



CCJSCA
Texas 2012

COUNCIL OF CHIEF JUDGES OF THE STATE COURTS OF APPEAL

ANNUAL CONFERENCE
November 13-17, 2012
Houston, Texas

EDUCATION PROGRAM AGENDA

HOUSTON DO WE HAVE A PROBLEM? APPELLATE COURTS AND THE FUTURE

TUESDAY, NOVEMBER 13, 2012

Noon to 7:00PM

Registration

Association Services Office

Oak Room, 3rd Level, The Westin Oaks Houston at the Galleria

6:30PM to 8:00PM

Welcome Reception

The Roof, 21st Level, The Westin Oaks Houston at the Galleria

Participants, spouses and guests

WEDNESDAY, NOVEMBER 14, 2012

7:30AM to 9:00AM

Breakfast Buffet

Consort I, 3rd Level, The Westin Oaks Houston at the Galleria

Participants, spouses and guests

7:30AM to 5:00PM

Registration (continued)

Association Services Office

Oak Room, 3rd Level, The Westin Oaks Houston at the Galleria

8:15AM to 9:00AM

Opening Ceremonies

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants, spouses and guests

Posting of the Colors by the Harris County Precinct Five Constable's Honor Guard

National Anthem Performed by Zachary Bryant, Baritone and Vocal Coach

Presiding, Welcoming Remarks and Introduction of Guest Speaker

Hon. Sherry Radack, Chief Justice, Texas Court of Appeals, First District
President, Council of Chief Judges of the State Courts of Appeal

Guest Speaker

Hon. Wallace B. Jefferson, Chief Justice of Texas

9:00AM to 9:15AM

Break

9:15AM to 10:15AM

Education Session: *Court Record Preservation: Lessons Learned from the Texas Supreme Court Historical Court Records Task Force*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. James T. Worthen, Chief Justice, Texas Court of Appeals, Twelfth District

Speakers

Hon. Mark Davidson, Judge, Multi-District Litigation Court, Harris County, Texas
William K. Kroger, Partner, Baker Botts LLP, Houston, Texas and Chair of the Texas
Supreme Court Historical Court Records Task Force

Description: The Texas Supreme Court Historical Court Records Task Force has been working to help preserve historical Texas state court records for the past several years. The work of the Task Force has stimulated work throughout Texas on preservation projects in district and county courts. Bill Kroger, the Chair of the Task Force, will discuss the project, the accomplishments, and the lessons learned, all with a view towards educating other state court systems on the importance of planning and coordinating historical records preservation. Mr. Kroger and Judge Davidson will include a brief discussion on some of the interesting historical discoveries made during this project.

10:15AM to 10:30AM

Break

10:30AM to Noon

Education Session: *He Speaks, She Speaks: How Gender Can Affect the Role of Chief Judge*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. Melanie G. May, Chief Judge, Florida Court of Appeal, Fourth District

Speaker

Audrey Nelson, Ph.D., Nelson Communication, Boulder, Colorado

Description: The program will identify differences in how men and women communicate in general, and more specifically in the role of Chief Judge. Learn how to more effectively communicate with your colleagues in small decision-making groups and in your role as Chief. Understand how the way we communicate may predict our success or failure.

Noon to 1:30PM

Luncheon

Consort I, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Topic: *Lessons from Major Disasters*

Introduction

Hon. Sherry Radack, Chief Justice, Texas Court of Appeals, First District

Speaker

Kenneth R. Feinberg, Founder, Managing Partner, Feinberg Rozen, LLP,
Washington, DC

Description: Kenneth Feinberg is the special master appointed by the courts to settle the claims of victims in five major disasters, including 9-11 and the BP oil spill. Mr. Feinberg will discuss his new book, *Who Gets What: Fair Compensation after Tragedy and Financial Upheaval*, and offer his views on what appellate judges and others might learn from the compensation models developed in the cases handled by him.

1:30PM to 1:45PM

Break

1:45PM to 2:45PM

Education Session: *Communication with the Rewired Brain: Legal Reading and Writing in the Paperless Chambers*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. James T. Worthen, Chief Justice, Texas Court of Appeals, Twelfth District

Speaker

Robert Dubose, Partner, Alexander Dubose & Townsend, Houston, Texas

Description: In a time when more judges and court staff are reading on screens, research is beginning to suggest that screen reading changes the way readers process information. How might these changes affect courts? What writing tools aid communication in a paperless environment?

2:45PM to 3:00PM

Break

3:00PM to 4:00PM

Education Session: *Alone Together: Why We Expect More from Technology and Less from Each Other*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. William B. Murphy, Chief Judge, Michigan Court of Appeals

Speaker

Sherry Turkle, Abby Rockefeller Mauzé Professor of the Social Studies of Science and Technology, Massachusetts Institute of Technology

Description: In this session, Dr. Turkle will explore the “subjective side” of people’s relationships with technology, especially computers, and focus essentially on two themes: (a) the current shift from conversation to connection and how it impacts public discourse and the law; and (b) what is democracy and intimacy without privacy?

4:00PM to 4:15PM

Break

4:15PM to 5:15PM

Education Session: *Technology Roundtable*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction and Moderator

Hon. Vance W. Raye, Administrative Presiding Justice
California Court of Appeal, Third District

Panelists

Hon. Philip G. Espinosa, Judge, Arizona Court of Appeals, Division Two

Hon. Gary W. Lynch, Judge, Missouri Court of Appeals, Southern District

Sherry Turkle, Abby Rockefeller Mauzé Professor of the Social Studies of Science and Technology, Massachusetts Institute of Technology

Description: This interactive discussion of technology will explore two subjects. First, following up on Sherry Turkle’s “Alone Together” presentation regarding technology’s effect on human relationships, the moderator will explore with her and the audience whether technology also has an effect on collegiality between judges and other judicial personnel. Following this somewhat erudite discussion, a panel of three Council members will discuss a deeply practical topic: the innovative use of tablet computers – iPads and similar devices – in performing judicial duties. The panelists will offer tips and suggest computer applications of particular value to judicial officers.

5:15PM to 5:30PM

White Paper Update: *The Role and Evolution of Intermediate Appellate Courts*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. Sherry Radack, Chief Justice, Texas Court of Appeals, First District

Speaker

Hon. David V. Brewer, Judge, Oregon Court of Appeals

6:00PM to 8:00PM

Reception at the Renovated 1910 Harris County Civil Courthouse

Participants, spouses and guests

THURSDAY, NOVEMBER 15, 2012

7:30AM to 9:00AM

Breakfast Buffet

Consort I, 3rd Level, The Westin Oaks Houston at the Galleria

Participants, spouses and guests

7:30AM to 8:30AM

New Members Breakfast

Continental Room, 3rd Level, The Westin Oaks Houston at the Galleria

New Members, Executive Committee Members, Membership Committee

Members and “Buddies”

8:30AM to 8:35AM

Report of the State Justice Institute

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. Sherry Radack, Chief Justice, Texas Court of Appeals, First District

Speaker

Jonathan Mattiello, Executive Director, State Justice Institute

8:35AM to 10:00AM

Education Session: *Reflections on the Supreme Court*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. Vance W. Raye, Administrative Presiding Justice
California Court of Appeal, Third District

Speaker

The Honorable Clarence Thomas, Associate Justice, Supreme Court of the United States

Description: Justice Clarence Thomas will share thoughts and insights developed during his 21 years of service on the United States Supreme Court, his previous professional life as a public attorney and chair of the United States Equal Employment Opportunity Commission as well as his private life as a young man from Pin Point, Georgia who went on to win academic honors at Holy Cross College and graduate from Yale Law School.

10:00AM to 10:15AM

Break

10:15AM to Noon

Education Session: *A Dissection of the Supreme Court's Term*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. James T. Worthen, Chief Justice, Texas Court of Appeals, Twelfth District

Panelists

Jack M. Balkin, Professor of Constitutional Law and the First Amendment,
Yale Law School

Theodore B. Olson, Partner, Gibson, Dunn & Crutcher LLP, Washington, DC

Description: The United States Supreme Court's 2011-12 term produced some of the most momentous decisions in its recent history. Former U.S. Solicitor General Theodore B. Olson and Yale Professor Jack M. Balkin will offer varied and sometimes disparate views on the term and the Constitution. These will reflect Mr. Olson's background as counsel to two presidents, Ronald Reagan and George W. Bush, and his advocacy before the Supreme Court in 58 cases, and Professor Balkin's extensive body of writings, including the critically acclaimed "Living Originalism," in which he argues that many decisions held in disdain by conservatives are consistent with the Constitution's original meaning.

Noon to 7:00PM

Trip to NASA's Johnson Space Center followed by a reception at the home of Richard W. and Ginni Mithoff, Founder, Mithoff Law Firm, Houston, Texas

Participants, spouses and guests

(A boxed lunch will be provided in the Consort I Room at 11:30AM)

Dinner on your own

FRIDAY, NOVEMBER 16, 2012

7:30AM to 9:00AM

Breakfast Buffet

Consort I, 3rd Level, The Westin Oaks Houston at the Galleria

Participants, spouses and guests

7:30AM to 8:30AM

Administration of Justice Committee Meeting

Continental Room, 3rd Level, The Westin Oaks Houston at the Galleria

AOJ Members

7:30AM to 8:30AM

Finance Committee Meeting

Consulate Room, 3rd Level, The Westin Oaks Houston at the Galleria

Finance Committee Members

7:30AM to 8:30AM

Newsletter Committee Meeting

Embassy Room, 3rd Level, The Westin Oaks Houston at the Galleria

Newsletter Committee Members

8:30AM to 9:30AM

Education Session: *Reasonable Expectations for the Death of Privacy*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. Lisa White Hardwick, Judge, Missouri Court of Appeals, Western District

Speaker

Ronald S. Sullivan, Edward R. Johnson Lecturer on Law and Director of the Criminal Justice Institute, Harvard University

Description: Public expectations of privacy have been eroded by the ubiquitous nature of surveillance cameras, GPS technology, and routine travel searches. As expectations fall, courts are more likely to lower the threshold for warrantless searches and the fortress of constitutional protections. Professor Ron Sullivan, of Harvard Law School, will explore the sociological and legal trends that may eventually lead us to mourn the demise of privacy.

9:30AM to 9:45AM

Break

9:45AM to 11:00AM

Education Session: *Employment Law Strategies and Solutions*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. Lisa White Hardwick, Judge, Missouri Court of Appeals, Western District

Speaker

Nancy Abell, Esq., Partner, Paul Hastings LLP, Los Angeles, California

Description: This session will feature an employment law update and practical tips on managing hot topics, such as the use of social media in the workplace. Nancy Abell, Partner with Paul Hastings LLP, will return by popular demand to guide us through an interactive discussion of the thorny issues courts face as employers.

11:00AM to 11:15AM

Break

11:15AM to 12:15PM

Education Session: *Headlines or Lifelines? Best Practices in Court Administration: Protecting the Public While Addressing the Problem of Judges in Distress*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introduction

Hon. William D. Palmer, Judge, Florida Court of Appeal, Fifth District

Speakers

Hon. Sarah L. Krauss, Chair CoLAP Judicial Assistance Initiative (JAI),
Brooklyn, New York

Hon. John Rowley, Chair, CoLAP JAI/Judicial Administration Working Group,
Ithaca, New York

Description: Most Judges are at a loss as to how to effectively deal with a judge who demonstrates signs of substance abuse, depression or possibly distress in some area that is not readily identifiable. This presentation will suggest methods and procedures to effectively bring help to the affected judge in a safe, humane and confidential manner before that distress or impairment affects the work of the court or negatively impacts the public.

12:15PM to 1:45PM

Luncheon and Business Meeting

Consort I, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

White Paper Update: *The Model Appellate Time Standards*

Introduction

Hon. Sherry Radack, Chief Justice, Texas Court of Appeals, First District

Speaker

John Doerner, Principal Court Management Consultant, National Center for State Courts, Denver Colorado

2:00PM to 2:15PM

Group Photograph

The Roof, 21st Floor, The Westin Oaks Houston at the Galleria

Council Members

2:30PM to 4:00PM

Education Session: *Solve My Problem*

Consort II, 3rd Level, The Westin Oaks Houston at the Galleria

Participants and guests

Introducer and Moderator

Hon. Kate Ford Elliott, President Judge Emeritus, Superior Court of Pennsylvania

Panelists

Hon. Philip G. Espinosa, Judge, Arizona Court of Appeals, Division Two

Hon. Lisa White Hardwick, Judge, Missouri Court of Appeals, Western District

Hon. William D. Palmer, Judge, Florida Court of Appeal, Fifth District

Hon. Dan R. Pellegrini, President Judge, Commonwealth Court of Pennsylvania

Christie S. Cameron Roeder, Clerk of the North Carolina Supreme Court

Description: Two major topics are scheduled for this program. First will be a moderated segment dealing with issues of Appellate Mediation specifically the various models utilized in different courts of appeal, procedures and evaluation criteria. The second segment will address e-filing issues in various courts, including startup problems and success stories. Our program will end with a brief demonstration of the new, revamped and refurbished website for CCJSCA.

6:00PM to 9:30PM

Reception and Dinner at the Petroleum Club

Participants, spouses and guests

Adjournment

SATURDAY, NOVEMBER 17, 2012

8:30AM to 10:00AM

Executive Committee Meeting

Consulate Room, 3rd Level, The Westin Oaks Houston at the Galleria

Executive Committee Members

**Council of Chief Judges of the State Courts of Appeal
2013 Annual Meeting
Houston, Texas
November 13-17, 2012**

SPEAKER BIOGRAPHIES

NANCY ABELL is a partner and chair of the Employment Law Department of Paul Hastings LLP, resident in its Los Angeles Office. She represents employers in all aspects of employment law and litigation, and focuses much of her practice on successfully defending employment class actions in the trial and appellate courts.

Ms. Abell is a Fellow of the College of Labor and Employment Lawyers and has been named in *The Best Lawyers in America* for 25 years. She has been recognized as one of the 40 most influential lawyers of the decade by the *National Law Journal* in 2010 (one of three employment lawyers), one of America's top 50 women litigators by the *National Law Journal*, one of the top employment lawyers in the world by *The International Who's Who of Business Lawyers*, one of the top six employment litigators in the United States by *The Legal 500*, one of the top few employment lawyers in California by *Chambers USA*, and one of California's "Top Labor and Employment Attorneys of 2012" by the *Daily Journal*.

JACK M. BALKIN is Knight Professor of Constitutional Law and the First Amendment at Yale Law School and the founder and director of Yale's Information Society Project, an interdisciplinary center that studies law and the new information technologies, as well as the director of the Abrams Institute for Freedom of Expression at Yale. Professor Balkin is a member of the American Academy of Arts and Sciences, and the author of over a hundred articles in different fields including constitutional theory, Internet law, freedom of speech, reproductive rights, jurisprudence, and the theory of ideology. He is the founder and editor of the Balkinization blog (<http://balkin.blogspot.com>) a group blog on constitutional issues, a correspondent for *The Atlantic Online*, and has written widely on legal issues for such publications as the *New York Times*, the *New England Journal of Medicine*, the *American Prospect*, *Washington Monthly*, the *New Republic Online*, and *Slate*. His books include *Living Originalism*; *Constitutional Redemption: Political Faith in an Unjust World*; *The Constitution in 2020* (with Reva Siegel); *Processes of Constitutional Decisionmaking* (5th ed., with Brest, Levinson, Amar and Siegel); *Legal Canons* (with Sanford Levinson); *The State of Play: Law Games and Virtual Worlds* (with Beth Noveck); *Cybercrime: Digital Cops in a Networked Environment* (with James Grimmelmann et al.); *Cultural Software: A Theory of Ideology*; *The Laws of Change: I Ching and the Philosophy of Life*; *What Brown v. Board of Education Should Have Said*; and *What Roe v. Wade Should Have Said*.

HON. MARK DAVIDSON served as Judge of the 11th District Court for twenty years before his retirement in 2009. He is now serving as the Multi-District Litigation Judge for all asbestos cases in the State of Texas, being named to that position by Chief Justice Wallace Jefferson and the Multi-District Litigation Panel of the Texas Supreme Court. In that role, he has judicial duties over the 85,000 asbestos cases pending throughout the state.

While serving as a district judge, he tried over 450 jury trials and cut the backlog in the 11th District Court by 70 percent. In 1993, he was named "Trial Judge of the Year" by the Texas Association of Civil Trial and Appellate Specialists. From 2002 through 2007, he served as Administrative Judge of Harris County. He is a passionate judicial historian, and is the author of twenty-two published articles on Texas Judicial History.

Judge Davidson is married to Sarah Duckers, and has two sons, William, age thirteen, and Thomas, who is eleven years old. In his spare time, Judge Davidson is the Cubmaster of a Cub Scout Pack dedicated to the needs of autistic boys. In 2003, he was awarded the Arbor Day award by Trees for Houston for his role in saving a 93 year old tree on the Harris County Courthouse lawn. He also is a regular blood donor, and was recently awarded a 45 Gallon Mug, recognizing his donations of 360 pints of blood.

ROBERT DUBOSE is a partner with the civil appellate law firm Alexander Dubose & Townsend LLP in Houston. He is a frequent speaker and writer on advocacy and legal writing. Robert is the author of the book, *Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World* (American Lawyer Media 2010), and the co-author of the Texas chapter of *The Insider's Guide to State and Federal Appellate Courts* (American Bar Association, pending publication 2012). From 1998 to 2010 he was an adjunct professor at the University of Houston Law Center where he taught *Appellate Advocacy* and *Insurance Appeals*. He is Board Certified by the Texas Board of Legal Specialization in Civil Appellate Law. Robert graduated from Rice University (B.A. 1990) and Harvard Law School (J.D. 1993).

HON. PHILIP ESPINOSA was appointed to the Arizona Court of Appeals, Division Two, in 1992. He was elected Chief Judge in 1999 and served a five year term in that capacity during which he accepted the Arizona Supreme Court's Public Access to Justice Award for Division Two's ground-breaking and nationally recognized innovations in court technology and Internet access. Those initiatives have now evolved to render Division Two a completely paperless court.

Before his appointment to the bench, Judge Espinosa was an Assistant U.S. Attorney in Tucson and became Deputy Chief of the criminal division in 1990. As a federal prosecutor, he litigated many significant cases in the U.S. District Court for the District of Arizona and the Ninth Circuit U.S. Court of Appeals. He received numerous commendations, including the U.S. Attorney General's Award for Prosecution of Public Corruption, and special recognition by the Department of Justice and Federal Bureau of Investigation for "outstanding contributions to the District of Arizona."

Judge Espinosa previously served on the state-wide Arizona Judicial Council, the Arizona Supreme Court Commission on Technology, and was a long-time member and chair of the Arizona Commission on Judicial Conduct. He also was a founding member and chair of the Arizona Judicial Performance Review Commission, and a recent past chair of the Arizona Judicial Ethics Advisory Committee. On weekends he is a volunteer judge for the Pima County Teen Court. He additionally serves on a number of community boards and is a volunteer music director at his church.

KENNETH FEINBERG is an attorney and one of the nation's experts in mediation and alternative dispute resolution and managing partner of Feinberg Rozen, LLP. He received his B.A. cum laude from the University of Massachusetts (1967) and J.D. from New York University School of Law (1970), where he was Articles Editor of the Law Review.

From the September 11th disaster; TARP Executive Compensation; to the 2010 Gulf Coast oil spill, he is renowned for his expertise in administering and resolving legal disputes that arise from catastrophes of historic proportion. He possesses unique experience in regard to personal strategies for resolving legal disputes that seem irresolvable because of their scale and their divisiveness.

HON. LISA WHITE HARDWICK has served on the Missouri Court of Appeals for the Western District since May 2001. She recently completed a two-year term as chief judge of the court. Her current judicial duties include serving as chairperson of the Missouri Supreme Court's Appellate Practice Committee. Previously, she was a trial court judge on the Jackson County Circuit Court from January 2000 through April 2001.

Judge Hardwick earned a journalism degree from the University of Missouri-Columbia in 1982 and a law degree from Harvard Law School in 1985. She began her legal career as an associate with Akin, Gump, Strauss, Hauer & Feld in Washington, D.C. Upon returning to her native Kansas City, Missouri, she practiced law with Shook, Hardy & Bacon for fourteen years. Judge Hardwick also was twice elected to the Jackson County Legislature, serving as an at-large representative from 1993-2000.

HON. SARAH L. KRAUSS is an elected judge to the New York City Civil Court and now serves as an Acting Supreme Court Justice in the Family Court in Brooklyn, New York.

Justice Krauss is the Chair of the American Bar Association's Commission on Lawyer Assistance Programs (CoLAP). Prior to this appointment, Justice Krauss served as chair of the CoLAP Judicial Assistance Initiative (JAI) from 2008 to 2011. In 2009, under Judge Krauss' leadership, the JAI published a resource guide through ABA entitled "Judges Helping Judges; Resource and Education." Prior to becoming Chair of JAI, Justice Krauss served as Education Chair of JAI for 2 years and served as a Commissioner on the American Bar Association's Commission on Lawyer Assistance Programs (CoLAP) from 1994 through 1997.

