, inappropriate e-mail correspondence and in-person confrontations with fellow judges and court staff; (2) family issues and anxiety that would have required unreasonable accommodations by the court system; (3) disclosing that he had filed a complaint against other judges with the **Commission on Judicial Conduct**; and (4) a chronic anxiety disorder that made it impossible for him to function. The parties stipulated that the Commission could find that the judge, in response to perceived inequities in his case assignments and other administrative matters and because he suffered from anxiety, engaged in strident e-mail correspondence and in-person confrontations with fellow judges and staff that reflected a lack of judgment and were inappropriate for his office.

The **New York State Commission on Judicial Conduct** censured Judge Gerard Maney for operating a vehicle while under the influence of alcohol, resulting in his conviction for driving while ability impaired, and “asserting” his office in connection with his arrest. Three of the Commission members voted for removal instead of censure.

Another “social networking” ethics opinion:

Ohio Judicial Ethics Opinion 2010-7 (Excerpts, December 3, 2010)

A judge may be a “friend” on a social networking site with a lawyer who appears as counsel in a case before the judge. . . . A judge who uses a social networking site should follow these guidelines:

1. To comply with Judicial Conduct Rule 1.2, a judge must maintain dignity in every comment, photograph, and other information shared on the social networking site.
2. To comply with Rule 2.4(C), a judge must not foster social networking interactions with individuals or organizations if such communications erode confidence in the independence of judicial decision making.
3. To comply with Rule 2.9(A), a judge should not make comments on a social networking site about any matters pending before the judge—not to a party, not to a counsel for a party, not to anyone.
4. To comply with Rule 2.9(C), a judge should not view a party’s or witnesses’ pages on a social networking site and should not use social networking sites to obtain information regarding the matter before the judge.
5. To comply with Rule 2.10, a judge should avoid making **any comments** on a social networking site about a pending or impending matter **in any court**.
Ed’s note: Colorado’s Rule 2.10(A) only requires avoidance of statements “that might **reasonably be expected to affect the outcome or impair the fairness**.”
6. To comply with Rule 2.11(A)(1), a judge should disqualify himself or herself from a proceeding when the judge’s social networking relationship with a lawyer creates bias or prejudice concerning the lawyer for a party. There is no bright-line rule: not all social relationships, online or otherwise, require a judge’s disqualification.
7. To comply with Rule 3.10, a judge may not give legal advice to others on a social networking site. To ensure compliance with all of these rules, a judge should be aware of the contents of his or her social networking page, be familiar with the social networking site policies and privacy controls, and be prudent in all interactions on a social networking site.

The **New York Commission** closed a matter against Judge Norman Perkins based on the judge’s resignation and affirmation that he will not seek or accept judicial office. The Commission’s complaint alleged that the judge had, in 2 matters, issued warrants of eviction even though notices of petitions had not been served or filed and no hearing had been held as required; in one matter, was impatient, undignified, and discourteous to the respondents’ attorney and encouraged the petitioner’s husband to take private punitive action against the respondents; had advised parties in six small claims actions that they were required to retain an attorney if they wished to appeal; and commended a small claims litigant after he made a derogatory and insulting comment about Jewish people.

The **U.S. Navy-Marine Corps Court of Criminal Appeals** set aside a sentence in a case in which a member of the Marines had entered a plea of guilty to indecent acts with another. The appeals court found that the military judge's post-trial comments about homosexuals in the military would lead a reasonable person to question his impartiality. U.S. v. Hayes (October 28, 2010). At a post-trial debriefing, the military judge stated that "Marines should not be required to live in the barracks with people like Seaman Hayes;" and "homosexuality has no place in our Armed Forces."

The **Arizona Commission on Judicial Conduct** reprimanded Judge Pendleton Gaines for informality and attempted humor in the courtroom that gave the appearance that he did not take the defendant's case seriously.

The **D.C. Court of Appeals** held that a trial judge was required to recuse from a proceeding after receiving two ex parte e-mails from another judge about an important government witness and that the trial court's denial of the defendant's motion to recuse was not harmless.

Reversing a jury conviction for lewd or lascivious conduct with a child, the **Vermont Supreme Court** held that "the lower court stepped outside its role as impartial arbiter" by relying on an *ex parte* conversation with a pharmacy manager at Walgreen's and ex parte conversations with transport officers to conclude that the defendant was competent to stand trial, despite claims that the defendant's reaction to anti-seizure medication rendered him unable to assist his counsel.

The **New York Advisory Committee on Judicial Ethics** opined that a judge may not accept a child advocacy award from a city children's services agency. Because the agency appears as a party in the judge's courtroom, acceptance of the award would compromise the appearance of impartiality. Opinion 10-65.

The **New York Advisory Committee on Judicial Ethics** opined that a judge may not accept an award from a domestic violence advocacy program, where advocates assist victims of domestic violence obtain protective orders; and where advocates regularly accompany DV victims to hearings before the judge. Nor may the judge attend a 'candlelight vigil' for domestic violence victims. "While the work of the Program in the present inquiry is unquestionably laudable, accepting an award from the Program and appearing at the candlelight vigil held for those affected by domestic violence would compromise the judge's appearance of impartiality in future cases because such activity suggests that the judge is sympathetic to the plight of victims - when a judge is required to apply - and appear to apply - the law in a completely neutral fashion." Opinion 10-59.