Justice Krauss is the immediate past chair of the New York State Bar Association's Lawyer Assistance Committee and presently chairs the Lawyers Helping Lawyers Committee for the Brooklyn Bar Association (BBA), is a member of the New York State Bar Association Judicial Wellness Committee and has been active as a lawyer/judge assistance volunteer and committee person in New York State since 1990.

Justice Krauss served as a member of the Bellacosa Commission on Alcoholism and Substance Abuse which was created by Chief Judge Judith Kaye in 1999 and was then appointed by Chief Judge Kaye as a trustee on the subsequently created Lawyer's Assistance Trust (LAT) in 2002 and served as the vice-chair of the LAT from 2004 to 2007. Justice Krauss served on the Judicial Advisory Panel to LAT and now serves as a trustee for the NYS-LAT.

Justice Krauss has presented to many bar associations and judges' groups in New York as well as in Arkansas, Arizona, California, New Jersey, Tennessee, Texas, Virginia and Washington, D.C. on the issues of impairments in the legal profession and in the judiciary.

WILLIAM K. KROGER is a partner at Baker Botts L.L.P., where he practices energy litigation. He is a past chair of the Houston Bar Foundation, and is the current chair of the Texas Supreme Court Historical Court Records Task Force. Mr. Kroger also serves as a member of the Texas State Library and Archives Commission Local Government Records Storage Task Force. Mr. Kroger received his J.D. from the University of Texas Law School in 1989, his M.B.A. in finance from the University of Texas in 1989, and his B.B.A. in accounting from the University of Texas in 1985.

HON. GARY W. LYNCH graduated with honors from Southwest Baptist University and then from the University of Missouri – Columbia Law School, where he was an editor of the Law Review. He returned to his hometown of Bolivar where he spent 26 years in private law practice before being elected and serving as Associate Circuit Judge of Polk County for three years. He was appointed to the Missouri Court of Appeals, Southern District, in January 2006, and served as Chief Judge 2007-2009. He and his wife Dana have been married 38 years; they have two adult sons. He still lives in Bolivar, where he is a active member of the First Baptist Church of Bolivar.

AUDREY NELSON, Ph.D. is an internationally recognized trainer, keynote speaker, author and consultant who helps organizations increase their productivity and profitability through winning communication strategies. She specializes in gender communication, conflict management, communication skills, and sexual harassment and discrimination.

Dr. Nelson's professional background includes 10 years teaching in the Department of Communication at the University of Colorado, Boulder. For 30 years, she has trained and consulted for a wide variety of government and Fortune 50 companies in 49 states, Australia, Canada, Great Britain and Korea.

Her clients include Xcel Energy, Pricewaterhouse Coopers, American Board of Trial Attorneys , AT&T, Honeywell, Hewlett-Packard, IBM, Upjohn Pharmaceuticals, Pentax, Lockheed Martin, Johnson & Johnson, U.S. Marine Corps, U.S. Forest Service, U.S. Department of Justice and the U.S. Department of State.

She holds a B.A., M.A. and Ph.D. in Communication. She conducted post-doctoral work at Warnborough College in Oxford, England in gender communication.

Thirty years ago she co-founded and served as president for the Organization for the Research on Women and Communication.

Audrey is a published author. *You Don't Say: Navigating Nonverbal Communication Between the Sexes* (Prentice Hall, 2004) was published in six languages. She co-authored *Code Switching: How to Talk so Men will Listen* (Penguin-Alpha Books, 2009) and *The Gender Communication Handbook: Conquering Conversational Collisions Between Men and Women* (Pfeiffer 2012).

THEODORE B. OLSON is a Gibson, Dunn & Crutcher partner in Washington, D.C., and Co-Chair of the firm's Appellate and Constitutional Law and Crisis Management Practice groups. He was Solicitor General of the United States from 2001-2004 and Assistant Attorney General in charge of the Office of Legal Counsel from 1981-1984.

Mr. Olson has argued 58 cases before the United States Supreme Court including the *Bush v. Gore* cases, *McConnell v. FEC*, *Citizens United v. FEC*, *Caperton v. Massey*, *Rasul v. Bush*, and cases involving telecommunications, antitrust, the environment, patents, numerous constitutional provisions and many other subjects.

He is a Fellow of the American College of Trial Lawyers and the American Academy of Appellate Lawyers. He is currently a member of the Council of the Administrative Conference of the United States and a member of the Board of Directors of the Cato Institute. He also currently serves on the Board of Trustees of the Ronald W. Reagan Presidential Foundation and the Board of Directors of the National Center for State Courts. He was Co-Chair of the Knight Commission on the Information Needs of Communities in a Democracy and a member of the Privacy and Civil Liberties Oversight Board. He was a Visiting Scholar at the National Constitution Center, 2006-2007.

In 2010, Mr. Olson was named by *Time* magazine as one of the 100 Most Influential People in the World and by *The Huffington Post* as one of the "100 Gamechangers."

HON. WILLIAM D. PALMER currently serves as Judge of Florida's Fifth District Court of Appeal in Daytona Beach. He was appointed to the court by Governor Jeb Bush in 2000 after 24 years in private practice, primarily in the areas of civil litigation, family law, appellate law, adoption law, arbitration, and mediation. He has served as Chair of the Florida Bar's Appellate Certification

Committee and Judicial Nomination Procedures Commission, the Ninth Circuit Grievance Committee, and the Ninth Circuit Judicial Nominating Commission. He has written and lectured extensively in the areas of judicial selection, family law, and litigation. He was a certified arbitrator, civil mediator, and family mediator and has written, spoken, and trained in those areas. He received a B.S. degree in Management Science (with honors) from Rensselaer Polytechnic Institute in 1973 and received his J.D. degree (cum laude) in 1976 from Boston College of Law School where he served as editor-in-chief of the Environmental Affairs Law Review. He is married to attorney Nancy S. Palmer and has five children.

HON. DAN R. PELLEGRINI is a Judge of the Commonwealth Court of Pennsylvania, assuming office in January 1990. He was elected as President Judge of the Commonwealth Court in January 2011. Prior to assuming the bench, Judge Pellegrini was City Solicitor for the City of Pittsburgh from 1982 until 1990. From 1985 to 1990, he was a trustee and member of the Executive Committee of the National Institute of Municipal Law Officers, a group of 1,800 city and county attorneys from the United States and Canada. He received his B.A. in 1967 and his J.D. in 1970 from Duquesne University School of Law and has taught at the National Judicial College.

CHRISTIE SPEIR CAMERON ROEDER has served as the Clerk of the North Carolina Supreme Court since 1991. In 1998, the Supreme Court of North Carolina became the first state court to accept all documents by electronic filing, and she has lectured on the benefits and costs of electronic filing at several national conferences since that time. Christie has formerly served as President of the National Conference of Appellate Court Clerks, Board member of the National Advisory Board for the Court Services Division of the National Center for State Courts, a Council of State Governments Toll Fellow, and President of the 10th Judicial District and Wake County Bar Associations in North Carolina.

Christie serves on several state and community boards including the North Carolina Railroad Board and the North Carolina Museum of History Associates Board of Directors. She is married with two sons and three step-children.

HON. JOHN ROWLEY is a Tompkins County Judge in Ithaca, New York. Judge Rowley is a graduate of Cornell University and the S.U.N.Y Buffalo School of Law. He was first elected to his current position, Tompkins County Judge, Family Court Judge and Surrogate, in 2000, and re-elected in 2010. He was appointed an Acting Supreme Court Justice in 2003. In addition to his criminal court and family court caseload, he presides in four specialty courts: the Family Treatment Court, the Felony Drug Court, the Sex Offense Compliance Court, and the Integrated Domestic Violence Court Part of Supreme Court.

Judge Rowley lectures widely on issues of domestic violence, lawyer and judicial alcoholism and addiction, stress management, vicarious trauma and other legal topics. His most recent presentations have included:

- Co-presenter at the National Council of Family Court Judges 2011 Annual Conference held in New York City on the topic of “Intimate Partner Sexual Assault”;
- Presenter at the 2011 Annual Meeting of the Conference of Chief Justices and the Conference of State Court Administrators held in Atlanta Georgia on the topic of “Headlines or Helplines – Assisting Judges in Distress”;
- Panelist at the 2011 Annual Conference of New York State Family Court Judges held in Saratoga, New York on the topic of “Working effectively in Family Court with substance abusing parents”; and
- Plenary presenter at the 2011 Gender Violence in South Asia conference held in New Delhi, India.

RONALD S. SULLIVAN JR. joined Harvard’s law faculty in July 2007. His areas of interest include criminal law, criminal procedure, legal ethics, and race theory. Prior to teaching at Harvard, Professor Sullivan served on the faculty of the Yale Law School, where, after his first year teaching, he won the law school’s award for outstanding teaching. Sullivan is the faculty director of the Harvard Criminal Justice Institute and a founding fellow of The Jamestown Project. Professor Sullivan is a Phi Beta Kappa graduate of Morehouse College, and the Harvard Law School, where he served as president of the Black Law Students Association and as a general editor of the Harvard BlackLetter Law Review. After graduating Harvard, Sullivan spent a year in Nairobi, Kenya as a Visiting Attorney for the Law Society of Kenya. In that capacity, he sat on a committee charged with drafting a constitution for Kenya. He also worked with the Kenya Human Rights Commission, documenting human rights violations throughout Kenya.

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Chief Justice Jefferson served in 2010-11 as president of the Conference of Chief Justices, an association of chief justices from the 50 states and U.S. territories. As president, Chief Justice Jefferson chaired the National Center for State Courts board of directors, a policy and resource organization in Williamsburg, Va.

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He and his wife, Rhonda, have three sons, William Douglas, Samuel Lewis, and Michael Andrew.

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JUDGES


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RESOURCES & EDUCATION

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 **Commission on
Lawyer Assistance Programs**
AMERICAN BAR ASSOCIATION

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COMMISSION ON LAWYER ASSISTANCE PROGRAMS
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AMERICAN BAR ASSOCIATION
 Commission on Lawyer Assistance Programs
 JUDGES HELPING JUDGES
THE JUDICIAL ASSISTANCE INITIATIVE: RESOURCES & EDUCATION
 Judges' Volunteer Handbook

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MODULE 8 - BEST PRACTICES IN COURT ADMINISTRATION TO ADDRESS THE PROBLEM OF IMPAIRED JUDGES

INTRODUCTION

Judges impaired by alcoholism, other drug abuse, or mental health disorders have a detrimental impact not only on the affected judge and his or her staff and family, but also on the judicial system as a whole. These issues may lead to disciplinary proceedings against the judge with outcomes that include removal from the bench. The Best Practices outlined here are intended to help judges deal with these issues by providing a framework for supportive oversight and intervention with both the administrative arm of the court as well as judicial disciplinary organizations. If effectively addressed, judges can receive the assistance they need, avoiding disciplinary entanglements, and remaining productive in their public service.

These proposed Best Practices can be adopted or modified by a court system to fit local structure and organization. These practices can be put in place by a court system at a variety of levels, depending on how the courts are administered and organized in a given jurisdiction.

TRAINING AND EDUCATION

Topics and Audiences

A court system should provide universal training for judges and staff in stress management, recognition of signs and symptoms of impairment, and wellness. Substantial attention should be given to this topic.

NEWLY ELECTED OR APPOINTED JUDGES

Special attention should be given to training new judges as they face the often-dramatic change of transitioning from the life of a lawyer to the life of a judge.

Teaching Techniques

Frequent reminders are needed to keep this issue at the forefront. In order to insure that these issues are given attention, materials, such as pamphlets, handbooks, newsletters, DVDs and interactive learning-websites, should be available and distributed on a regular basis. Most importantly, judges and judicial staff should be invited to regularly discuss these topics together and with their peers.

Family members

Outreach to family members should be included in a comprehensive educational plan. Instruction should include information on the signs and symptoms of impairment and effective stress management. Again, family members should be encouraged to talk about their experiences living with the judge and their observations of the judge's success in managing work stress.

Knowledge of Judicial Assistance Resources

Judges, staff, and the families of judges should have easy access to contact information for the appropriate judicial assistance program if there is a program serving the

jurisdiction. A basic description of the process associated with referral to the judicial assistance program must be readily available.

RESPONSIBILITIES OF JUDICIAL ADMINISTRATORS AND SUPERVISORS

Performance Reviews

Administrative judges with supervisory responsibilities should conduct periodic performance reviews of judges over whom they have supervisory responsibilities. These internal performance evaluation systems should be designed to identify problem areas for judges for the purpose of providing additional support where appropriate. Performance problems such as delays in processing documents, conducting hearings, poor record keeping, and other problems which may indicate problems with stress management and/or impairment should not be ignored.

When such problems are identified, the evaluator should be forthright with the judges about troubling conduct and symptoms that may indicate stress or alcohol and/or drug abuse. When there is substantial evidence of problematic conduct or symptoms of abuse, administrative judges should not hesitate to make inquiries of colleagues and staff in order to avert potential problems. Referrals for appropriate evaluations can clarify what difficulties the judge is experiencing and provide a direction for future action.

Administrative Protocols

Court systems need a clear, written protocol for responding to credible reports of judicial impairment. Issues that must be addressed include the confidentiality of such reports including who will be notified of the report, a protocol for requiring appropriate assessments including an identified source of payment for the same, and a plan for covering the caseload of a judge who is temporarily unavailable to continue their duties. Clear distinctions must be made between reports of problematic behavior and reports of possible ethics violations. Most jurisdictions require the filing of an ethics violation with the appropriate disciplinary authorities. The Best Practices for the disciplinary response is described below.

Procedure for Lawyer's Complaints

Lawyers are often in a position to note changes in the behavior of a judge or other signs of impairment or distress. Lawyers are understandably reluctant to make formal complaints about judges they appear in front of absent clear evidence of unethical misconduct. Nonetheless, it is important to create an atmosphere that encourages lawyers to report concerns that do not rise to the level of misconduct. Components of this atmosphere must include a clearly designated person whose responsibility is to receive such concerns, a guarantee of confidentiality, and protection against retaliation.

SUPPORT FOR IMPAIRED JUDGES

Judicial Assistance Programs (JAP)/Lawyer Assistance Programs (LAP)

It is imperative that the assistance programs within the jurisdiction are involved in cases involving alcoholism, other drug abuse, or mental health disorders. Besides their expertise in these areas, assistance programs typically rely on peer support. Judges who have experience with the problem facing the impaired judge can provide invaluable experience, strength, and hope during a very difficult period. In this regard, it is important to remember that judges who enter treatment need substantial support upon their return to the community to maintain their stability.

Employee Assistance Programs

Jurisdictions without either a JAP or a LAP generally rely on an Employee Assistance Program (EAP) in cases of this kind. It is recommended that EAP's providing assistance to judges have a working relationship with individuals or organizations that can provide peer support for judges.

PREVENTION STRATEGIES AND JUDICIAL WELLNESS

Caseload Review

Many judges handle high volume caseloads and/or highly emotional cases (i.e., violent crimes, difficult divorce proceedings, etc.). Both the lack of control over the types of cases a judge hears and the volume of cases for which a judge is responsible are significant factors contributing to stress. Ongoing monitoring of a judge's performance under such caseloads can help prevent burnout and other stress related problems. Periodic rotation of the types of cases a judge handles should be considered where possible.

Work Flexibility

Mechanisms to adjust and accommodate calendars affected by unexpected personal or family obligations or responsibilities should be developed.

Leave of Absence or Study Leave

Upon appropriate request, judges should be granted a leave of absence or a study leave after a defined length of service.

Mutual Support

Court systems should confront the isolation inherent in serving as a judge. The separation from attorney colleagues required by the job frequently represents a major disruption in social support for a new judge. Judges often experience isolation from their colleagues as well because of their heavy caseloads and their differing assignments. Effective strategies to combat isolation include creating judge only break room/meal rooms within buildings housing multiple judges, regularly bringing judges with similar responsibilities together for continuing education and a free exchange of ideas, and organizing social events where judges can spend "down time" with their peers.

Support during high profile cases

Judges are occasionally the subject of criticism or scrutiny, e.g., during high profile cases. Ethical considerations generally prevent a judge from responding directly when unfair or false comments are made about the judge. Utilization of a public information office that can provide appropriate information to the public and refute false or exaggerated claims can provide significant relief to a judge. Other strategies may include utilizing lawyers from bar associations to help the public understand difficult or controversial legal issues that might lead to unjust criticisms of a judge if left unexplained.

Retirement and aging issues

Judges face the challenges of aging just like everyone else. However, the length of their term and the goal of completing the same may complicate their situation. It is important for judicial supervisors to monitor the health and performance of judges as they age. The effects of aging are sometimes misinterpreted as signs of impairment and vice versa. Retirement systems for judges should be designed to encourage judges to retire before they are overtaken with age related impairments. The guidelines in the Federal circuits

for a chief judge who must certify the fitness of senior status judges may be useful to consider.

Ongoing Wellness Education

Wellness programs like that of the 9th circuit should be explored to head off problems before they spin out of control.⁵

⁵ For aspects of wellness programs: See Zimmeman article in vol. 90 no.1 Judicature (2006) at pp. 13-15

Judges may suffer vicarious trauma, burnout, high stress, etc. solely because of the nature of the cases they hear. Effective educational programs that candidly discuss these issues and provide judges with an opportunity to talk freely about their experiences are essential.

JUDICIAL DISCIPLINE

Court administrators' responsibilities

Court administrators should be able to interact with judicial disciplinary systems in appropriate cases. Disciplinary cases involving judges should be jointly screened by disciplinary authorities and wellness programs or JAP/LAPs to identify appropriate cases for diversion into therapeutic remedies.

Professional Evaluations

Judicial Discipline bodies need to be educated on when it is advisable to seek an assessment for dependence or stress related problems to assist in determining the factors related to judicial misconduct and/or appropriate responses to misconduct.

Disciplinary Options

There must be an array of options available to the body deciding judicial discipline. Procedures like deferred prosecution, suspended sanctions, and diversion should be utilized where appropriate.

Monitoring

When a disciplinary sanction such as diversion is imposed on a judge by a judicial disciplinary agency, court administrative structures should be used to monitor the overall progress and compliance by the judge. Day-to-day monitoring may best be contracted out to qualified professionals.

CONFIDENTIALITY

Cases of Misconduct

Judges, lawyers, and judicial staff who report concerns about misconduct by judges must be granted complete confidentiality to encourage appropriate review of serious matters. Judges who are the subject of misconduct complaints are guaranteed different levels of confidentiality by statute or court rule within their jurisdiction. However, even in states where judicial complaints are made public, judges are entitled to confidentiality regarding all medical/mental health/substance abuse evaluations and treatment. Reports to the supervising judges should generally be restricted to information about general compliance with recommended treatment.

Voluntary Cases

Judges who privately seek help from a JAP, LAP, or EAP must be guaranteed complete confidentiality as long as they have not committed acts of professional misconduct and have not been directed to seek an evaluation by a supervising judge. No information regarding the judge's case should be available to anyone in the court system absent the express consent of the judge seeking treatment.

Court Rules and Statutes

The parameters of confidentiality must be clearly established for all cases. The best practice in this regard is passage of statutes that guarantee appropriate protections.

CONCLUSION

Court administrators and judicial supervisors have the responsibility to support judges in their roles as public servants and to protect the integrity of the institution. However, this responsibility is often poorly defined and court systems lack coordinated approaches to identify judges who are not performing well due to alcoholism, other drug abuse, or mental health problems. The Best Practices outlined here are designed to suggest a global approach to this challenge. It is our belief that implementation of these practices will help administrators and supervisors provide meaningful support to judges and prevent some impairment problems. In more serious cases, earlier identification of judges in distress can prevent judicial misconduct and save lives. Surely it is worth the effort to not only ensure the absolute best outcomes in the administration of justice but also to provide the mechanisms to assist judges in addressing serious issues of health and wellness.

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NOTES

Got Stress? Using CoLAP and Its New Judicial Assistance Project

By Hon. Robert L. Childers

Many of us have seen the disheartening statistics. Lawyers are much more likely than the general population to suffer from depression, emotional distress, anxiety, addictions, and other related mental, physical, and social problems.¹ Over a third of lawyers suffer from depression,² and we are almost four times more likely to experience depression than the general population.³ According to at least one study, lawyers are the most frequently depressed occupational group in the United States.⁴ As a result, lawyers are at a much greater risk of suicide.⁵

Given the stressors encountered on the bench, judges are certainly not immune from depression, addiction, or other problems. However, assisting judges who become impaired because of such problems may be considerably more difficult than assisting lawyers generally, for a number of reasons. As leaders within the judicial



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system, judges are concerned about being perceived as weak or unable to cope. They are often better able to hide their problems because they lead a relatively isolated lifestyle—often times buffered by their staffs—and this can allow their conditions to worsen before others take notice. For a variety of reasons, attorneys and judicial colleagues hesitate to get personally involved with interventions for judges. Further, once a judge deems it necessary to make a lifestyle change, he or she may find it more difficult to attend local support groups or access local treatment providers because of his or her position in the community.

Because of the unique issues that judges face, the American Bar Association Commission on Lawyers Assistance Programs has decided to implement a program reaching out to impaired or potentially impaired judges. It is giving this effort top priority. Based upon an initiative originally aimed at law school students that was commenced in 2002, the new Judicial Assistance Project is currently being tailored to meet the specific challenges of the leaders of the judicial system. I report below about the work of the commission generally and about the emerging program aimed at helping judges who may be depressed, chemically dependent, or have other mental health conditions that impair judicial performance.

The Commission on Lawyers Assistance Programs

The first American Bar Association (ABA) attempt to address the health needs of lawyers was started in 1988, when the Commission on Impaired Attorneys was established. Its pur-

pose was to provide a model for assisting local and state bar associations in handling lawyers suffering from alcoholism and drug addiction. By 1996, the name of the commission was changed to the Commission on Lawyers Assistance Programs (CoLAP), and its focus was broadened to include a much more comprehensive array of issues, including stress, depression, addictive behaviors, and any other mental health issues that can affect a lawyer's, judge's, or law student's professional or private life.

That same goal motivates the commission today. CoLAP seeks to advance the legal community's knowledge of all quality-of-life issues. This runs the gamut from learning how to help an addicted lawyer to offering support for disaster victims, such as those otherwise healthy legal professionals whose lives were uprooted by Hurricanes Katrina and Rita last year and who subsequently experienced near total devastation, loss, and even post-traumatic stress disorder.

General CoLAP services. Perhaps the single most identifiable event that CoLAP sponsors is an annual national conference for persons working for state lawyers assistance programs (LAPs), bar association leaders, volunteers, law students, and others. For eighteen years, this conference has taken place annually, and its activities are now so detailed and all-encompassing that the event is spread over four days. The conference provides attendees with information on existing LAPs and best practices that can be used in their respective states or regions. It provides an opportunity for continuing education on the myriad issues affecting lawyers' professional and private lives and is good for both

professionals servicing state programs and individual lawyers, as well as judges, law students, discipline counsel, and bar leaders who need to find out more solutions to apply in their lives.

However, a whole host of services is offered through CoLAP. The heart of the program can be found in the member services arena, where information is provided to ABA members who may not be active in their state or local bar associations. The information they access can alert them regarding the quality of life services available from state and local LAPs. Members are also able to call CoLAP and be referred to a confidential telephone number in their state where help is available in confronting alcohol, drug, or other addictions, as well as mental illnesses.

Whereas member services concentrate on helping the individual law professional one on one, the ABA also assists state bars to create and enhance LAPs. In 1988, approximately twenty states had LAPs. Today, all fifty states have some form of LAP, with the majority having at least one paid staff member. CoLAP has developed a Model Lawyers Assistance Program that contains best practices for establishing a LAP. CoLAP also provides evaluations of state LAPs upon request.

Publications are another significant area of endeavor. CoLAP provides several publications to assist state and local LAPs. Two of the more important ones are the *Survey of Lawyers Assistance Programs* and the *LAP Director's Management Manual*.

New directions. During the last several years, CoLAP has initiated several new efforts to assist those in underserved groups. In 2002, CoLAP created the Law School Outreach Committee to develop a strategic plan for assisting law schools in providing education and assistance to law students regarding substance abuse and other mental health issues. The committee—consisting of a select group of law school deans, professors,

students, and LAP directors and volunteers—developed a plan that has resulted in the distribution of a tool kit called *Substance Abuse in Law Schools: A Tool Kit for Law School Administrators* to all ABA-accredited law schools. The kit contains a list of resources available for assisting law students, including an annotated bibliography of books, articles, and reports on law student addictions and mental health problems.

The committee, now known as the Law School Assistance Committee, is also working on a Model Rule on the Conditional Admission to Practice Law. The purpose of this is to assist states that may be interested in adopting a conditional admission rule. Such a rule can be used, in conjunction with educating law students about mental health and substance abuse issues, to encourage law students to seek assistance and treatment at the earliest possible time. It would allow bar applicants who have sought treatment to obtain conditional admission to practice law for a specified period of time. After successfully completing the probationary period, the affected applicant would be licensed to practice law unconditionally. The Conditional Admission Subcommittee includes members of the National Conference of Bar Examiners and the ABA Legal Education and Admissions to the Bar Section.

Another more recent CoLAP effort has been a diversity initiative. It has been reported that minority lawyers who have discipline problems due to substance abuse or addiction are less frequently readmitted to the bar. CoLAP believes that one reason for this is that minority lawyers are less likely to take advantage of LAP services. For this reason, in 2005 CoLAP began to formalize relationships with specialty bar associations by working with liaisons appointed by those specialty bars. For example, a formal agreement was signed by the presidents of the ABA and the National Bar Association to provide assistance to NBA members. CoLAP's goal is to

achieve cooperative working relationships with national, state, and local minority organizations and introduce them to the help that is available for their members. CoLAP is also focused on increasing the awareness of the LAPs to the special needs of minorities related to substance abuse, addictions, and mental illness.

Tailoring an Outreach Program for Judges

The initial planning session for the Judicial Assistance Project was held in early May 2006 in Greensboro, North Carolina, when members of CoLAP, the ABA Judicial Division, and the American Judicature Society met for the first time. Project members included judges, CoLAP members, and various state LAP directors and volunteers. Facilitated sessions were conducted to develop a three-year plan of action.

The mission of the Judicial Assistance Project is to develop a comprehensive national program that will effectively assist judges who may be depressed, chemically dependent, or have other mental health conditions that impair judicial performance. The project will combine respect for judges as the pinnacle of the legal profession with an understanding of the need to identify and assist those who may be affected by conditions or diseases that impair their judicial performance and threaten their lives.

For two days, the participants at the planning session examined the issues involved in assisting judges. Participants specifically examined the barriers to treatment that exist for judges, the opportunities that are currently available to enhance development of a Judicial Assistance Project, and what specific steps this new project should take over the next three years to design a top-notch program that can assist judges and aid LAPs throughout the United States to provide the best possible services to judges in need.

Identifying the issues. Project

members began by discussing the issues that judges face when seeking help for themselves or assisting other judges who may need help. One matter that was raised immediately is judicial isolation. All too often judges have difficulty confronting everyday problems because they cannot reach out with the same ease that others can. They also have trouble showing weakness on any level because of the nature of the judicial role. Similar to lawyers generally, judges perceive their role as “fixing things” for others. They therefore assume that if they have a problem, they should be able to fix it by and for themselves.

This isolation is institutional as well as personal. Judicial impairment is hard to identify and resolve because of the institution surrounding it. Staff, family, and the judiciary as

an institution all want to protect the idea and actuality of a fair and impartial justice system, and this can work to isolate and disadvantage judges. A judge’s “family” is often his or her staff, who can be very strong enablers of negative behavior by surrounding, buffering, and isolating the judge. In addition to many other factors, staff jobs often depend on the judge maintaining his or her position. Thus, erratic judicial behavior may be hidden or smoothed over, and the extent of the judge’s problems downplayed.

Court rules can also make it difficult to help affected judges. Some states have rules that make it almost impossible for judges to be referred to a LAP program without significant adverse consequences. Even when a judge is referred, it can be difficult for the LAP to provide help because

resources are not available due to the restrictive rules.

The specific nature of judicial elections or life tenure can also complicate the picture. Intervening with judges who are appointed for life or who run for popular election is extremely difficult. Very few people—whether court administrators, clerks of court, or even other judges—are willing to intervene with tenured or elected judges until the problem becomes so great that someone’s hand is forced and some action has to be taken. Yet, by then, it is often too late for the judge.

Another pressing concern for many judges is the weight of public expectation. Judges generally feel that they must be perfect. Not only do they feel that they should be fair, impartial, and make the right decision 100 percent of the time, but the public *expects* this of them as well, as do the lawyers who practice before them. This can create undue pressure for judges and consciously or subconsciously keep them from admitting or recognizing the signs of debilitating disease. When this is paired with another common problem—that of the lack of an adequate foundation of knowledge or information about addiction, mental diseases, or stress—the whole issue of how to go about seeking to change one’s life becomes even more murky. Many judges are unaware or uneducated about the problems of addiction, mental health, and judicial impairment generally. This may allow them to choose to ignore behaviors that might indicate a problem. Quite frankly, many judges feel that they are immune from these sorts of problems. Further, many do not know what to do to help another judge who may be evidencing symptoms of concern or impairment.

All of these problems are exacerbated by a host of other items. The pressures to be found in a crowded urban courtroom may well differ substantially from those found in a small rural court, but each will present a unique challenge to a given judge. Men may face different pressures from women, as

Depressed?

In any given one-year period, 9.5 percent of the population, or about 20.9 million American adults, suffer from a depressive illness. A depressive disorder is not the same as a passing blue mood. It is not a sign of personal weakness or a condition that can be willed or wished away. People with a depressive illness cannot merely “pull themselves together” and get better. Without treatment, symptoms can last for weeks, months, or years. Appropriate treatment, however, can help most people who suffer from depression.

Not everyone who is depressed or manic experiences every symptom. Some people experience a few symptoms, some many. Severity of symptoms varies with individuals and also varies over time. But if you have experienced several or more of the following, you may well be at risk and should seek help:

- persistent sad, anxious, or “empty” moods
- feelings of hopelessness or pessimism
- feelings of guilt, worthlessness, or helplessness
- loss of interest or pleasure in hobbies and activities that were once enjoyed, including sex
- decreased energy, fatigue, or being “slowed down”
- difficulty concentrating, remembering, or making decisions
- insomnia, early-morning awakening, or oversleeping
- appetite and/or weight loss or overeating and weight gain
- thoughts of death or suicide, or suicide attempts
- restlessness and irritability
- persistent physical symptoms that do not respond to treatment, such as headaches, digestive disorders, and chronic pain

Source: National Institute of Mental Health, *Depression*, <http://www.nimh.nih.gov/publicat/depression.cfm#ptdepl>.

may members of one ethnic group from another. Even the kind of court over which a judge presides, and the cases that he or she must adjudicate, can make a major difference in the perception and actuality of pressure. For a judicial assistance program to be truly effective, the gamut of issues will have to be adequately raised, considered, and confronted.

Removing the barriers to judicial treatment. Facilitating treatment for judges is intimately linked with the issues just discussed. For example, one must get beyond the hurdle of enabling or protective behaviors by a judge's staff or colleagues. Removing the reticence of other judges and court staff to confront and aid a judge—not for disciplinary purposes but to ameliorate the quality of his or her life—thereby becomes one of the goals of the project. Marshalling the energy and resources to work through the unique barriers that judges present is necessary, so as to provide state LAPs that do not currently have the financial or human resources available to adequately assist judges.

The structural nature of the job of judge is a key barrier. Some would liken this to the structural isolation of race. In each case, the *perception* of isolation can be so strong as to become the reality.

Another major barrier in helping an impaired judge to seek help—or in getting an administrative judge to deal with the impaired judge—is whether that judge is using some form of legal substance. If a judge is using alcohol or prescription medication that is entirely legal, and if that substance is only intermittently impairing the judge's work on the bench, the offending judge is likely to fly under the radar and not be referred to an organization that can help because of an institutional climate that does not wish to publicly air any problems of judges. While this may seem acceptable in the short run, in the long term it does not serve either the individual judge or the judiciary well.

Barriers to effective treatment can

exist in many ways. The respect and decorum accorded judges when working with them professionally are also a necessity when trying to get them to understand their possible impairment, yet that “distance” may also be part of a hurdle when trying to reach them and get them to acknowledge very personal issues. The judicial sense of self-importance, both in their role and in that of the judicial system generally, can add to the problem.

The fact of the matter, at least currently, is that most LAP directors indicate that by the time an impaired judge is referred to them, that judge is often very far gone. Most administrative judges or other supervisory

personnel will only refer an impaired judge when no other alternative exists. The impaired judge is referred only when the problem has become so acute that the court does not know what else to do, especially because no procedures are in place to help. Hence, the referral to a LAP is a last resort rather than a first option. This culture has to change if we are to make real inroads into the problem. So, too, must we adjust the practice of looking the other way. Very often fellow judges will say that they did not recognize that a specific judge had a problem. In reality, they often do but simply lack the will to intervene. If procedures were in place that could

Am I an Alcoholic?

Alcoholism, also known as alcohol dependence, is a disease that includes the following four symptoms:

- *craving*—a strong need, or urge, to drink
- *loss of control*—not being able to stop drinking once drinking has begun
- *physical dependence*—withdrawal symptoms, such as nausea, sweating, shakiness, and anxiety after stopping drinking
- *tolerance*—the need to drink greater amounts of alcohol to get “high”

People who are not alcoholic sometimes do not understand why an alcoholic can't just “use a little willpower” to stop drinking. However, alcoholism has little to do with willpower. Alcoholics are in the grip of a powerful “craving,” or uncontrollable need, for alcohol that overrides their ability to stop drinking. This need can be as strong as the need for food or water.

Although some people are able to recover from alcoholism without help, the majority of alcoholics need assistance. With treatment and support, many individuals are able to stop drinking and rebuild their lives.

How can you tell whether you may have a drinking problem?

Answering the following four questions can help you find out:

- Have you ever felt you should cut down on your drinking?
- Have people annoyed you by criticizing your drinking?
- Have you ever felt bad or guilty about your drinking?
- Have you ever had a drink first thing in the morning (as an “eye-opener”) to steady your nerves or get rid of a hangover?

One “yes” answer suggests a possible alcohol problem. If you answered “yes” to more than one question, it is highly likely that a problem exists. Even if you answered “no” to all of these questions, if you encounter drinking-related problems with your job, relationships, health, or the law, you should seek professional help. The effects of alcohol abuse can be extremely serious—even fatal.

Source: National Institute on Alcohol Abuse and Alcoholism, *Alcoholism: Getting the Facts*, http://pubs.niaaa.nih.gov/publications/GettheFacts_HTML/facts.htm.

make it easy for them, that would be a positive and necessary step forward to confront the problem rather than looking away. Such procedures need to be so automatic that other judges or colleagues do not have to spend time debating what to do—they merely need to act.

Accomplishing the mission. While in Greensboro, attendees of the initial Judicial Assistance Project meeting discussed a number of opportunities to explore to accomplish the project's mission. One option mentioned was working with the Conference of Chief Justices, the Appellate Judges Conference of Chief Judges, the Intermediate Court Judges, the Judicial Family Institute, and the National Judiciary Disciplinary Counsel Group to obtain multiple viewpoints on the issues and to explore satisfactory ways to resolve the differences of opinion that have emerged. Talk also focused on educating administrative and chief judges about the proposed changes to Model Rule of Judicial Conduct 2.19, which would impose a mandatory obligation to take appropriate action when a judge learns of a colleague's impairment.⁶ Likewise, several state jurisdictions are looking at changing their codes of judicial conduct by adding rules that require judges to report other judges. Clearly, this will be controversial when its results are exclusively about discipline. Nonetheless, it may open a dialogue with the judiciary about a rule that also allows judges to help their fellow judges by referrals to LAPs rather than to disciplinary actions.

To implement the three-year plan, project members were divided into four working groups, each charged with a specific mission. The first group is focusing on *education*, and it has been charged to

- develop a comprehensive education program on the problems of addiction, depression, and mental health issues among the legal profession and the judiciary, as well as the unique difficulties for judges in getting assistance with

these issues;

- target its efforts to several audiences, including judges in need of help, the judiciary as an institution, judicial administrators, and supreme courts;
- design the project to reach judges where they are, i.e., develop a sophisticated, science-based approach that shows the nature of the diseases and how identification and referral can serve as cures;
- build in components that motivate the judiciary to care about the issues and why—i.e., saving lives and protecting and improving the judicial system and the independence of the judiciary;
- provide specifics on recognizing the signs of various diseases or conditions, from onset to later stages;
- focus education in two ways, both top-down (i.e., through supreme court justices who understand the issues and support identification and referral instead of solely disciplinary responses) and bottom-up (i.e., allowing judges in recovery to educate the leaders of the judiciary on the issue); and
- produce sophisticated materials that maintain a high respect for the judiciary as an institution, delineate the lethal nature of the diseases or conditions if they are left untreated, and deliver the message that silence or protection of the judge is very detrimental to the judge's chances of recovery.

The *judicial administration group* is to

- develop best practices in judicial evaluation to provide to administrative judges and to judicial inquiry committees so that they know the signs to look for, understand the rules of identification and referral, have an established process in place, and can use the process quickly when an issue arises;
- in jurisdictions where no administrative structures are in place,

implement a process by which model judicial administrative rules can be provided to all jurisdictions that need them;

- commence a process to eliminate the rules barriers in states where those rules make it impossible for judges to be referred to a LAP without major disciplinary consequences for the judge;
- combat the enormous difficulty of intervening with elected judges or lifetime-appointed judges and develop ideas to assist jurisdictions in providing intervention assistance for elected judges, who are unlikely to be reported or helped even by those who know they need help but do not do so because of the political ramifications;
- develop a database of judicial inquiry committees in each state so that CoLAP can disseminate the current best practices to them, models can be sent to those that have no current structure, and CoLAP can get input from those that do have effective procedures in place on what works best for judges; and
- work with the National Judicial College on judicial discipline by enhancing contact and work among judicial administrators.

Networking is the subject of the third working group, and it is to

- develop a database of persons, organizations, and institutions specifically focused on judicial assistance;
- expand the judge volunteer corps in all LAPs;
- compile a list of administrative or chief judges in each state who are willing to work with LAPs to address groups of judges;
- develop a list of physician assistance networks;
- identify associations of judges knowledgeable about the issues of addiction and mental health, e.g., criminal and drug court judges,

and identify a core group who will conduct outreach to their fellow judges;

- develop judge telephone groups in each LAP;
- contact the national organization of judicial disciplinary counsel;
- develop a list of judges from each state LAP who will serve as experts to speak to local judges groups in other states;
- create a list of anonymous helplines for judges who need help and do not want to go to a local source;
- survey all LAPs to determine which have a judicial assistance program, which are effective, what makes them work, and determine what has not worked; in tandem with this, have LAPs identify the states that do not have judicial inquiry committees so that CoLAP can target them as jurisdictions to provide with information on how to do judicial evaluations; and
- build up a list of health and wellness committees in each state, and enlist these committees for their help as additional assistance teams.

The final working group is simply known as *peer-to-peer*, and it will work to

- build local judge peer groups for all LAPs, as well as anonymous

peer assistance for judges;

- develop a national peer network for judges who do not want to make local contact for assistance, a cadre of judges who either understand the issues or are in recovery;
- develop a listserv and consider monthly conference calls or at regular intervals so that when a new judge needs help, the network is there for the judge right away;
- foster online or telephone peer groups so judges can work with fellow judges without having to make a local contact for assistance; and
- encourage LAPs to develop relationships with the medical professions so judges can join peer groups of doctors.

Conclusion

Clearly, the ABA's CoLAP has much work to do to expand its efforts to help judges with addictions, mental diseases, and other problems that may be affecting their ability to exercise their duties. But, just as clearly, a concerted effort is being made to do so, and to do so in ways that balance the professionalism and discretion of the judicial office with the need to administer to individual judges who are experiencing problems. One cannot doubt that we need to alter the current dynamic of isolation, fear, and looking the other way. Too many

good judges are being compromised by their own perceptions or those of their fellow judges, staffs, and supervisory administrators. Rather than abandoning them to their own fate, it behooves the judicial corps to work together

to find the means to work for all of its members. ■

Endnotes

1. Connie Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1 (1995).
2. N.C. BAR ASSOCIATION, FINAL REPORT OF THE QUALITY OF LIFE SURVEY OF NORTH CAROLINA ATTORNEYS (2003).
3. BENJAMIN SELLS, *THE SOUL OF THE LAW: UNDERSTANDING LAWYERS AND THE LAW* (1996).
4. W.W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1083-1132 (1990).
5. SELLS, *supra* note 3, citing Blachly, Osterud & Josslin, *Suicide in Professional Groups*, 268 NEW ENG. J. MED. 1278 (1963).
6. The Joint Commission to Evaluate the Model Code of Judicial Conduct is revising the Model Code. It has heard public testimony and invited written comment. The latest public version of the Code can be found at the joint commission's Web site, <http://www.abanet.org/judiciaethics/home.html>. The joint commission plans to file the revised Code for consideration by the ABA House of Delegates at the 2007 Midyear Meeting. Rule 2.19 is currently planned to be renumbered as 2.18 and a new, related Rule 2.19 added. Note that the commission does not see this Rule 2.18 primarily as a disciplinary device. Rather, its fundamental purpose is to guide and encourage judges to address impairment problems when they arise.

CoLAP is dedicated to assisting judges, lawyers & law students with impairments resulting from alcoholism, chemical dependency and mental health problems. Those in need of assistance can call the CoLAP Helpline 866-LAW LAPS. Special populations have special needs and CoLAP has a series of committees to address those needs. The Judicial Assistance Initiative (JAI) addresses issues particular to the judiciary. Through the work of JAI a confidential helpline specifically for the judiciary has been created, known as the National Judges' Assistance Helpline (800-219-6474). This helpline is answered during normal business hours by the staff of the Texas Lawyers' Assistance Program in Austin, Texas. For additional information call 312-988-5717 or visit www.americanbar.org/colap.