Justice Antonin Scalia will speak to U.S. lawmakers at a seminar sponsored by the **Tea Party Caucus**; the speech will be open to all members of **Congress** but not to the public or press. Scalia's speech will focus on separation of powers according to the Supreme Court's spokeswoman.

Lisa Valentine filed a lawsuit in **Georgia federal court** alleging emotional suffering and violation of her constitutional rights when she was jailed in 2008 based on a contempt order entered by Judge Keith Rollins after she refused to remove her hijab in municipal court. The suit asks that the court be ordered to adopt a policy recommended by the **Georgia Judicial Council** making an exception to the prohibition on head coverings for those worn for medical or religious reasons.

Colorado Code of Judicial Conduct Rule 2.4

(A) A judge shall not be swayed by public clamor or fear of criticism;

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

Ed's note: Three of Iowa's seven supreme court justices stood for retention in the November, 2010 election. All three failed to win another term. Opposition to their retention arose after the Iowa supreme court unanimously ruled in favor of gay marriage.

Statement of William D. Johnston, President of the American Judicature Society, on the effort to impeach Iowa's Supreme Court justices (Jan 6, 2011):

Three freshman legislators have threatened to file articles of impeachment against four Iowa Supreme Court justices when the legislative session begins next week. Impeachment for a single controversial decision would be a dangerous precedent, an irresponsible use of legislative power, and a disservice to the citizens of Iowa.

The founders of our nation understood that courts need to remain free of political pressure in order to deliver fair and impartial decisions without being beholden to the partisan or interest group agendas of the political class. When skilled and honorable judges decide difficult cases, as they must, their reasoning will adhere to the rule of law, not the political opinions of legislators or voters. Should a judicial decision be politically unpopular, legislators and executives may seek to alter the law or the constitution. Impeachment of an Iowa judge is reserved for Dmisdemeanor or malfeasance in office;|| it is not a political tool to punish judges for an unpopular decision. This proposition has guided Iowa throughout its history.

The current threat of impeachment in Iowa is not unique. Over the past seven years, state legislators in at least 14 states have attempted to make judicial impeachment easier or to remove specific judges based upon a controversial decision. Across the country, state judges are threatened with heightened legislative scrutiny of their decisions C not because they have failed to follow the law, but because their decisions have failed to conform to a particular political agenda.

The **Arizona Commission on Judicial Conduct** publicly reprimanded Judge Alan Williams for failing to be present or immediately available to promptly attend to court business. The preliminary investigation revealed that the judge consistently failed to appear for work on Wednesdays and Fridays, except to perform weddings in the evenings for a fee, and computerized records revealed that he is at the courthouse, on average, less than 25 hours a week.

The **Utah Supreme Court** approved implementation of a public reprimand of Judge Kenneth Adams for failing to disqualify himself from court proceedings arising from 37 traffic citations issued by his son-in-law. His son-in-law was Chief of Police of Parowan City. In 2008, Chief Griffiths issued at least 31 citations that were filed in the judge's court; of which 19 resulted in some involvement by the judge. The judge has asked for an advisory opinion and agreed to follow the opinion's advice.

The **Arizona Supreme Court** censured Judge Carmine Cornelio for saying "f--- you" to an attorney during a settlement conference while showing his middle finger and telling the attorney it was "sh--ty" to change his position. The charges noted that, in 2007, the Commission had reprimanded the judge for confronting a court employee in the public street and making a hand gesture in an accusatory manner and using an obscene expletive in open court.

The **Tennessee Court of the Judiciary** publicly reprimanded Judge James McKenzie for (1) presiding over cases in which an attorney who rented office space from the judge represented one of the parties, and appointing the attorney as a guardian ad litem; and (2) using a wholly improper expletive in open court.

The *Fulton County Daily Report* named Richard Hyde, an investigator for the **Georgia Judicial Qualifications Commission** and former police detective, its "Newsmaker of the Year" because his aggressive work has led to dramatic results. According to the newspaper, "Hyde, since 2008, has been the driving force behind an unprecedented string of judicial misconduct cases that have led to investigations of 23 Georgia judges, 21 of whom have resigned or been removed from office."

The **Georgia Judicial Qualifications Commission** may not be able to bring charges against several judges it has been investigating because it has just \$1,600 left in its budget for investigations and prosecutions for the fiscal year ending June 30, 2011.

The **California Commission on Judicial Performance** publicly admonished Judge John Gibson for inappropriate comments. In a criminal case, the judge displayed irritation, impatience, and sarcasm toward a male attorney because the defense witnesses had been subpoenaed for the following week. The male attorney was appearing on behalf of a female attorney who was representing the defendant. Later the same day, the judge ordered the female attorney and another attorney into chambers, where he made rude, insensitive, and inappropriate remarks to the female attorney about the male attorney who had appeared on her behalf. The judge exhibited irritation toward the female attorney and said words to the effect of, "He was incompetent, and just stood in the courtroom scratching his ass and picking his nose." Judge Gibson also used gestures to indicate the actions.