Helping Our Fellow Judges: An Update on the CoLAP Judicial Assistance Initiative

By Judge Robert L. Childers



Hon. Robert L. Childers has been the presiding judge of the Shelby County Circuit Court, Division Nine, in Tennessee since 1984. He has been an ABA CoLAP member since 1999, a member of the Tennessee LAP since it was created in 1999, and a founding member of the Memphis Lawyers Helping Lawyers Committee. He was appointed chair of the Judicial Assistance Project in the fall of 2005. He can be reached at Robert.Childers@shelbycountyttn.gov.

I became involved with the lawyer assistance program movement in 1987, early in my judicial career, after a lawyer friend committed suicide. My friend had shown few outward signs that anything was wrong. He was an extremely bright and competent attorney, an accomplished musician, with a brilliant mind and quick wit. So it came as a complete shock to most everyone when he took his own life.

At his wake, several of his lawyer and judge friends talked and decided that it was time to do more to help our colleagues who were struggling with stress-related issues of substance abuse and depression. Shortly thereafter the Memphis Lawyers Helping Lawyers Committee was formed. One of the keys to the committee's success was the support and involvement of the judiciary. The success of the Memphis program and others like it across the state led to the creation in

1999 of the Tennessee Lawyers Assistance Program by the Tennessee Supreme Court. Unfortunately, there has not been as much success in assisting judges who may be struggling with stress-related issues.

As we all know, judges are not immune from the problems which stem from the stress of the legal profession, including depression and addiction. Judges work in high-stress situations and are often isolated from their peers. In addition, judges face ever-increasing dockets, media scrutiny, public criticism, and second-guessing.

Judges may frequently have difficulty confronting everyday problems because they cannot reach out with the same ease that others can. They may also have trouble showing weakness on any level because of the nature of the judicial role. Much like lawyers generally, judges perceive their role to be one of fixing things for others. As a result many assume that if they have problems, they should be able to fix them by themselves.

The isolation that judges experience is institutional as well as personal. Judicial impairment is sometimes hard to identify and resolve because of the institution surrounding it. Staff, family, and the judiciary as an institution all want to protect the idea and actuality of a fair and impartial justice system, but this can work to isolate and disadvantage judges. A judge's "family" is often his or her staff, who can be very strong enablers of negative behavior by surrounding, buffering, and isolating the judge. Additionally, staff jobs often depend on the judge maintaining his or her position. As a result erratic judicial behavior may be hidden or smoothed over, and the extent of a judge's problems downplayed.

Court rules can also make it difficult to help affected judges. Some states have

rules that make it difficult, if not impossible, for judges to be referred to a lawyer assistance program (LAP) without significant adverse consequences. In many states, even when a judge is referred, it can be difficult for LAP staffers to provide help because resources are not available due to restrictive rules.

The nature of judges as public officials having to run for office or having life tenure also complicates the picture. Intervening with judges who are appointed for life or who run for popular election is extremely difficult. Very few people, whether court administrators, clerks of court, or even other judges, are willing to intervene with tenured or elected judges until the problem becomes so great that someone's hand is forced and action must be taken. By then, however, it is often too late for the judge.

Yet another stressor for judges is the weight of public expectation. Judges generally feel that they should be perfect. Not only do they feel that they should be fair, impartial, and make the right decision 100 percent of the time, but the public expects this of them as well, as do the lawyers who practice before them. This can create undue pressure for judges and, consciously or unconsciously, keep them from admitting or recognizing the signs of debilitating disease. When this is paired with another common problem, that of the lack of an adequate foundation of knowledge or information about addiction, mental diseases, or stress, the whole issue of how to go about seeking to change one's life becomes even more murky. Many judges are unaware or uneducated about the problems of addiction, mental health, and judicial impairment generally, which may allow them to ignore behaviors that might indicate a problem. Many judges feel they are immune from these sorts of problems, and many do not know what to do to help another judge who may be evidencing symptoms of concern or impairment.

These and other barriers may all serve to deter referring an impaired judge for treatment until it is too late to save a jurist's career. Most LAP directors indicate that by the time an impaired judge

is referred to them, that judge is often very far gone. Most administrative judges or other supervisory personnel will only refer an impaired judge when no other alternative exists. The impaired judge is referred only when the problem has become so acute that the court does not know what to do, especially because no procedures are in place to help. This culture has to change if we are to make real inroads into the problem.

*The practice of
looking the
other way must
change.*

And the practice of looking the other way must change as well. Often judges will say that they did not recognize that a fellow judge had a problem when, in reality, they did notice but simply lacked the will to intervene. If procedures were in place that could make it easy for them to respond, that would be a positive and necessary step forward to confronting the problem. Such procedures should be so automatic that other judges or colleagues would not have to spend time debating what to do—they would merely need to act.

The Commission on Lawyer Assistance Programs (CoLAP) is in the midst of devising a plan to be implemented nationwide to assist impaired judges.

CoLAP's Judicial Assistance Initiative has been working since 2006 to devise such a plan. Currently chaired by Judge Sarah (Sallie) Krauss, a New York state trial judge, the committee is comprised of trial and appellate court judges, LAP directors and volunteer attorneys, judicial administrators, and Judge William Dressel, President of the National Judicial College. The committee is divided into four subcommittees: Education, Judicial Administration, Networking, and Peer-to-Peer.

Education

The Education Subcommittee is working on, among other things:

- Developing a comprehensive education program on the problems of addiction, depression, and mental health issues among the legal profession and judiciary, as well as the unique difficulties facing judges in getting assistance with these issues;
- Building in components that motivate the judiciary to care about the issues and explain reasons why doing so is important—i.e., saving lives, protecting and improving the judicial system, and enhancing the independence of the judiciary;
- Focusing education in two ways, both top-down (i.e., through supreme court justices who understand the issues and support identification and referral instead of solely disciplinary responses) and bottom-up (i.e., allowing judges in recovery to educate the leaders of the judiciary on the issue); and
- Producing sophisticated materials that maintain a high respect for the judiciary as an institution, delineate the lethal nature of the diseases or conditions left untreated, and deliver the message that silence or protection of the judge is very detrimental to the judge's chances of recovery.

Judicial Administration

The Judicial Administration Subcommittee is working on, among other things:

- Implementing a process by which

model judicial administrative rules can be provided to all jurisdictions that need them;

- Developing a process to eliminate the rules barriers in states where those rules make it impossible for judges to be referred to an LAP without major disciplinary consequences for the judge;
- Developing a database of judicial inquiry committees in each state so CoLAP can disseminate the current best practices, models can be sent to those who have no current structure in place, and CoLAP can get input on what works best for judges from those programs that do have effective procedures in place; and
- Working with the National Judicial College on judicial discipline by enhancing contact and work among judicial administrators.

Networking

The Networking Subcommittee is working on, among other things:

- Developing a database of persons, organizations, and institutions specifically focused on judicial assistance;
- Expanding the judge volunteer corps in all LAPs;
- Developing judge telephone groups in each LAP;
- Creating a list of anonymous helplines for judges who need help and do not want to go to a local source; and
- Creating a list of health and well-

ness committees in each state, and enlisting these committees for their help as additional assistance teams.

Peer-to-Peer

The Peer-to-Peer Subcommittee is working on, among other things:

- Creating local judge peer groups for all LAPs, as well as anonymous peer assistance for judges;
- Developing a national peer network for judges who do not want to make local contact for assistance, a cadre of judges who either understand the issues or are in recovery;
- Fostering online or telephone peer groups so judges can work with fellow judges without having to make a local contact for assistance; and
- Developing a listserv and conference calls at regular intervals so that when a new judge needs help, the network is there for the judge immediately.

Conclusion

The members of the Judicial Assistance Initiative of the ABA Commission on Lawyer Assistance Programs (CoLAP) have done a great deal of work, but much work is still to be done to create a nationwide system to help judges with addictions, mental diseases, and other prob-

lems that may be affecting their ability to fulfill their duties. The committee is striving to develop a system that will balance the professionalism and discretion of the judicial office with the need to administer to individual judges who are experiencing problems. It can hardly be debated that we need to alter the current dynamic of isolation, fear, and looking the other way. Too many good judges are being compromised by their own perceptions or those of their fellow judges, staffs, and supervisory administrators. Rather than abandoning them to their own fate, it behooves us to work together to find the means to aid our colleagues who are suffering.

CoLAP is dedicated to assisting judges, lawyers & law students with impairments resulting from alcoholism, chemical dependency and mental health problems. Those in need of assistance can call the CoLAP Helpline 866-LAW LAPS. Special populations have special needs and CoLAP has a series of committees to address those needs. The Judicial Assistance Initiative (JAI) addresses issues particular to the judiciary. Through the work of JAI a confidential helpline specifically for the judiciary has been created, known as the National Judges' Assistance Helpline (800-219-6474). This helpline is answered during normal business hours by the staff of the Texas Lawyers' Assistance Program in Austin, Texas. For additional information call 312-988-5717 or visit www.americanbar.org/colap.

Judicial Assistance Initiative Report on Judicial Diversion Programs and Policies

Introduction

Statistics on rates of depression, emotional distress, anxiety, addictions and other related mental, physical and social problems have been widely reported as being particularly high among lawyers.¹ Such pressures are certainly also felt – and possibly to a greater extent – by judges. However, because of their unique positions both in their communities and in their professional lives, it may be even more difficult for judges to reach out for and receive help than it is for lawyers.²

In 2006, the American Bar Association implemented the Judicial Assistance Initiative (JAI) in order to reach out to impaired judges. The mission of the initiative is to develop a comprehensive national program that will effectively assist judges who may be experiencing depression, chemical dependency or have other mental health conditions that impair judicial performance. In implementing this mission, project members have pursued identifying the major issues judges face when seeking help and identifying policies and practices that might be targeted to facilitate the removal of barriers to judicial treatment. One method of assisting judges is the use of rules and procedures to provide assistance for impaired judges who have been reported to judicial conduct commissions.

This report examines the existence and nature of judicial diversion programs and policies across the country. It has been reported previously that most states have something of this nature.³ This report summarizes current models in various jurisdictions, highlighting the features that such programs share and addressing their strengths and weaknesses. It is anticipated that based on this report, a model diversion policy may be crafted.

This memo provides an initial overview of the relevant state rules and statutes. Section A provides a summary and discussion of the reporting requirements that are found in the judicial codes. Section B provides a brief summary of commission rules, statutes and court rules that provide for assisting impaired judges rather than disciplining them in certain cases as well as a roadmap for the continued analysis. An extensive appendix is also available (though, because of its length is not included here) that provides the relevant rules and statutes for each state.

A. Reporting Requirements in Judicial Codes

Rule 2.15a of the ABA Model Code of Judicial Conduct requires that “a judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge’s honesty, trustworthiness, or fitness as a judge in other respects shall inform

¹ See e.g., Connie Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers* 10 J.L. & Health 1 (1995); W.W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. Occupational Med. 1079, 1083-1132 (1990)

² Childers, R.L. *Got Stress? Using CoLAP and Its New Judicial Assistance Project*. Judges’ Journal (2006)

³ See, e.g., Cynthia Gray, *How Judicial Conduct Commissions Work*, 28 Justice System Journal 405, 417 (2007)

the appropriate authority.” A standard approach by the states is to incorporate some variation of this requirement in their state codes. Often, this statement can be found in subsections addressing administrative or disciplinary responsibilities. Alabama, for example, incorporates the following variation into Canon 3 under the Administrative Responsibilities section:

A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge has personal knowledge.⁴

The ABA Model Code of Judicial Conduct has a separate rule addressing disability and impairment which provides an avenue to divert these cases to assistance programs rather than requiring that these cases be reported to disciplinary authorities. This rule or variations of this rule have been adopted by eleven jurisdictions.⁵ Rule 2.14 of the Model Code states:

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.⁶

The comment section clarifies that “appropriate action” refers to action intended and reasonably likely to help the judge address the problem. The comment explicitly states that a referral to an assistance program may qualify as an appropriate action, depending upon the circumstances and that doing so may satisfy a judge’s responsibility under this Rule, therefore relieving the judge of the reporting requirement.

Some states have elaborated on the model rule, providing more guidance for judges in diverting impaired cases to appropriate assistance programs. Arkansas, for example, adds [3A] to the comment section “Judges may exercise discretion in referring a lawyer or another judge to the Arkansas Judges and Lawyers Assistance Program.”⁷ New Mexico lists “Alcoholics Anonymous, Narcotics Anonymous, or other support group recognized by the New Mexico Disciplinary Board of the New Mexico judicial Standards Commission” as appropriate places to which to refer an impaired judge.⁸ The commentary to Maryland’s rule also provide guidance for determining what corrective measures are required, suggesting that in some cases a referral to a bar association counseling service may be appropriate.⁹

Alaska provides an extended commentary section explaining that a judge has a degree of discretion in determining how to respond to misconduct, that there will be a range of reasonable responses. Examples are included, one of which is provided below:

[A] judge who learns that another judge is suffering from alcohol or drug addiction might direct that other judge to counseling or might seek the help of the other judge's colleagues or friends or refer the matter to a judicial assistance committee. On the other hand, if the

⁴http://www.americanbar.org/content/dam/aba/migrated/judicialethics/ABA_MCJC_approved.authcheckdam.pdf

⁵ The following states have adopted the ABA model rule or a substantially similar version: Arkansas, Delaware, the District of Columbia, Indiana, Kansas, Minnesota, Montana, New Mexico, Nevada, Tennessee, and Utah.

⁶http://www.americanbar.org/content/dam/aba/migrated/judicialethics/ABA_MCJC_approved.authcheckdam.pdf

⁷ https://courts.arkansas.gov/rules/judicial_conduct/index.cfm#Canon3

⁸ <http://nmjsc.org/docs/Consolidated%20pdf%20of%20CJC.pdf>

⁹ <http://www.courts.state.md.us/ethics/pdfs/codes.pdf>

other judge refuses to admit the problem or submit to ameliorative measures, and if the other judge's intoxication is interfering with his or her judicial duties (so as to constitute a violation of Canon 1 and Section 3A), then a judge who knows of this problem may be obliged to report it to the Commission on Judicial Conduct, unless that judge is a senior judge acting as a member of a judicial assistance committee.¹⁰

Arkansas and Wisconsin's rules provide clauses in their judicial codes that explicitly protect attorneys or judges who are assisting an impaired judge in receiving treatment from having to report such behaviors. Wisconsin's rule simply adds that the reporting requirement "does not require a judge to report conduct disclosed through a judge's participation in a group to assist ill or disabled judges or lawyers when such information is acquired in the course of assisting an ill or disabled judge or lawyer."¹¹ Arkansas' rule is below:

[3A] This rule shall not apply to a Judge who is a member of the Judges and Lawyers Assistance Committee (the "Committee") of the Arkansas Judges and Lawyers Assistance Program (JLAP) or a volunteer serving pursuant to Rule 4 of the Rules of JLAP regarding information received in his or her capacity as a Committee member or volunteer. However, the "duty to report" outlined in Rule 2.15 above is reinstated if, in good faith, the JLAP committee member or volunteer has: reason to believe that an attorney or judge participating in the JLAP program is failing to cooperate with said program; is engaged in criminal behavior or the threat thereof; or, is otherwise in violation of Rule 2.15 which is beyond or succeeds the behavior upon which the judge's participation in JLAP was initially based.¹²

B. Commission Diversion Procedures

There are several significant variations in how the judicial conduct commissions address judicial impairment, as is evident in their rules of procedure. Although not all of the jurisdictions contain explicit diversion rules that allow an impaired judge to benefit from assistance rather than being subject to formal disciplinary procedures, all jurisdictions contain some language which might provide some amount of discretion to the judicial conduct commission at least early on in the investigation.¹³ See Image 1 on the final page of this document. California, Florida and Montana, for example allow for settlement agreements negotiated between the commission and the judge.¹⁴ Idaho's rules indicate that the Council may take action or direct such other action as will "reasonably curtail or eliminate the conduct of the judge which involves any matter within the jurisdiction of the Council."¹⁵ Iowa's rules allow for "letters of caution and warning" in cases where the misconduct does not warrant formal discipline.¹⁶ Michigan's rules suggest that the matter may be dismissed "contingent upon the satisfaction of conditions imposed by the

¹⁰ <http://courts.alaska.gov/cjc.htm#3>

¹¹ <http://www.wicourts.gov/sc/rules/chap60.pdf>

¹² https://courts.arkansas.gov/rules/judicial_conduct/index.cfm#Canon2

¹³ CA, DE, D.C., FL, ID, IA, IL, KY, LA, ME, MI, MO, MT, NE, NH, NJ, NC, OH, OK, RI, TX, UT, VA, WA, and WV.

¹⁴ See California Commission on Judicial Performance Rule 116.5;

http://cjp.ca.gov/res/docs/Appendix/CJP_Rules.pdf; Montana Judicial Standards Commission Rule 10(g)

http://courts.mt.gov/content/library/forms/judges_complaint/jsc.pdf; Florida Judicial Qualifications

Commission Rule 6(j) <http://floridajqc.com/rules.html>

¹⁵ See Idaho Judicial Council Rule 28

<http://www.judicialcouncil.idaho.gov/General%20Rules%20of%20Procedure.pdf>

¹⁶ See Iowa Court Rule 52.26 http://www.iowajqc.gov/governing_provisions/Iowa_Court_Rules/

commission, which may include a period of monitoring.”¹⁷ New Hampshire also provides for committee monitoring and the imposition of conditions in connection with an informal resolution.¹⁸ And Virginia’s rules provide for informal conferences to discuss allegations and possible solutions.¹⁹

Other jurisdictions provide language, typically embedded within their rules related to informal adjustment and sanctioning, allowing for the commission to refer a judge to counseling or other educational programs.²⁰ Arkansas Commission Rule 9, for example, indicates that if the 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.”²¹ Connecticut has a rule specific to mental infirmity or mental illness or drug dependency or alcohol addiction that directs the Council to investigate such issues and, if appropriate shall “request the judge or family support magistrate to seek appropriate treatment.”²²

Similarly, a number of jurisdictions allow for the commission to refer a judge to a treatment program or counseling, but add that the judge and commission can or shall enter into an agreement to that effect.²³ Alaska Judicial Conduct Commission Rule 11(3), for example, indicates that if the commission finds that there has been misconduct for which counseling is appropriate, the commission may recommend counseling and the commission will “in its discretion, also enter into an agreement with the judge, set out in a memorandum, concerning the judge’s future conduct or submission to counseling.”²⁴ Mississippi Commission on Judicial Performance Rule 6 also allows for a “memorandum of understanding” concerning a judge’s “future conduct or submission to professional treatment or counseling.”²⁵ Massachusetts Commission on Judicial Conduct Rule 7(b)(3) indicates that if informal adjustment is appropriate, the commission may, “with the agreement of the judge, so inform or admonish the judge, direct professional counseling or assistance for the judge, or impose conditions on the judge’s future conduct.”²⁶ Oregon Commission on Judicial Fitness and Disability Rule 18(g) indicates that the Commission may enter into a disposition of the matter which may include “agreement by the judge to obtain professional counseling, medical treatment or other assistance or to comply with other conditions with respect to the future conduct of the judge.”²⁷

Fifteen jurisdictions have explicit diversion rules that facilitate rehabilitation for impaired judges rather than discipline.²⁸ Such diversion rules are referred to as deferral of impairment rules, diversion plans, deferred resolutions, deferred disposition agreements, and deferred discipline agreements. A number of jurisdictions have provided definitions of such diversion agreements in

¹⁷ Michigan Judicial Tenure Commission Internal Operating Procedure Rule 9.207(b)(3)

<http://jtc.courts.mi.gov/downloads/IOPs.pdf>

¹⁸ New Hampshire Supreme Court Rule 40(8) <http://www.courts.state.nh.us/rules/scr/scr-40.htm>

¹⁹ See Section 4 of the Rules of the Judicial Inquiry and Review Commission

<http://www.courts.state.va.us/agencies/jirc/rules.html>

²⁰ See AZ, AR, CT, GA, HI and NM.

²¹ http://www.arkansas.gov/jddc/pdf/rules_060108.pdf

²² <http://www.ct.gov/jrc/cwp/view.asp?a=3061&q=384462&jrcNav=|>

²³ See AK, MA, MS, OR and WI.

²⁴ <http://www.courts.alaska.gov/jcc.htm#11>

²⁵ Mississippi Commission on Judicial Performance Rules can be found here:

<http://www.judicialperformance.ms.gov/Pages/Provisions.aspx>

²⁶ <http://www.mass.gov/cjc/rules.pdf>

²⁷ [http://www.ojd.state.or.us/web/ojdpublishations.nsf/Files/CJFDRules.pdf/\\$File/CJFDRules.pdf](http://www.ojd.state.or.us/web/ojdpublishations.nsf/Files/CJFDRules.pdf/$File/CJFDRules.pdf)

²⁸ AL, CO, IN, KS, MD, MN, NV, NY, ND, PA, SC, SD, TN, VT, and WY.

their Commission rules. North Dakota, Tennessee, and South Carolina all provide definitions of deferred discipline agreements, the core and common features of which involve confidentiality of the agreement, for the purpose of providing rehabilitation, and which can only be used in cases where the misconduct is minor:

North Dakota:

a confidential agreement between the judge and the commission for the judge to undergo treatment, participate in education programs, or take other corrective action that is only available as a response to minor misconduct that can be addressed through treatment or a rehabilitation program.²⁹

Tennessee:

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 court 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.³⁰

South Carolina

A confidential agreement between the lawyer and an investigative panel of the Commission for the lawyer to undergo treatment, participate in education programs or take other corrective action. It is only available as a response to misconduct that is minor and can be addressed through treatment or a rehabilitation program. A deferred discipline agreement can only be entered into prior to the filing and service of formal charges.³¹

Some of the diversion rules are quite brief, however, providing little guidance on the conditions and procedures for diversion. Colorado Rule of Judicial Discipline 35(b) indicates that a judge may be directed to “follow a diversion plan, including but not limited to education, counseling, drug and alcohol testing, medical treatment, medical monitoring, or docket management, which may be accompanied by the deferral of final disciplinary proceedings.”³² New York’s Manual for the Commission on Judicial Conduct says that the Commission “may approve deferring a disciplinary determination for a reasonable time, to permit the judge to complete a rehabilitation program or supplemental judicial education and training program.”³³ Wyoming Rule Governing the Commission on Judicial Conduct and Ethics 6(g) simply says that the adjudicatory panel has the authority to proceed with deferred discipline agreements.³⁴ Minnesota’s Board on Judicial Standards Rule 6(5)(i) says that if the board finds that there is reasonable cause to believe the judge committed misconduct, it may “enter into a deferred disposition agreement for a period of

²⁹ <http://www.ndcourts.gov/rules/Commission/frameset.htm>

³⁰ <http://tennessee.gov/tccy/tchild/tca/tca.htm>

³¹ <http://www.judicial.state.sc.us/courtReg/index.cfm>

³² [http://www.coloradojudicialdiscipline.com/PDF/CJD%20RULES%20-%20Revised%20and%20Adopted%20by%20Supreme%20Court%202012\(07\)%20Clean%206-20-12.pdf](http://www.coloradojudicialdiscipline.com/PDF/CJD%20RULES%20-%20Revised%20and%20Adopted%20by%20Supreme%20Court%202012(07)%20Clean%206-20-12.pdf)

³³ <http://www.cjc.ny.gov/Legal.Authorities/NYSCJC.PolicyManual.March2011.pdf>

³⁴ See, http://judicialconduct-wy.us/cjce_rules.php

time, and the agreement may specify the disposition upon completion.”³⁵ South Dakota Rule 20 indicates that the commission may enter into a deferred discipline agreement “provided that the judge throughout the period complies with specified reasonable conditions...upon satisfactory compliance, the commission may thereafter dismiss the proceedings.”³⁶ And, South Carolina Judicial Disciplinary Enforcement Rule 21 indicates that the investigative panel shall approve or disapprove a deferred discipline agreement or a letter of caution and shall impose the sanction or issue the letter of caution without submitting the matter to the Supreme Court.³⁷

Alabama, Indiana, Kansas, Maryland, Nevada, Pennsylvania, and Vermont all have fairly extensive diversion rules that provide procedures for when and how to implement the procedures. Similar features among these diversion rules include the following:

1. applies to misconduct that is the result of impairment
2. external evaluation of impairment (by LAP or other expert)
3. agreement between judge and commission
4. indication of consequences of failure to complete treatment
5. confidentiality

These jurisdictions also have a number of notable differences. While Alabama and Kansas have a commission rule dedicated specifically to diversion, Indiana’s rules mention diversion, but the procedures can be found in the state supreme court rule for referring judges to the state LAP. Kansas’ diversion rule sets up a committee, called the “impaired judges assistance committee,” and specifies its purpose and duties in assisting impaired judges. Maryland’s rules really focus on the conditions under which and the logistics of implementing a deferred discipline agreement. Pennsylvania’s diversion rule is very policy oriented and provides language about protecting the public while providing help for the judge.

C. Plan for continued analysis

The commission rules contain a number of similarities and differences that will be analyzed and discussed in greater detail, with a focus on the 7 jurisdictions that have more comprehensive procedures. Specifically, diversion rule features will be discussed according to the following categories: conditions for implementing diversion, when diversion procedures may be implemented, what types of treatment programs are referred to or discussed, the terms of such diversion agreements, medical examinations, confidentiality and immunity. The analysis and discussion of each of these elements will be useful in facilitating the development of a model diversion rule.

³⁵ <http://www.bjs.state.mn.us/Promulgated%20Rules%20of%20BJS%202009.pdf>

³⁶ http://www.sdjudicial.com/Uploads/downloads/III_Judicial_Discipline.pdf

³⁷ See <http://www.judicial.state.sc.us/courtReg/index.cfm>

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Alabama

Authority and Application. The [Alabama Judicial Inquiry Commission](#), pursuant to [Article VI of the Constitution of Alabama](#), is authorized to investigate allegations of misconduct in office, of violation of the Canons of Judicial Ethics, or of disability made against any judge of a court of the judicial system of the state of Alabama. The Rules of Procedure of Judicial Inquiry Commission can be found [here](#).

Procedures. Upon receipt of a complaint, a preliminary review may be conducted. The Commission may then dismiss the complaint according to Rule 6B or conduct further investigation. Every six weeks after serving the judge pursuant to Rule 6C, the Commission shall serve on the judge being investigated copies of all materials of any nature and a full statement of whether the commission intends to continue the investigation.

Diversion Procedures: [Rule 16](#) of Alabama’s Judicial Inquiry Commission creates judicial diversion procedures to address findings of “misconduct as a result of alcohol, drug or substance abuse, addiction or mental or emotional disorder” (Rule 16). Based on a discussion with David Wooldridge, who worked with the Alabama Inquiry Commission on developing Rule 16, diversion will not occur unless a report has been made to the Commission and during an investigation the Commission agrees that the judge should undergo a confidential evaluation through the LAP. Potentially creating a chilling effect, the person making the complaint to the Judicial Inquiry Commission must sign their name to the complaint, revealing their identity to the judge. The judge is then not required to participate in the proceedings, which may make it difficult to determine if there are impairment issues. The Commission may enter into an agreement whereby if the judge successfully completes the conditions of his or her treatment, the commission may dismiss the complaint or take other appropriate action. A deferred matter may be reopened. Rule 16 provides that all communications made by or for a judge with the commission are privileged and inadmissible as either substantive evidence or impeachment evidence against the judge.

Rule 16. Deferral of Impairment Cases.

A. If the commission finds during the course of an investigation that there is cause to believe that any misconduct specified in the complaint was the result of alcohol, drug, or substance abuse, addiction, or a mental or emotional disorder, the commission and the judge may agree that the judge undergo confidential evaluation through the Alabama Lawyers Assistance Program (“ALAP”). Should the evaluation reveal the existence of a condition for which treatment through ALAP is appropriate, the commission may thereafter enter into a diversion agreement with the judge under which resolution of the complaint is deferred upon the condition that the judge participate in the professional treatment, counseling, after-care, and/or other assistance program recommended in the ALAP evaluation. Every diversion agreement shall be reduced to writing, shall provide for periodic reporting by ALAP to the commission regarding the judge’s compliance or noncompliance, and shall be signed by the judge and the chairman of the commission. A copy of the agreement will be given to the judge; the original shall be maintained in the commission’s file. Upon the judge’s satisfactory completion of the agreed treatment, counseling, or other assistance program, the commission may dismiss the complaint or take other appropriate action. If the commission finds the judge is noncompliant with treatment or has otherwise failed to successfully complete the agreed program, the commission may reopen the deferred matter.

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B. All statements made by or for a judge in the course of discussions or negotiations with the commission regarding referral to ALAP or in the course of his or her involvement in or assessment by ALAP, including statements made in connection with any evaluation, treatment, counseling, or after-care, shall be privileged and inadmissible as either substantive evidence or impeachment evidence against the judge.

Confidentiality. Proceedings of the commission shall be confidential, except for filing of a complaint with the Court of the Judiciary and except as otherwise provided by the rules. Rule 5A(4) provides the following exception related to communication with LAPs:

“When the commission refers a judge to the Alabama Lawyers Assistance Program (“ALAP”) for evaluation under Rule 16, the commission may disclose relevant information to ALAP.”

ALAP: <http://www.alabar.org/alap/>

Contact Info:

- LAP assistant to the Director: Sandra Dossett sandra.dossett@alabar.org
- Worked with Director and Alabama Inquiry Commission on developing rules and procedures: David Wooldridge: dwooldridge@sirote.com (phone conversation on 8/9)
- Judicial Inquiry Commission Executive Director: Jenny Garrett jic@alalinc.net

Alaska

Authority and Application. Pursuant to [Article IV, Section 10 of the Alaska Constitution](#), [Alaska’s Commission on Judicial Conduct](#) has the authority to address allegations of judges’ physical and mental disabilities (see Commission Rule 7). According to the commission’s website, disabilities may include: alcohol or drug abuse; senility; serious physical illness; or mental illness. In the event that the allegations are of mental or physical disabilities, the commission will follow the procedures established by Rules 1-16, 18, and 20. The Commission Rules of Procedures can be found [here](#).

Reporting Requirements. [Alaska’s Code of Judicial Conduct](#) provides a responsibility of taking appropriate action when a judge has information establishing a likelihood that another judge has violated the code. However, the Code allows a judge a degree of discretion in determining how he or she should respond to misconduct. Specifically, the comment section states “a judge who learns that another judge is suffering from alcohol or drug addiction might direct that other judge to counseling or might seek the help of the other judge's colleagues or friends or refer the matter to a judicial assistance committee”

Canon 3

D. Disciplinary Responsibilities.

(1) A judge having information establishing a likelihood that another judge has violated this Code shall take appropriate action. A judge having knowledge* that another judge has engaged in conduct reflecting the other judge's lack of fitness for judicial office shall

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inform the appropriate disciplinary authority,* unless the judge reasonably believes that the misconduct has been or will otherwise be reported.

Commentary. -- Section 3D establishes a judge's duty to take action in response to the misconduct of another judge (Section 3D(1)) or the misconduct of a lawyer (Section 3D(2)). In many instances, Section 3D allows a judge a degree of discretion in determining how he or she should respond to misconduct; the Section specifies only that the judge shall take "appropriate action." Thus, a judge who learns that another judge has engaged in an improper but de minimis ex parte contact, or who learns that a judge has engaged in a fundraising activity for a charity, may believe that the only action needed is to point out to the other judge that his or her conduct violates the Code. Similarly, a judge who learns that another judge is suffering from alcohol or drug addiction might direct that other judge to counseling or might seek the help of the other judge's colleagues or friends or refer the matter to a judicial assistance committee. On the other hand, if the other judge refuses to admit the problem or submit to ameliorative measures, and if the other judge's intoxication is interfering with his or her judicial duties (so as to constitute a violation of Canon 1 and Section 3A), then a judge who knows of this problem may be obliged to report it to the Commission on Judicial Conduct, unless that judge is a senior judge acting as a member of a judicial assistance committee.

Appropriate action will vary with particular situations and with particular individuals. There will generally be a range of reasonable responses available to the judge who learns of misconduct. However, a judge who learns of misconduct must respond reasonably. For example, the judge may not "respond" by explicitly or implicitly condoning the misconduct.

A judge's discretion to determine an appropriate response to misconduct is circumscribed in certain instances. Both Sections 3D(1) and 3D(2) grant no discretion -- they require the judge to report misconduct to the appropriate disciplinary authority -- if (a) the misconduct is serious and (b) the judge's awareness of the misconduct rises to the specified level of certainty.

With regard to this level of awareness, a judge must report judicial misconduct if he or she "knows" that another judge has engaged in serious misconduct, while a judge must report attorney misconduct if he or she has information "establishing a likelihood" that an attorney has engaged in serious misconduct. The term "knows" is defined in the Terminology Section. The term "likelihood" is used in the sense of "more probable than not," a preponderance of the evidence.

If the misconduct the judge learns of is not among the serious types of misconduct, or if the misconduct is serious but the judge's level of awareness of the misconduct does not rise to the specified degree of certainty, there is no absolute duty to report. However, the judge who is aware of a likelihood of misconduct will still be under the more general obligation to take appropriate action.

A judge is not required to report all conduct that indicates lack of fitness for judicial office, only conduct of the same seriousness as that described in Subsections 3D(1)(a)-(c).

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Section 3D applies to magistrates. However, a magistrate may report serious misconduct to the presiding judge or chief justice instead of the Judicial Conduct Commission.

Procedures. After a report has been filed with the Commission, an evaluation will be conducted. The identity of the individual filing the complaint is not revealed unless the commission determines that an investigation is going to happen (Rule 8). A preliminary investigation will then be conducted by the executive director to determine what further action should be taken, if any (Rule 7b3). After the initial investigation, the executive director may initiate settlement discussions with the judge that may result in one of the following: an informal and private admonishment or a recommendation for counseling, subject to the approval of the commission (Rule 20a). The commission may conduct a formal investigation, or may go forward with disposition based on the executive director's initial investigation.

Medical Examination. In the event that the judge has been charged with a disability or raises disability as an affirmative defense to misconduct, the commission may request the judge to submit to a physical or mental examination by an independent medical expert (Rule 17b2).

Diversion. The Commission Rules suggest counseling as one possible settlement that may take place before a formal investigation (Rule 20a). Also one possible disposition option includes a recommendation of counseling and the commission may enter into an agreement with the judge concerning future conduct or submission to counseling (Rule 11b3). The rules clarify that "counseling" means personal or professional counseling, further training, and other remedial measures (Rule 11b3).

Rule 20. Settlement Procedures

(a) Settlement After Investigation. After an investigation, the executive director may initiate settlement discussions with the judge that may result in one of the following: an informal and private admonishment, or a recommendation for counseling. The executive director shall present any agreed disposition to the commission for approval or rejection. If rejected, the commission will, in its discretion, give reasons for the rejection but will not comment on the strength or weakness of the factual investigation. If the settlement is approved, the executive director shall prepare a written statement of facts and a decision in support of the agreed action. The statement of facts and decision may be revised by the commission but, once adopted, will either constitute the private admonishment or state the need for counseling.

Rule 11. Investigation Results; Commission Action.

(b) Disposition. The commission will proceed in one of the following ways:

(3) Recommendation for counseling. If the commission finds that there has been misconduct for which counseling is appropriate, the commission will, in its discretion, recommend counseling. For purposes of this paragraph, "counseling" means personal or professional counseling, further training, and other remedial measures; it can take the form of a cautionary letter. The commission will, in its discretion, also enter into an agreement with the judge, set out in a memorandum, concerning the judge's future conduct or submission to counseling. The executive

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director shall notify the complainant, under Rules 5(d) and 8(d) of these rules, that the matter has been resolved by recommended counseling. The commission will monitor any prescribed counseling.

Confidentiality. All investigative records, files, and reports of the commission are confidential and no disclosure may be made except as permitted by [AS 22.30.060](#) (Rule 5a). After a formal charge is filed, only the formal charge, the answer, the formal evidentiary hearing, and the final recommendation by the commission, including any minority report, are public (Rule 6b). If formal charges are issued, Civil Discovery Rules apply; family members and friends would normally not be contacted during the course of a complaint investigation. According to an email with the Executive Director, the Commission does not collaborate with the LAP to facilitate counseling or educational services for judges, but that the LAP is currently in the process of finalizing a program to create a judges' component of the LAP.

Contact Info:

- Commission on Judicial Conduct, Executive Dir: Marla Greenstein
mgreenstein@acjc.state.ak.us emailed 8/9
 - LAP https://www.alaskabar.org/servlet/content/lawyers_assistance_committee.html
Executive Director: Deborah O'Regan oregan@alaskabar.org Emailed on 7/25
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Arizona

Authority and Application: Established by [Article 6.1 of the Arizona Constitution](#), [Arizona's Commission on Judicial Conduct](#), has disciplinary authority over judges and judicial officers in Arizona. The grounds for judicial discipline issued by the Commission include "willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the code" (Rule 6). The Commission's rules can be found [here](#).

Reporting Requirements. [Arizona's Code of Judicial Conduct](#) addresses the issue of judicial impairment and directs action at a point prior to a judge's involvement in disciplinary procedures. Rule 2.14 directs a judge who has a "reasonable belief" that another judge is impaired to take appropriate action, which may include referral to a judicial assistance program. The Comments to Rule 2.14 clarifies that referring a judge to an assistance program may satisfy the judge's responsibility under this rule.

RULE 2.14. Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

1. "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to

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speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

2. Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

RULE 2.15. Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

(E) Acts of a judge in the discharge of disciplinary responsibilities required or permitted by Rule 2.15 are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Comment

1. Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.
2. A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the

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judge who may have violated this code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

Procedures. An investigation is commenced upon the receipt of a written complaint (Rule 20); the identity of the complainant is revealed to the judge (see Rule 9). The executive director will conduct an initial screening (Rule 21), and if the complaint is not dismissed, an investigation will take place (Rule 22). Whenever the commission or supreme court enters an order of discipline, the commission staff shall investigate, evaluate and report on compliance with that order. If the commission has reason to believe that further action is appropriate, the commission may reopen any suspended matter (Rule 34).

Medical Examinations. To determine a judge's mental or physical condition to hold judicial office, a medical examination may be ordered (Rule 32).

Diversion. The Commission's rules do not mention diversion agreements, but the commission may impose informal or formal sanctions that might involve directing a judge to participate in professional counseling, judicial education, mentoring or similar activities (Rule 17, 18).

Rule 17. Informal Sanctions

(b) Other informal sanctions. The commission may take any other informal action consistent with these rules, including, but not limited to, directing a judge to participate in professional counseling, judicial education, mentoring or similar activities, and assessing attorney fees and costs.

Rule 18. Formal Sanctions

(e) Other formal sanctions. The commission may recommend the imposition of other formal sanctions consistent with these rules, including, but not limited to, directing a judge to participate in professional counseling, judicial education, mentoring or similar activities, and assessing attorney fees and costs.

Confidentiality. Confidentiality depends on the disposition of the complaint (Rule 17). If a complaint is dismissed, the original complaint and the order resolving the case will be released to the public after names and other identification have been removed from the document (Rule 9). In formal cases involving the potential censure, suspension or removal of a judge from office, the complaint, the judge's response and other related documents will be open for public inspection earlier in the process, and formal hearings will be open to the public. All other commission correspondence, draft documents, computer records, investigative reports, attorney work product, commission deliberations, and records in dismissed cases, except as provided in the preceding paragraph, are confidential. Rule 9c mentions discretionary disclosure, however, according to which the commission may disclose a complaint to a judge and a judge's response to a complainant at any time. However, regarding disclosure to other entities, there are very specific situations whereby such disclosure may take place (e.g., to protect the public, for the administration of justice). There is no mention in the commission rules of relying on LAPs at any point during this process, however the comment to ethics rule 8.3 explicitly protects information

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about a lawyer's or judge's misconduct or fitness received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program.

Immunity. Rule 15.

Communications with the supreme court, the court's staff, the commission, or commission staff relating to judicial misconduct or incapacity and testimony given in any proceedings before the commission, a panel thereof, or a hearing officer shall be absolutely privileged as provided by law. No civil action may be instituted against any complainant or witness on the basis of these privileged communications. Members of the commission, commission staff, hearing officers, and court staff shall be immune from suit for any conduct in the course of their official duties.

Judges Assistance: <http://www.azbar.org/professionaldevelopment/map/judgesassistance>

Contact Information:

- Commission on Judicial Conduct, cjc@courts.az.gov emailed 8/9
- LAPMember Assistance Committee: <http://www.azbar.org/professionaldevelopment/map>
- Director: Hal M. Nevitt hal.nevitt@staff.azbar.org Emailed 7/26

Arkansas

Authority and Application: Established by [Amendment 66 of the Arkansas Constitution](#), the [Arkansas' Judicial Discipline and Disability Commission](#) is authorized to handle complaints concerning the misconduct of all justices and judges in Arkansas. Specifically, the Commission shall handle allegations of "misconduct or disability" (Rule 6) and may order examinations. The Commission's rules of procedure can be found [here](#).

Reporting Requirements. [Arkansas's Code of Judicial Conduct](#) addresses the issue of judicial impairment and directs action at a point prior to a judge's involvement in disciplinary procedures. Rule 2.14 directs a judge who has a "reasonable belief" that another judge is impaired to take appropriate action, which may include referral to a judicial assistance program. The Comments to Rule 2.14 clarifies that referring a judge to an assistance program may satisfy the judge's responsibility under this rule.

RULE 2.14
Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to

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speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

[3A] Judges may exercise discretion in referring a lawyer or another judge to the Arkansas Judges and Lawyers Assistance Program. See Rule 2.15.

RULE 2.15

Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Arkansas Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Arkansas Rules of Professional Conduct shall take appropriate action.

COMMENT

[3A] This rule shall not apply to a Judge who is a member of the Judges and Lawyers Assistance Committee (the "Committee") of the Arkansas Judges and Lawyers Assistance Program (JLAP) or a volunteer serving pursuant to Rule 4 of the Rules of JLAP regarding information received in his or her capacity as a Committee member or volunteer. However, the "duty to report" outlined in Rule 2.15 above is reinstated if, in good faith, the JLAP committee member or volunteer has: reason to believe that an attorney or judge participating in the JLAP program is failing to cooperate with said program; is engaged in criminal behavior or the threat thereof; or, is otherwise in violation of Rule 2.15 which is beyond or succeeds the behavior upon which the judge's participation in JLAP was initially based.

Procedures. All complaints shall bear the name of the complainant, unless anonymous or based upon media reports (Rule 8). The executive director then investigates the complaint and if the

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complaint is not dismissed, an investigation panel will direct the staff to make a “prompt, discreet, and confidential investigation” (Rule 8). In no instance may the staff undertake any investigation or make any contact with anyone other than the complainant and the judge unless authorized to do so by the Investigation Panel. Rule 8e indicates that disposition options include dismissal or a formal statement of the allegations. Rule 9 indicates that if the 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.

Medical Examinations. In cases involving allegations of mental and physical disability, the commission may order a medical exam or require that the judge produce his or her medical records (Rule 13).

Diversion. There is no mention in the commission’s rules of diversion agreements, but one possible disposition might involve direct professional treatment, counseling, or assistance for the judge, or impose conditions on the judge’s future conduct. (Rule 9)

Rule 9. Hearing on formal statement of allegations

I. *Disposition.* In its report, the Commission shall dispose of the case in one of the following ways: (1) If it finds that there has been no misconduct, the complaint shall be dismissed and the Director shall send the judge and each complainant notice of dismissal ; (2) If it 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 ; and (3) If it finds there has been conduct that is cause for formal discipline, it shall be imposed as set forth in Rule 9. J.

Confidentiality. Actions taken by the commission after an investigation are public, but records and communications during the course of an investigation are confidential (Rule 7). There is no mention in the Commission’s rules of LAP involvement, but the LAP rules indicate that they may take referrals from the Professional Conduct Committee, Judicial Discipline and Disability Commission, or other disciplinary agencies (Rule 7).

Arkansas LAP: <https://courts.arkansas.gov/rules/alap/>

AJLAP: <http://www.arjlap.org/>

Contact Information

Judicial Discipline & Disability Commission, Exc Dir. David A. Stewart

jddc@mail.state.ar.us

Director of Client Services: Sarah Cearley sarah@arjlap.org

Assistant Director: Matthew Reel matthew@arjlap.org

California

Authority and Application: Pursuant to [Article VI, Section 18 of the California Constitution](#), the [Commission on Judicial Performance](#) is responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. Specifically, the Commission handles “willful misconduct in office, persistent failure or inability to perform the duties of office,

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habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or that the judge has a disability that seriously interferes with the performance of the duties of office and is or is likely to become permanent, or that the judge has engaged in an improper action or a dereliction of duty.” (Rule 109). The Commission’s rules of procedure can be found [here](#).

Procedures. The Commission’s procedures are very formal and do not suggest rehabilitative elements. Upon receiving a complaint, the commission may dismiss the proceeding, make a staff inquiry to determine if sufficient facts exist to warrant a preliminary investigation, or make a preliminary investigation to determine whether formal proceedings should be instituted (Rule 109). The following are the actions that may be taken: close (dismissal), advisory letter, private admonishment, public admonishment, public censure, removal from office/involuntary retirement.

Medical Examinations. Medical examinations may be ordered under Rule 105, but no examination by a specialist in psychiatry may be required without the consent of the judge.

Diversion. California does not have formal diversion rules, but provides rules that may be interpreted to give leeway for addressing certain mental health or drug and alcohol abuse issues. Under Rule 112, the commission may defer termination of a preliminary investigation for a period not to exceed two years for observation and review of a judge’s conduct. During a preliminary investigation or admonishment proceeding, the commission may negotiate with the judge a resolution of any matter at issue (Rule 116.5).

Rule 116.5. Negotiated Settlement During Preliminary Investigation

At any time during a preliminary investigation or an admonishment proceeding under rules 113-116, the commission may designate trial counsel or another attorney authorized by the commission to negotiate with the judge a resolution of any matter at issue. A proposed resolution shall be jointly submitted to the commission, which may accept it, reject it or return it to the judge and examiner to consider modifications to it. No agreement between the judge and legal staff is binding unless approved by the commission. A settlement proposal rejected by the commission cannot be used against the judge in any proceedings. After formal proceedings are instituted, settlement negotiations are governed by rule 127.

Confidentiality. All papers filed with the commission shall be confidential (Rule 102a) but after the institution of formal proceedings, papers filed and findings of fact are not confidential (Rule 102b). The rule provides some specific exceptions to this confidentiality rule.

Procedure chart: http://cjp.ca.gov/res/docs/Appendix/Chart-CN_Proceedings_4-09.pdf

LAP: <http://www.otherbar.org/>

Contact Information

- Commission on Judicial Performance, Director-Chief Victoria Henley
- Deputy Director of the State Bar’s Lawyer Assistance Program: Richard Carlton Richard.carlton@calbar.ca.gov
- Consultant Coordinator of the Other Bar: Robert Resner resner2100@comcast.net

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Colorado

Summary: Established by [Article VI, Section 23 of the Colorado Constitution](#), the [Commission on Judicial Discipline](#) is charged with monitoring the conduct of the Judiciary of the state courts of Colorado. Specifically grounds for discipline or disability include 1) willful misconduct in office, including misconduct that, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice; 2) willful or persistent failure to perform judicial duties, including incompetent performance of judicial duties; 3) intemperance, including extreme or immoderate personal conduct, recurring loss of temper or control, abuse of alcohol, or the use of illegal narcotic or dangerous drugs; 4) any conduct that constitutes a violation of the Code; or 5) a disability interfering with the performance of judicial duties that is, or is likely to become, of a permanent character. (Colo. RJD 5a). The Commission's rules can be found [here](#).

Procedures. When a complaint has been filed against a judge under Rule 12, the executive director of the commission will screen the complaint and either dismiss it or submit it to the commission for a preliminary investigation (Rules 13 and 14). The commission will then conduct a preliminary investigation (Rule 14). At this point, the commission may recommend a diversion plan under rule 35 (see below for more info).

Medical Examinations. The Commission may order a medical examination if there are concerns about physical or mental disability (Rule 15).

Diversion. Rule 35b of Colorado's Commission on Judicial Discipline creates procedures for diversion so that a judge may receive education, counseling, and/or treatment rather than disciplinary action. Rule 36(e) addressing sanctions states that the Commission may require compliance with a diversion plan or deferred discipline plan.

Rule 35. Dispositions.

Upon consideration of all the evidence and the report of the presenter(s), the Commission may order any of the following dispositions:

(b) Diversion Plan. Direct the Judge to follow a diversion plan, including but not limited to education, counseling, drug and alcohol testing, medical treatment, medical monitoring, or docket management, which may be accompanied by the deferral of final disciplinary proceedings;

Rule 36. Sanctions.

The Commission, including any member who was a presenter with respect to the complaint, shall consider the report issued by the special masters under Rule 32 and recommend that the Supreme Court dismiss the charges or order one or more of the following sanctions:

(e) Diversion or Deferred Discipline. Require compliance with a diversion plan or deferred discipline plan;

Confidentiality. The proceedings of the Commission and special masters, including all papers, investigative notes and reports, pleadings, and other written or electronic records, shall be confidential unless and until the Commission files a recommendation with the Supreme Court for

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one or more sanctions of a Judge's conduct under Rule 36, at which time the recommendation together with the supporting record of the proceedings shall no longer be confidential (rule 6.5). Disclosures may be allowed in specific instances, however.

Immunity. Rule 10

Members, the executive director, Commission staff, its investigators, special counsel, and special masters shall be absolutely immune from suit for all conduct in the course of their official duties.

Colorado Lawyers Helping Lawyers: <http://clhl.org/index.htm>

Contact Information:

- Director of Colorado Lawyers Helping Lawyers: John Holt johnholtlaw@aol.com

Connecticut

Summary: Governed by Chapter [872a, Section 51-51g through 51-51u of the Connecticut General Statutes](#), the [Judicial Review Council](#) investigates complaints alleging misconduct, disability, or substance abuse of state judges, family support magistrates, and workers' compensation commissioners. The State of Connecticut Regulations, Section 51-51k-2 indicates that the Council is responsible for complaints involving conduct prohibited by the Code of Judicial Conduct, prohibited by section 51-52n of the General Statutes, in the event that a judge has become incapacitated as to be unable to fulfill adequately the duties of such office, and has the authority to investigate the alleged mental infirmity or mental illness or drug dependency or alcohol addiction of any judge or family support magistrate. The Council's rules can be found [here](#).

Procedures. The initiation of the process is by formal complaint, which can be filed by anyone or initiated by the Council itself, and must be signed under oath (Section 51-51k-4). Upon receiving a complaint, the council will conduct an investigation to determine whether there is probable cause that the judge is guilty of the conduct (Section 51-51k-6). A complaint may be dismissed at any time during the investigation and a decision to issue a private admonishment may be made after a hearing where no probable cause is found. More serious penalties are imposed only after a guilty finding has been made following a public hearing (Section 51-51k-9).

Medical Examination. According Section 51-51k-11, the Council may request access to or authorization for access to all medical and other records pertaining to the physical or mental condition.

Diversion. Section 51-51k-11 governs mental infirmity or mental illness or drug dependency or alcohol addiction. The Council shall then conduct a closed hearing to determine if the judge or family support magistrate suffers from the mental infirmity, illness or drug or alcohol addiction. The Council may, after a finding of temporary infirmity or drug or alcohol dependence or addiction, request that the judge seek appropriate treatment

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Section 51-51k-11. MENTAL INFIRMITY OR MENTAL ILLNESS OR DRUG
DEPENDENCY OR ALCOHOL ADDICTION

(a) The Council shall investigate every referral by the chief court administrator of the mental infirmity or mental illness or drug dependency or alcohol addiction of a judge or family support magistrate.

(b) All proceedings hereunder shall be confidential unless the judge or family support magistrate requests that such proceedings be open.

(c) Not later than five days after receipt of such matter from the chief court administrator, the Council shall, by registered or certified mail, return receipt requested, notify the judge or family support magistrate under investigation by such referral.

access to all medical and other records pertaining to said physical and mental condition, drug dependency or alcohol addiction of such judge or family support magistrate. If a judge or family support magistrate declines to furnish or submit such authorization or record, or if further information is needed, the Council may request the judge or family support magistrate to submit to independent medical or other examinations at the expense of the judicial department. A copy of the results of any independent examination shall be sent to the judge or family support magistrate by registered or certified mail, return receipt requested, within five business days of its receipt by the Council.

(e) Any medical records or reports generated or produced in such an investigation shall be maintained in a separate, locked file or file cabinet, accessible only by the executive director of the Council.

(f) If a judge or family support magistrate fails or refuses to submit to an independent examination requested by the Council, unless such failure or refusal is due to circumstances beyond the judge's or family support magistrate's control, the judge or family support magistrate shall be precluded from submitting reports of medical or other examinations done on the judge's or family support magistrate's behalf.

(g) The Council may consider such judge's or family support magistrate's refusal or failure to submit to such examination as evidence that the judge or family support magistrate has a mental infirmity or mental illness or drug dependency or addiction to alcohol.

(h) The Council shall conduct a hearing to determine if the judge or family support magistrate suffers from a mental infirmity or mental illness or drug dependency or alcohol addiction. Such hearing shall be closed to the public unless the person being investigated requests it be open.

(i) The hearing shall be scheduled at a time and place to be determined by the Council, but only after reasonable notice to the judge or family support magistrate.

(j) Such notice shall contain the information that the judge or family support magistrate may attend the hearing, be represented by counsel, may elect to testify, may call witnesses, present evidence and may examine or cross examine witnesses.

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(k) A record shall be made of the hearings.

(l) Any reporter or language interpreter present at the hearing shall be sworn as to confidentiality.

(m) After all evidence and arguments have been presented at a hearing, the Council shall make its finding in executive session unless the respondent requests the finding be made in a public session.

(n) If the Council finds that a judge or family support magistrate is suffering from a temporary mental infirmity, mental illness, drug dependency or addiction to alcohol which prevents the judge or family support magistrate from performing his or her judicial or magisterial duties, either on a full-time or part-time basis, the Council shall request the judge or family support magistrate to seek appropriate treatment.

(o) Upon completion of such treatment program, and a finding by the Council that such judge or family support magistrate can fully perform his or her duties, the Council shall report said finding to the chief court administrator within three business days of such finding.

(p) If the judge or family support magistrate refuses to seek treatment, or does not fully cooperate in the treatment program, the Council may (1) publicly censure the judge or family support magistrate, (2) suspend the judge or family support magistrate for a definite term not to exceed one year, (3) refer the matter to the supreme court with a recommendation that the judge or family support magistrate be suspended for a period longer than one year, or (4) refer the matter to the supreme court with a recommendation that the judge or family support magistrate be removed from office.

(q) If the Council finds that a judge is permanently incapable of adequately fulfilling his or her duties because of mental infirmity or mental illness or drug dependency or addiction to alcohol, the judge shall thereupon be retired.

(r) If the Council finds that a family support magistrate is permanently incapable of adequately fulfilling his or her duties because of mental infirmity or mental illness or drug dependency or addiction to alcohol, the family support magistrate shall be removed from office.

Confidentiality. Section 51-51k-11 on mental infirmity and/or substance dependency indicates that proceedings under this section are confidential. However, if the Council concludes that there is probable cause and issues formal disciplinary action, such fact is made public and all subsequent proceedings are public.

Information handbook: <http://www.ct.gov/jrc/cwp/view.asp?a=3061&q=384562&jrcNav=|>

Contact Information

Scott J. Murphy, Executive Director of the Judicial Review Council jrc@po.state.ct.us

Richard Banbury, Executive Director of Council on Probate Judicial Conduct

Executive Director of Lawyers Concerned for Lawyers: Beth D. Griffin beth@lclct.org

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Delaware

Summary: Pursuant to [Article IV, Section 37 of the Delaware Constitution](#), the [Canons of Judicial Ethics](#) provide guidance to judges and nominees for judicial office and establishes the standards of conduct. Specifically, the Constitution states that a “judicial officer may be censured or removed by virtue of this section for willful misconduct in office, willful and persistent failure to perform his or her duties, the commission after appointment of an offense involving moral turpitude, or other persistent misconduct in violation of the Canons of Judicial Ethics as adopted by the Delaware Supreme Court from time to time.” (Article IV, Section 37).

Diversion. No rules addressing diversion as part of the disciplinary procedures.

Reporting Responsibilities. The Delaware Canons address the issue of judicial impairment and direct action at a point prior to a judge’s involvement in disciplinary procedures. Rule 2.14 directs a judge who has a reasonable belief that another judge is impaired to take appropriate action, which may include referral to a judicial assistance program. The Comments to Rule 2.14 clarifies that referring a judge to an assistance program may satisfy the judge’s responsibility under this rule.

RULE 2.14 Disability and Impairment.

A judge, having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, should take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment:

“Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

RULE 2.15 Responding to Judicial and Lawyer Misconduct.

A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

Comment:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authorities.

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Contact Information

The Lawyer Assistance Program

Executive Director: Carol P. Waldhauser cwaldhauser@de-lap.org

District of Columbia

Authority and Application: Established by [D.C. Code Title 11, Section 15-1521](#), the [Commission on Judicial Disabilities and Tenure](#) is authorized to investigate charges of misconduct, failure to perform judicial duties, or disability. Such charges may be rooted in concerns about “mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his or her judicial duties” (2010.1). The Commission’s rules can be found [here](#).

Reporting Responsibilities. Rule 2.14 of the [Code of Judicial Conduct](#) creates the obligation for a judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, to take appropriate action which may include a confidential referral to a lawyer or judicial assistance program. The comment clarifies that taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule.

Rule 2.14: Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Procedures. Subject to the provisions of §2044, the Commission may receive information or a complaint from an individual or an organization regarding a judge’s conduct or health (2004.1). Upon receiving a complaint, the Commission may then conduct an investigation, with which the judge shall cooperate (2010.3a). After the investigation, the Commission may determine that a proceeding is warranted (2011.1).

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Medical Examinations. At the Commission's request, a judge shall submit to a physical or mental examination by a physician designated by the Commission after consultation with the judge (2002.1).

Diversion. The District of Columbia does not provide any diversion procedures for impaired judges.

Confidentiality. The identity of any individual or organization submitting a complaint will not be disclosed to anyone, including the judge who is the subject of the complaint (2044.3). Commission records are confidential, with the exception of time and attendance data and some financial data. The record of investigations, proceedings, evaluations, and recommendations conducted or made by the Commission, as well as all financial and medical information received by the Commission pursuant to this chapter, other than the financial data, shall be confidential. A number of specific exceptions are listed, however. (2044)

Contact Information

Columbia Lawyer Assistance Program
Director: Denise Perme: dperme@dcbar.org

Florida

Authority and Application: Pursuant to [Article V, Section 12 of the Constitution of the State of Florida](#), The [Judicial Qualification Commission](#) has the authority to discipline, retire, or remove justices of the Supreme Court, and judges of the District Courts of Appeal, Circuit Courts, and County Courts. Specifically, the Commission may investigate complaints indicating that a judge is guilty of "willful or persistent failure to perform judicial duties, or conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or that the judge has a disability seriously interfering with the performance of the judge's duties, which is, or is likely to become, permanent in nature" (Rule 6A). The Judicial Qualifications Rules can be found [here](#).

Procedures. In order to determine whether formal charges should be instituted, an investigation will be conducted to determine if there is probable cause (Rule 6C). The Investigative Panel may reach an agreement with a judge on discipline or disability, and such stipulation shall be transmitted by it directly to the Supreme Court to accept, reject or modify in whole or in part (Rule 6j). After conducting a hearing, the Hearing Panel shall determine by a two-thirds vote whether the judge is guilty and may recommend to the Supreme Court that the judge be subject to appropriate discipline (Rule 19) or the Panel may dismiss the formal charges (Rule 20).

Medical Examination. Upon receiving information that a judge is suffering a possible physical or mental disability which seriously interferes with the performance of the judge's duties, the Panel may order the judge to submit to a physical and/or mental examination (Rule 13).

Diversion. Although Florida does not have formal diversion procedures, Rule 6j allows for stipulated agreements which may be interpreted to give leeway for addressing certain mental health or drug and alcohol abuse issues.

(j) The Investigative Panel may reach agreement with a judge on discipline or disability, and such stipulation shall be transmitted by it directly to the Supreme Court to accept,

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reject or modify in whole or in part.

Confidentiality. Rule 23 governs confidentiality. Until formal charges against a judge are filed by the Investigative Panel, all proceedings by or before the Commission shall be confidential. Upon a finding of probable cause and the filing by the Investigative Panel with the Clerk of the formal charges, such charges and all further proceedings before the Hearing Panel shall be public.

Judicial Qualifications Commission: <http://floridajqc.com/>

Contact: contact@floridajqc.com

Florida Lawyers Assistance Program, Exec Dir: Michael J. Cohen Michael@fla-lap.org

Georgia

Authority and Application: Pursuant to Article VI, Section VII of the Georgia Constitution, [The Judicial Qualifications Commission](#) is authorized to conduct investigations and hearings with respect to complaints of ethical misconduct by Georgia judges. Specifically, the Judicial Qualifications Commission investigates complaints on the following grounds: willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance, conduct prejudicial to the administration of justice which brings the judicial office into disrepute, and disability seriously interfering with the performance of duties, which is or likely to become, of a permanent character. (Rule 4b). The Commission Rules can be found [here](#).

Procedures. Complaints filed must be in writing with an original signature (Rule 4a). Upon receiving a complaint, the Executive Director may authorize a preliminary inquiry. The Commission members will then determine whether to close the complaint, investigate the complaint, or require the judge to appear before the Commission and respond to questioning. Then, depending upon the outcome of the investigation, the Commission may close the complaint, admonish or reprimand the judge, or file formal proceedings (which may result in retirement, censure, suspension or removal from the office). According to Rule 5, the Commission may choose to hold a formal hearing on the charges and proceeding according to Rules 5-14. Rule 14 indicates the possible recommendations the Commission may make.

Diversion. The Commission's website indicates: "Alcohol or drug abuse by a judicial officer may suggest a possible impairment in the performance of judicial duties. In the absence of associated judicial misconduct, the Commission would initially pursue such matters with a view toward medical intervention. If it appears that instances of misconduct resulted from alcohol or drug abuse, the Commission would emphasize medical treatment while mindful of its public responsibility to charge and prosecute aberrant conduct." At any time after receipt of a complaint or otherwise receiving information indicating that a judge may have been guilty of such conduct, the Commission may informally direct professional counseling and assistance for a judge (Rule 4f)

(f) At any time after receipt of a complaint or otherwise receiving information indicating that a judge may have been guilty of conduct which, while insufficient to warrant the institution of formal proceedings, nevertheless warrants sanctions, the Commission may informally: (i) admonish and/or reprimand a judge; (ii) direct professional counseling and assistance for a judge; (iii) impose conditions on a judge's future conduct or instruct a judge to make specific changes in particular matters of conduct; or (iv) adjust the complaint by any other appropriate means consistent with these rules.

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Confidentiality. Proceedings and related correspondence are kept confidential. However, confidentiality requirements cease at the time of the decision of the Commission on whether to initiate formal hearing against a judge, or at the time the complaint in question is resolved, closed, or otherwise settled through formal disposition. Confidentiality does not apply to complaints alleging a violation of Canon 7. (Rule 20).

Immunity. Rule 21 governs immunity and provides that members of the Commission, Commission counsel and the Commission staff are immune from suit for all conduct in the course of their official duties.

Complaints, reports or testimony in the course of proceedings under these rules shall be deemed to be made in the course of judicial proceedings. Members of the Commission, Commission counsel and the Commission staff shall be absolutely immune from suit for all conduct in the course of their official duties. All other participants shall be entitled to all rights, privileges and immunities afforded to participants in actions filed in the courts of this state, and shall be immune from civil liability with respect to all papers filed with, or statements made or testimony given to, the Commission or the Supreme Court or given in any investigation or proceeding pertaining to a complaint against a judge, when done in good faith.

Judicial Qualifications Commission: <http://www.gajqc.com/default.cfm>
Georgia Lawyer Assistance Program
Director: Steve Brown steve.brown@familiesfirst.org

Hawaii

Authority and Application: Pursuant to Article [VI, Section 5 of the Hawaii State Constitution](#), the [Commission on Judicial Conduct](#) handles complaints that involve any violation of the Code of Judicial Conduct. Disability involves the physical or mental inability to perform judicial duties and functions.

Procedures. Complaints are made formally, submitted in writing and must include the complainant's name. Upon receiving a complaint, the Commission may find that no further proceedings are necessary and it may recommend that the Supreme Court issue a private reprimand, admonish the judge, direct professional counseling or assistance to the judge, or impose conditions on the judge's conduct. Otherwise, the Commission may proceed with formal proceedings that may result in more serious sanctions.

Confidentiality. All proceedings involving allegations of misconduct or disability are confidential unless the Supreme court enters an order for the imposition of public discipline or the judge requests that the matter be made public or if the case has become public knowledge through an independent source.

(all from 2009-2011 report)

Contact Info:
Hawaii Supreme Court Attorneys and Judges Assistance Program

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Director: Steven B. Dixon sdixon@interpac.net

Idaho

Authority and Application: Pursuant to [Title I, Chapter 21 of the Idaho Code](#), the [Idaho Judicial Council](#) may investigate claims that a judge is guilty of willful misconduct in office, willful and persistent failure to perform the duties of a judge, habitual intemperance, or of conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the Code of Judicial Conduct, or that a judge has a disability that seriously interferes with the performance of the judge's duties which is or is likely to become of a permanent character. (Rule 28). The Judicial Council Rules can be found [here](#).

Procedures. Upon receiving a complaint, the Council will either dismiss an unfounded or frivolous complaint or conduct an initial investigation. During the investigation, the Council may order physical and/or mental examinations of the judge by independent examiners (Rule 28(2)). After the initial investigation, the Council may decide to continue the case for further investigation or review, require a personal appearance of the judge, recommend a remedial course of conduct, issue a public reprimand with the judge's consent, institute formal proceedings, or take or direct such other action as the Council may determine will reasonably curtail or eliminate the conduct. (Rule 28(2)c). Otherwise, formal proceedings will ensue according to Rules 29-55.

Medical Examinations. . If, after the preliminary investigation, the Council determines that the physical or mental health of the judge is in issue, it may order physical and/or mental examinations of the judge by independent examiners (Rule 28(2)c).

Diversion. Although Idaho does not have formal diversion procedures, it does contain some language in the rules that suggest that informal sanctions or agreements may be made. If the preliminary investigation discloses sufficient cause to warrant further proceedings, the Council may:

Rule 28. Grounds for Discipline, Removal or Retirement – Initial Inquiry – Preliminary Investigation

(c) If the preliminary investigation does disclose sufficient cause to warrant further proceedings, the Council may:

(6) take or direct such other action as the Council may determine will reasonably curtail or eliminate the conduct of the judge which involves any matter within the jurisdiction of the Council.

Confidentiality. The identity of the complainant is confidential. All papers filed with and proceedings before the Council are confidential until a record is filed by the Council in the Supreme Court, unless the allegations have been made public by the complainant, judge or third persons. (Rules 24). All judicial Performance Evaluations, records, documents and reports are confidential (Rule 52).

Idaho Judicial Council: <http://www.judicialcouncil.idaho.gov/>
<http://www.judicialcouncil.idaho.gov/General%20Rules%20of%20Procedure.pdf>

Idaho Lawyer Assistance Program

Director: John Southworth john@southworthassociates.net

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Illinois

Authority and Application: Pursuant to [Article VI, Section 15\(c\) of the Illinois Constitution](#), the [Judicial Inquiry Board](#) is authorized to receive, initiate, and investigate complaints concerning active Illinois state court judges. Specifically, the Judicial Inquiry Board may investigate complaints related to whether a judge is guilty of misconduct or is suffering from a disability. Misconduct includes a violation of the Code of Judicial Conduct, which may include but not limited to: impropriety and the appearance of impropriety, improper communication with only one of the parties in the a case, injudicious temperament (such as rudeness, profanity or yelling), inappropriate political activity, or delay in performing judicial duties). The Board's Rules of Procedure can be found [here](#).

Procedures. Upon receiving a complaint, the Board with either dismiss it for being patently frivolous or unfounded, or will initiate and conduct an investigation to determine whether a reasonable basis exists for the filing of a complaint with the Commission. After the investigation, the board will determine whether a reasonable basis exists to charge a judge with misconduct or disability. (Rule 4). Where the board determines that the conduct does not warrant the initiation of a formal proceeding, the Board may issue a letter to the judge, calling the judge's attention to conduct which should be avoided in the future (Rule 4k). Where a formal complaint is filed (with the Courts Commission), sanctions may include reprimand, censure, suspension, removal from office, or retirement.

Diversion. The Illinois Judicial Inquiry Board Rules to not contain procedures for judicial diversion.

Confidentiality. The Board does accept anonymous complaints. The proceedings of the Board and all information and materials, written or oral, received or developed by the Board in the course of its work, insofar as such proceedings and information or materials relate to the question of whether a judge is guilty of misconduct or suffers from disability, shall be confidential and privileged as a matter of law. This means that the Board may not discuss its investigation with third parties. After any disposition of a matter, the Board, if it believes that fairness and the public interest require it, may issue a public announcement of the Board's determination (Rule 5e) (Article VI, Section 15(d), Constitution of the State of Illinois).

Judicial Inquiry Board: <http://www2.illinois.gov/jib/Pages/default.aspx>
Lawyers Assistance Program, Inc
Clinical Director: Susan Riegler sriegler@illinoislap.org

Indiana

Authority and Application: Pursuant to [Article 7, Section 9 of the Indiana Constitution](#) and [Indiana Code 33-38-13-1](#), the [Indiana Commission on Judicial Qualifications](#) investigates complaints concerning Indiana judges and determines whether a particular complaint has merit. Specifically, the Commission may investigate claims related to the conviction of any felony or crime that involves moral turpitude or that adversely affects the ability of a judge to perform his

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duties, willful and persistent failure to perform duties, willful misconduct in office, willful misconduct related to the judicial office that brings such office into disrepute, *habitual intemperance*, conduct prejudicial to the administration of justice, and a violation of professional rules. (Rule 25, III, italics added). The Rules for Judicial Disciplinary Proceedings can be found [here](#).

Reporting Requirements. [Indiana's Code of Judicial Conduct](#) addresses the issue of judicial impairment and directs action at a point prior to a judge's involvement in disciplinary procedures. Rule 2.14 directs a judge who has a "reasonable belief" that another judge is impaired to take appropriate action, which may include referral to a judicial assistance program. The Comments to Rule 2.14 clarifies that referring a judge to an assistance program may satisfy the judge's responsibility under this rule.

RULE 2.14: Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Procedures. Upon receipt of a complaint, the Commission will either dismiss the complaint due to it being unfounded or frivolous, or will conduct a preliminary investigation. After a preliminary investigation, the Commission may either dismiss the case (often with an advisory or cautionary letter to the judge), conduct further inquiry, begin an investigation, agree to a deferred resolution, or issue a private caution. (Rule 25, VIIIe) Upon a finding of misconduct pursuant to Section IIIA or disability pursuant to Section IIIB, the Supreme Court may impose a private reprimand or censure, among other options (see Rule 25 IV).

Diversion. After a preliminary investigation, the Commission may agree to a deferred resolution (Rule 25, VIIIe). After an investigation and at any time prior to a final disposition by the Supreme Court and upon a finding of misconduct, the Commission and the judicial officer may enter into a settlement agreement. The Supreme Court may accept the agreement resolving the case or it may reject the agreement and return the matter to the Commission for further action.

VIII. Disciplinary Procedure.

E. *Consideration of Complaint.*

- (2) The Commission shall make such initial inquiry as is necessary to determine if the complaint is founded and within the jurisdiction of the Commission. The Commission, without receiving a complaint, may make such an initial inquiry on its own motion. The Commission shall dismiss any complaint or inquiry which is frivolous, groundless, not within the Commission's jurisdiction, or upon a finding

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that no misconduct occurred. The notification of dismissal to the complainant shall contain the basis for the Commission's decision. The Commission may also conduct further inquiry, begin an investigation, agree to a deferred resolution, or issue a private caution. If the final disposition is by deferred resolution or private caution, the judicial officer shall have had the opportunity to respond to the allegations in writing and the complainant shall be notified that appropriate action was taken without specifying the nature of the disposition.

- (5) If the investigation does not disclose probable cause to warrant further proceedings, the Commission may dismiss the complaint with a finding that no misconduct occurred, may conduct further investigation, or may issue a deferred resolution or private caution, and the judicial officer shall be so notified. Where a deferred resolution or private caution is imposed, the judicial officer shall have had an opportunity to respond in writing to the allegations. The Commission shall have the power to make investigations by members of the Commission, staff, or by special investigators employed by the Commission and to hold confidential hearings with the judicial officer involved.

- H. *Settlement Agreements.* The Commission and the judicial officer may enter into a settlement agreement, either prior to the appointment of Masters, or at any time prior to a final disposition by the Supreme Court. The Supreme Court may accept the agreement resolving the case or it may reject the agreement and return the matter to the Commission for further action.

Also, Supreme Court Rule 31 establishes and provides procedures for referring a judge to a Judges and Lawyers Assistance Program.

Rule 31. Judges and Lawyers Assistance Program

Section 1. Establishment.

The Judges and Lawyers Assistance Committee is created and shall have the powers and duties set out below. The Committee shall be composed of Committee members, an Executive Director, and such other persons as shall from time to time be approved by the Supreme Court and who are necessary to carry out the Committee's work.

Section 2. Purpose.

The purpose of the Judges and Lawyers Assistance Program is assisting impaired members in recovery; educating the bench and bar; and reducing the potential harm caused by impairment to the individual, the public, the profession, and the legal system. Through the Judges and Lawyers Assistance Program, the Committee will provide assistance to judges, lawyers and law students who suffer from physical or mental disabilities that result from disease, chemical dependency, mental health problems or age that impair their ability to practice; and will support other programs designed to increase awareness about the problems of impairment among lawyers and judges.

Section 3. Committee Members.

- (a) The Committee shall consist of fifteen (15) Committee members, all of whom shall be appointed by the Supreme Court. Members shall have experience with the problems of chemical dependency and/or mental health problems. Seven (7) members shall be practicing lawyers; five (5) shall be judges; one (1) shall be a law school administrator or law school faculty member employed by, or a law student enrolled in, an Indiana law school at the time of appointment; two (2) members may be filled by judges, lawyers,

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- and/or law student(s). A reasonable effort shall be made to provide geographical representation of the State.
- (b) Members shall be appointed for three-year terms. All terms shall commence on January 1 and end on December 31. Any member who has served three (3) consecutive terms, exclusive of filling out an unexpired term, shall not be reappointed to the Committee for at least three (3) consecutive years. Any vacancy on the Committee shall be filled as soon as practicable and the new member so appointed shall serve the unexpired term of the member being replaced. Any member may be removed by the Supreme Court for a good cause.
 - (c) *Election of Officers.* The members shall elect from the membership a Chair who shall preside at all meetings, a Vice-Chair who shall preside in the absence of the Chair, a Secretary who shall be responsible for giving notices and keeping the Committee's minutes, and a Treasurer who shall be responsible for keeping the Committee's record of account.
 - (d) *Executive Committee.* The Officers shall comprise the Executive Committee, which shall have the power to conduct all necessary business that may arise between meetings of the full Committee. Three (3) Officers shall constitute a quorum. The Executive Committee shall act by a vote of a majority of the Officers. All action taken by the Executive Committee shall be reported to the full Committee at its next meeting.
 - (e) *Meetings.* The Committee shall meet at least twice each year at times and places designated by the Chair. The Chair, the Executive Committee or any six Committee members may call special meetings of the Committee.
 - (f) *Notices.* The Secretary shall send notice of each Committee meeting, which states the meeting's purpose, to all members at least five (5) business days before the meeting.
 - (g) *Quorum.* Six (6) members shall constitute a quorum for the transaction of business. The Committee shall act by majority of the members constituting the quorum. Members may participate in meetings by telephone or other similar device.

Section 4. Powers and Duties of the Committee.

In addition to the powers and duties set forth elsewhere in this Rule, the Committee shall have the power and duty to:

- (a) Adopt rules and regulations, to be known as the Judges and Lawyers Assistance Program Guidelines, for the efficient discharge of its powers and duties. The Guidelines shall become effective when approved by the Supreme Court.
- (b) Establish an office to provide administrative and financial record keeping support for the Committee.
- (c) Establish a mechanism, subject to Court approval, to arrange loans or other financial assistance to members of the bar for recovery related expenses.
- (d) Review this Rule and Guidelines from time to time and make recommendations to the Supreme Court for changes.
- (e) Publish proposed Guidelines and procedures through West Publishing Company and Res Gestae and file them with the Clerk of the Supreme and Appellate Courts.
- (f) Appoint subcommittees having such powers and duties as the Committee may determine are necessary to carry out the Committee's work; including trustees of any organization

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created to receive and distribute or spend grants, bequests, gifts and other monies for loans or other financial assistance to members of the bar for recovery related expenses.

- (g) Provide financial reports to the Chief Justice.
- (h) Make an annual report of its activities to the Supreme Court each year. The report shall include a statement of income and expenses for the year.
- (i) Recruit and train volunteers, as defined by the Guidelines, to assist the Committee's work with impaired members of the legal profession.
- (j) Do all other things necessary and proper to carry out its powers and duties under this Rule.

Section 5. Executive Director. With the assistance of the Committee members, the Chief Justice shall hire an Executive Director.

Section 6. Powers and Duties of the Executive Director. In addition to the powers and duties set forth in this Rule or otherwise defined by the Committee or the Supreme Court, the Executive Director shall have the power and duty to:

- (a) Administer the Committee's work.
- (b) Appoint, with approval of the Committee, such staff as may be necessary to assist the Committee to carry out its powers and duties under this Rule.
- (c) Supervise and direct the work of the Committee's staff and volunteers.
- (d) Assist the Committee in developing Guidelines.
- (e) Supervise the maintenance of the Committee's records.
- (f) Assist judges, courts, lawyers, law firms and law schools to identify and intervene with impaired members of the legal profession.
- (g) Do all things necessary and proper to carry out the Executive Director's duties and powers under this Rule.

Section 7. Sources and Uses of Funds.

- (a) The Indiana Supreme Court shall periodically designate a portion of the registration fee charged to attorneys pursuant to Admission and Discipline Rule 2 to be used for the operations of the Judges and Lawyers Assistance Committee. The Executive Director shall deposit such funds into an account designated "Supreme Court Judges and Lawyers Assistance Committee Fund."
- (b) The Supreme Court shall specifically approve the salaries to be paid out of the Judges and Lawyers Committee Fund.
- (c) Not later than May 1 of each year, the Committee shall submit for approval by the Supreme Court an operating budget for July 1 to June 30 of the following fiscal year.

Section 8. Referrals.

- (a) Any judge, lawyer, or law student may contact the Committee seeking assistance.
- (b) Any person may report to the Committee that a judge, lawyer, or law student needs the Committee's assistance. The Committee shall then take such action as authorized by the Guidelines.
- (c) The Supreme Court, the Indiana Commission on Judicial Qualifications, the Disciplinary Commission, the Board of Law Examiners, and the Administration of any Indiana law

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school may refer judges, lawyers, or law students to the Committee for assessment or treatment upon such terms authorized by the Guidelines.

- (d) The Committee may refer judges, lawyers, and law students to outside agencies, organizations, or individuals for assessment or treatment upon such terms authorized by the Guidelines.

Section 9. Confidentiality.

- (a) All information, including records obtained by the Committee in the performance of its duty under these rules and as delegated by the Supreme Court of Indiana, shall be confidential, except as provided by the Program Guidelines.
- (b) Nothing in this section prevents the Committee from communicating statistical information which does not divulge the identity of any individual.
- (c) Violation of the confidentiality provisions of this rule shall be subject to disciplinary proceeding under Indiana Admission and Discipline Rules 12, 23 and 26.

Section 10. Immunity. The Committee, Executive Director, staff, and volunteers are not subject to civil suit for official acts done in good faith in furtherance of the Committee's work. Absent malice, a person who gives information to the Committee, staff or volunteers about a judge, lawyer or law student thought to be impaired is not subject to civil suit.

PROGRAM GUIDELINES FOR THE INDIANA JUDGES AND LAWYERS ASSISTANCE PROGRAM

The Indiana Judges and Lawyers Assistance Program (JLAP), established pursuant to Indiana Admission and Discipline Rule 31, provides assistance to judges, lawyers, and law students who suffer from physical or mental disabilities resulting from disease, chemical dependency, mental health problems, or age that impair their ability to practice or serve. JLAP neither engages in punishing nor disciplining members nor does it have the power or authority to do so. These policies and procedures have been adopted by JLAP and constitute guidelines approved by the Committee.

Section 1. Definitions.

The following terms or phrases shall have the meanings assigned in this section.

- (a) Chairperson--the person who is currently holding the office of chairperson of the committee.
- (b) Clinical director--clinical director of JLAP
- (c) Committee--the body comprised of the persons appointed by the Supreme Court of Indiana to administer JLAP pursuant to Admis.Disc.R. 31 § 1.
- (d) Confidential information--all information, whether oral, written, or electronically acquired, received by, or held in the possession of a representative, which in any manner (including identity) relates to a member who is impaired, believed to be impaired or possibly has an impairment.
- (e) Contract participant--a participant who has entered into a formal, written agreement with JLAP.
- (f) Court--the Supreme Court of Indiana
- (g) Director--executive director of JLAP

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- (h) Impaired--having a physical or mental disability resulting from disease, chemical dependency, mental health problems, or age that could affect a member's ability to practice law or serve as a lawyer or judge.
- (i) Independent source--any person consulted to verify a JLAP contact who did not initiate the contact.
- (j) JLAP--the Indiana Judges and Lawyers Assistance Program as established pursuant to Admis.Disc.R. 31, its staff and volunteers.
- (k) Members or members of the legal profession -- persons who are judges, lawyers, law students, or have applied for admission to the Indiana bar.
- (l) Monitor--Volunteer who oversees a contract participant's compliance with a JLAP monitoring agreement.
- (m) Monitoring agreement--a formal written agreement between a participant and JLAP that establishes the obligations of the participant and provides for the monitoring of the participant's compliance.
- (n) Official referral--referral of a member to JLAP by:
 - 1) The Indiana Supreme Court Disciplinary Commission;
 - 2) The Indiana Board of Law Examiners;
 - 3) The Indiana Commission on Judicial Qualifications; or
 - 4) Any Indiana law school administration as part of its disciplinary process.
- (o) Participant--any member who is referred to JLAP and, as a result thereof, receives a contact or communication from a representative.
- (p) Permitted disclosures--disclosure of confidential information
 - 1) Permitted or required pursuant to Rule 31 § 9(c);
 - 2) With the written consent of the participant or contract participant to whom such confidential information relates; or
 - 3) By or among representatives to carry out or accomplish the purposes of JLAP.
- (q) Representative--the director, clinical director, any member or employee of the committee or any volunteer.
- (r) Self-referral--a member's direct contact with a representative to consider becoming a participant in JLAP not in furtherance of an official referral or a third party referral.
- (s) Staff--any and/or all of the employees of JLAP.
- (t) Third party referral--any referral of a member to JLAP other than an official referral or self-referral.
- (u) Volunteer--any person (including members of the committee) who has entered into an agreement with JLAP to assist in providing services in accordance with JLAP policies and procedures including completing any required application process.

Section 2. Purpose of JLAP.

Pursuant to Admis.Disc.R. 31 § 2, JLAP was established to assist impaired members in recovery; to educate the bench and bar; and to reduce the potential harm caused by impairment to the individual, the public, the profession, and the legal system.

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These guidelines have been adopted with these purposes in mind. The work of JLAP is designed to be educational, confidential, and responsive to the special situations faced by impaired members of the legal profession.

The JLAP committee and the executive director may take any other action required to fulfill, yet remains consistent with, the stated purpose.

Section 3. Organization.

JLAP was established pursuant to Admis.Disc.R. 31. The Committee consists of fifteen (15) members appointed by the Court: seven (7) practicing attorneys, five (5) judges, one (1) law student, and two (2) judge(s), lawyer(s), or law student(s). The director operates under the direction of the committee. The clinical director, staff and volunteers operate under the direction of the director.

Section 4. Policies.

- (a) JLAP designs and delivers programs to raise the awareness of the legal community about potential types of impairment and the identification, prevention and available resources for treatment and/or support.
- (b) JLAP works toward increasing the likelihood of recovery by encouraging early identification, referral and treatment.
- (c) Any person may report to the director, clinical director, or any member of the committee that a particular member of the bar needs the assistance of JLAP.
- (d) JLAP encourages and welcomes contact by any means. However, the confidentiality of e-mail communications is subject to the limitations inherent in Internet transmissions.
- (e) Neither JLAP, nor any representative, in their role as a volunteer, engages in the practice of law while fulfilling their JLAP responsibilities. Upon admission to inpatient or residential treatment, or with a physical disability case, JLAP may:
 - 1) work with the participant to find friends and/or colleagues to assist with the law practice;
 - 2) work with the relevant local and state bar association committees to assist with the practice;
 - 3) should no other arrangements be possible, attempt to facilitate movement of a participant's case files to the respective clients upon receipt of written permission from the participant.

Section 5. Referral Procedures

(a) General Procedures

The state will be divided into geographical areas and a committee member or other designated representative shall serve as the primary contact for each area.

(b) Self-Referrals and Other Referrals

- 1) When the participant is a self-referral, the following procedures apply:
 - i. JLAP may conduct an initial consultation to determine the nature of the participant's impairment;
 - ii. where appropriate, JLAP may make a referral to a qualified medical and/or clinical resource for further evaluation, assessment, and/or treatment;

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- iii. if appropriate, JLAP may assist in the development of a treatment plan, which may include participation in JLAP;
 - iv. with the participant's permission, a volunteer will be appointed to provide ongoing support.
- 2) When the member is referred by a third party the following procedures apply:
- i. JLAP will obtain detailed information from the referral source regarding the nature of the impairment, the referral source's relationship to the member, and the circumstances giving rise to the referral. The identity of the referral source shall remain confidential unless the referral source instructs otherwise.
 - ii. JLAP may conduct further investigations to verify the circumstances that led to the referral by contacting independent sources to determine whether the member may be impaired.
 - iii. Any independent sources shall be approached in a manner to preserve, as far as possible, the privacy of the member.
 - iv. If it is determined the member may be impaired, JLAP will determine how the member will be approached with special attention given to involving local volunteers and/or local members of the bar who may already be involved in the case.
 - v. If the referred member is a judge, every effort shall be made to include at least one judge as a volunteer in the case.
- 3) If the impaired member agrees to treatment, or other levels of participation in JLAP, further assistance may include:
- i. consultation with the participant, in-house assessment/evaluation, or referral for appropriate assessment/evaluation;
 - ii. assistance in locating treatment resources; and
 - iii. assistance in development of continuing care including support and referral to JLAP.
- 4) The director may terminate JLAP's involvement in any case at any time should it be determined that the member does not comply or refuses to participate and will not likely benefit from JLAP services at that time.
- (c) Official Referrals
- 1) Upon receipt of an official referral for assessment/evaluation, JLAP will:
- i. Determine if all appropriate releases and/or authorizations have been signed and obtained.
 - ii. Determine whether the requested assessment/evaluation will be done in house, referred out or a combination.
 - iii. Contact the official referral source for background information and direction, if necessary.
 - iv. Coordinate the assessment process with selected provider, participating as deemed appropriate on a case-by-case basis.
 - v. Release information and/or the final assessment/evaluation as allowed by written release.
- 2) Upon receipt of an official referral for a monitoring agreement JLAP will:
- i. Determine if all appropriate signed releases/authorizations have been obtained.

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- ii. Review existing assessment(s) and/or determine whether initial or additional assessment(s) are necessary.
- iii. Develop a monitoring agreement.
- iv. Select and provide a monitor.
- v. Meet with the participant, his/her attorney if appropriate, and the monitor prior to execution of the agreement to explain JLAP's role and the agreement terms and conditions.
- vi. Report to the official referral source according to the terms of the referral and the monitoring agreement.

Section 6. Services.

- (a) Any member is eligible for assistance and participation in JLAP. JLAP services will be provided without charge for initial consultation, in-house assessment, referral, and peer support.
- (b) Referrals for medical and/or clinical evaluations, treatment, therapy and aftercare services will be provided; engagement of, and payment for, such services is solely the responsibility of the participant.
- (c) Participants entering into a monitoring agreement with JLAP due to an official referral or upon their own initiative may be charged a monthly fee pursuant to JLAP's fee policy as approved by the Supreme Court from time to time.

Section 7. Treatment--Medical Assistance.

- (a) JLAP endeavors to provide a network of therapeutic resources that includes a broad range of health care providers, therapists, and "self-help" support groups. JLAP will maintain a statewide list of available providers.
- (b) With the written consent of the participant, JLAP may maintain contact with, and receive information from, the treatment provider. JLAP may remain involved in support during treatment, and shall endeavor to provide peer support and aftercare assistance in early recovery.
- (c) In cases where it is determined the participant is not in need of inpatient or residential treatment, JLAP may provide referrals to outpatient counseling resources and self-help groups such as 12-step programs.

Section 8. Confidentiality.

- (a) JLAP and its representatives will observe anonymity and confidentiality at all times. JLAP is an autonomous program, independent from the administrative offices of the Court or any other board or disciplinary organization, agency or authority.
- (b) No disclosure of confidential information will be made by any representative except for permitted disclosures and those identified in Ind. Professional Conduct Rule 8.3.

Section 9. Role of Program Volunteers.

JLAP will maintain a statewide network of volunteers to assist the committee in carrying out the purposes of JLAP. Volunteers fulfill the following functions:

- (a) Assist in investigations, assessments, interventions, monitoring and support;
- (b) Appear on behalf of contract participants as witnesses at the discretion of the director;

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- (c) Attend ongoing training on topics that enhance their ability to assist impaired members of the legal profession; and
- (d) Disseminate information about JLAP including the offer of presentations to local and specialty bars.

Section 5. Referral Procedures

(a) General Procedures

The state will be divided into geographical areas and a committee member or other designated representative shall serve as the primary contact for each area.

(b) Self-Referrals and Other Referrals

- 1) When the participant is a self-referral, the following procedures apply:
 - i. JLAP may conduct an initial consultation to determine the nature of the participant's impairment;
 - ii. where appropriate, JLAP may make a referral to a qualified medical and/or clinical resource for further evaluation, assessment, and/or treatment;
 - iii. if appropriate, JLAP may assist in the development of a treatment plan, which may include participation in JLAP;
 - iv. with the participant's permission, a volunteer will be appointed to provide ongoing support.
- 2) When the member is referred by a third party the following procedures apply:
 - i. JLAP will obtain detailed information from the referral source regarding the nature of the impairment, the referral source's relationship to the member, and the circumstances giving rise to the referral. The identity of the referral source shall remain confidential unless the referral source instructs otherwise.
 - ii. JLAP may conduct further investigations to verify the circumstances that led to the referral by contacting independent sources to determine whether the member may be impaired.
 - iii. Any independent sources shall be approached in a manner to preserve, as far as possible, the privacy of the member.
 - iv. If it is determined the member may be impaired, JLAP will determine how the member will be approached with special attention given to involving local volunteers and/or local members of the bar who may already be involved in the case.
 - v. If the referred member is a judge, every effort shall be made to include at least one judge as a volunteer in the case.
- 3) If the impaired member agrees to treatment, or other levels of participation in JLAP, further assistance may include:
 - i. consultation with the participant, in-house assessment/evaluation, or referral for appropriate assessment/evaluation;
 - ii. assistance in locating treatment resources; and

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- iii. assistance in development of continuing care including support and referral to JLAP.
 - 4) The director may terminate JLAP's involvement in any case at any time should it be determined that the member does not comply or refuses to participate and will not likely benefit from JLAP services at that time.
- (c) Official Referrals
- 1) Upon receipt of an official referral for assessment/evaluation, JLAP will:
 - i. Determine if all appropriate releases and/or authorizations have been signed and obtained.
 - ii. Determine whether the requested assessment/evaluation will be done in house, referred out or a combination.
 - iii. Contact the official referral source for background information and direction, if necessary.
 - iv. Coordinate the assessment process with selected provider, participating as deemed appropriate on a case-by-case basis.
 - v. Release information and/or the final assessment/evaluation as allowed by written release.
 - 2) Upon receipt of an official referral for a monitoring agreement JLAP will:
 - i. Determine if all appropriate signed releases/authorizations have been obtained.
 - ii. Review existing assessment(s) and/or determine whether initial or additional assessment(s) are necessary.
 - iii. Develop a monitoring agreement.
 - iv. Select and provide a monitor.
 - v. Meet with the participant, his/her attorney if appropriate, and the monitor prior to execution of the agreement to explain JLAP's role and the agreement terms and conditions.
 - vi. Report to the official referral source according to the terms of the referral and the monitoring agreement.

Confidentiality. The name of the complainant is revealed to the judge only if a formal investigation is deemed necessary. Before the filing and service of formal charges, the Commission shall not publicly disclose information relating to a complaint, inquiry, or investigation (unless there has been a waiver, a determination of need to protect the public or the administration of justice, or where the Commission elects to respond to a publicly disseminated statement). After the filing of formal charges, all pleadings and proceedings are public. Commission deliberations, settlement conferences, and proposed settlement agreements shall remain confidential. Settlement agreements submitted to the Supreme Court for approval shall become public when the Supreme Court accepts the agreement in whole or in part and issues an order or opinion resolving the judicial disciplinary case. (Rule 25, VIII B)

Immunity

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VII. Immunity. Members of the Commission, Masters, Commission Counsel, and staff are absolutely immune from suit for all conduct in the course of their official duties.

VIII. Disciplinary Procedure.

- C. *Civil Immunity.* Each person shall be immune from civil suit for all sworn or written statements, if made without malice, and intended for transmittal only to the Commission, Counsel, or staff, or made in the course of investigatory, hearing, or review proceedings under this rule.

Indiana Commission on Judicial Qualifications: <http://www.in.gov/judiciary/jud-qual/2380.htm>

Indiana Judges and Lawyers Assistance Program
Clinical Director: Tim Sudrovech tsudrove@courts.state.in.us

Iowa

Authority and Application: Pursuant to [Article V, Section 19 of the Iowa Constitution](#) and [Iowa Code Section 602.2103](#), the Commission on Judicial Qualifications may investigate complaints that may lead to retirement, discipline, or removal of a judicial officer by the Iowa Supreme Court. Specifically, Iowa's Supreme Court may retire a judge for permanent physical or mental disability; discipline or remove a judge for persistent failure to perform duties, habitual intemperance, willful misconduct in office, conduct which brings judicial office into disrepute, or substantial violation of the canons of judicial ethics; and discipline or remove a judge for conduct which violates the code of ethics. (Iowa Code, section 602.2106). Iowa's Judicial Qualifications Commission's rules can be found [here](#).

Procedures. Anyone may file a complaint with the Commission, but it must be in writing and signed (Rule 52.9). Procedures for investigation begin with an initial review (Rule 52.10), at which point the commission determines if the complaint is clear and serious or habitual, thus warranting a full investigation and disposition. If a full investigation is completed and shows clear and serious misconduct, the commission will call an evidentiary hearing (Rule 52.11). After the hearing, the commission can dismiss the complaint, give a private reprimand or admonition, or make a recommendation to the Supreme Court for disciplinary action (Rule 52.12). At any point, if the charge does not warrant application to the supreme court, the commission may dispose of it informally by conference with or communication to the judicial officer involved (Iowa Code section 602.2104(1), Rule 52.26).

Medical Examinations. Where a judicial officer's physical or mental health is in issue, the commission may order the judicial officer or employee to submit to a physical or mental examination by a duly licensed health care professional designated by the commission (Rule 52.22).

Rule 52.22 Physical or medical examinations

Where a judicial officer's or employee's physical or mental health is in issue, the commission may order the judicial officer or employee to submit to a physical or mental examination by a duly licensed health care professional designated by the commission. The failure of the judicial officer or employee to submit to a physical or mental

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examination ordered by the commission may be considered by the commission, unless it appears that such failure was due to circumstances beyond the control of the judicial officer or employee. [Court Order November 9, 2001, effective February 15, 2002]

Diversion. Iowa's Commission procedures do not provide for diversion in the case of impairment. However, such cases may be diverted through the use of Rule 52.26 allowing for letters of caution and warning.

Rule 52.26 Letters of caution and warning

In some cases, the commission may conclude that a judicial officer's or employee's conduct has been questionable but does not amount to misconduct, or that misconduct of a very minor nature has occurred which does not warrant formal discipline. In these cases, the commission may inform the judicial officer or employee that no present formal disciplinary action will be taken but that the judge should avoid similar conduct in the future. [Court Order November 9, 2001, effective February 15, 2002]

Confidentiality. The evaluation and investigation process are confidential up to the point when the commission makes a recommendation, if any, to the supreme court.

Iowa Lawyers Assistance Program
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Kansas

Authority and Application: Pursuant to [Article III, Section 15 of the Kansas Constitution](#), the [Commission on Judicial Qualifications](#) has the authority to assist the Supreme Court in the exercise of the court's responsibility in judicial disciplinary matters. Specifically, the Commission may investigate claims that a judge has failed to comply with the Code of Judicial Conduct or has a disability that seriously interferes with the performance of judicial duties. (Rule 609).

Reporting.

Rule 2.14. Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority. See Rule 2.15.

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Procedures. When a complaint is received, the examiner shall conduct an informal investigation (rule 609). After this investigation, the panel may, in its discretion, issue to the judge a letter of caution or of informal advice with copies to the complaining party or other interested persons as deemed appropriate (Rule 610). Otherwise, the commission may initiate formal proceedings (Rule 611). Dispositions of the formal hearing include: admonishment, issue of an order of cease and desist, recommendation to the Supreme Court for discipline (public censure, suspension or removal) or compulsory retirement. (Rule 620).

Diversion Rule 640: Impaired Judges Assistance Committee

- (a) Pursuant to Article 3, Section 15 of the Constitution of the State of Kansas and the inherent power of the Supreme Court, there is hereby created an impaired judges assistance committee to provide assistance to any Kansas judge needing help by reason of a mental or physical disability or an addiction to or excessive use of drugs or intoxicants.
- (b) The committee shall consist of seven judges and shall always include at least two active district judges and two active district magistrate judges. The other three members may be active or retired judges. Population and geographical representation shall be considered in the appointment process.

All members shall be appointed to staggered four-year terms; however, initial appointments following this amendment may be for less than four years. The members may be re-appointed at the pleasure of the Supreme Court.

- (c) The Supreme Court shall designate one member as chair of the committee, which shall meet when the need arises and as called by the chair.
- (d) The purpose of the committee is to aid Kansas judges who are, or may potentially become, impaired in the performance of their duties by reason of alcohol or substance abuse or other physical or mental infirmity. The objectives of the committee are to:
 - 1. identify judges who are impaired from responsibly performing their duties by virtue of addiction or abuse of alcohol or other chemicals or due to senility, psychiatric disorders or other reasons;
 - 2. arrange intervention in those identified cases in such a manner that the judges involved will recognize their impairment, accept help from the committee and medical professionals, and be treated and monitored for a period of time so that they may return to their duties when able;
 - 3. recommend avenues of treatment and provide a program of peer support where possible;
 - 4. act as an advocate of judges who are ill and assist them in recognizing their impairment in obtaining effective treatment when possible, and in returning to the responsible performance of their profession;
 - 5. educate the public and the legal community about the nature of impairments and develop a program which will generate confidence to warrant early referrals and self-referrals to the committee so that impairments may be avoided, limited or reversed.
- (e) A judge may communicate with the committee or one of its members directly on his or her own behalf or any person may suggest the need to intervene on a judge's behalf. The judge's interaction with the committee, however, shall be voluntary. The Office of the Clerk of the Appellate courts is authorized to assist judges and other persons wishing to contact the Impaired Judges Assistance Committee.
- (f) The committee is authorized to designate persons to assist the committee in its work.
- (g) The committee members, designees, and all other participants shall be entitled to the immunities of Rule 608 and shall be relieved from the provisions of Rule 8.3 of the Kansas Rules of Professional Conduct, Canon 3D(1) of the Kansas Code of Judicial

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Conduct, and rule 207 as to work done for and information obtained in carrying out the work of the committee.

- (h) All proceedings, information, meetings, reports, and records of the committee pertaining to individual judges shall be privileged and not be divulged in whole or in part except:
 - 1. when the judge fails or refuses to address the issues of concern, the committee, upon a vote of the majority, may refer the matter to the Commission on Judicial Qualifications;
 - 2. when a judge has been referred to the committee by the Commission on Judicial Qualifications, the committee shall provide progress reports and recommendations to the Commission;
 - 3. when the judge consents to the release of information;
 - 4. or by order of the Supreme Court.
- (i) Annually, and at such additional times as the Supreme Court may order, the committee shall file a statistical report of its activities with the Court and the Commission on Judicial Qualifications.
- (j) The committee may adopt rules of procedure consistent with this rule.
- (k) Members and designees of the committee shall be reimbursed their actual and necessary expenses, including the use of professional intervention assistance, incurred in the discharge of their official duties. Any psychological, medical, or rehabilitative programs undertaken shall not be the financial responsibility of the Impaired Judges Assistance Committee.
- (l) A judge's cooperation, or failure to cooperate, with the committee may be considered by the Commission on Judicial Qualifications and/or the Supreme Court in any disciplinary proceeding.
- (m) For purposes of this rule "judge" shall mean any Supreme Court Justice, Court of Appeals Judge, District Judge, District Magistrate Judge, Municipal Court Judge, or any retired judge or justice accepting judicial assignments.

Confidentiality. All complaints, investigations, reports, correspondence, proceedings, and records of the commission shall be private and confidential, and shall not be divulged in whole or in part except as provided in these rules or by order of the court (Rule 607). A copy of the complaint may be provided to the judge. Confidentiality does not apply to written notices of formal proceedings, any hearing held before a hearing panel under Rules 614 and 619, and any information that the commission or panel considers relevant to any current or future criminal prosecution or ouster proceeding against the judge. The commission may, in its discretion, disclose relevant information in specific instances. (Rule 607).

Immunity. Rule 608

Complaints, reports, or testimony in the course of proceedings under these rules shall be deemed to be made in the course of judicial proceedings. Commission counsel and members of the commission, commission staff, either panel and panel staff shall be absolutely immune from suit for all conduct in the course of their official duties. All other participants shall be entitled to all rights, privileges, and immunities afforded to participants in actions filed in the courts of this state.

Commission on Judicial Qualifications: <http://www.kscourts.org/appellate-clerk/general/commission-on-judicial-qualifications/default.asp>

Kansas Lawyers Assistance Program

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Kentucky

Authority and Application: Pursuant to [Section 121 of the Constitution of Kentucky](#) and [Rule XXIII of the Rules of the Supreme Court of Louisiana](#) the [Judicial Conduct Commission](#) has authority to investigate complaints involving the discipline, retirement or removal of justices of the Supreme Court and judges of the Court of Appeals, circuit court and district court. Specifically, the Commission has the authority to order temporary or permanent retirement of any judge is suffering from a mental or physical disability that seriously interferes with the performance of his duties; impose sanctions on any judge who is guilty of misconduct in the office, persistent failure to perform his duties, incompetence, habitual intemperance, violation of the Code of Judicial Conduct, willful refusal or failure to conform to official policies or directives, and conviction of a crime punishable as a felony, (SCR 4.020(1)). The Kentucky Supreme Court Rules governing judicial retirement and removal can be found [here](#).

Procedures. A written complaint initiates a preliminary investigation by the commission to determine whether formal proceedings should be initiated. The name of the complainant shall not be included on the notice to the judge. After the preliminary investigation, the name of the complainant shall be revealed if relevant. (SCR 4.170). The commission may then conclude that formal proceedings should be initiated (SCR 4.180). Final determinations may include censure, suspension, retirement or removal of a judge (SCR 4.280).

Confidentiality. All papers and information obtained by or on behalf of the Commission shall be confidential except as provided in this rule or by order of the Supreme Court (SCR 4.130). After the commission files formal charges against a judge and receives the judge's response, the commission makes public the charges and the judge's response and all subsequent proceedings will be public.

Kentucky Lawyers Assistance Program
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Louisiana

Authority and Application: Pursuant to [Article V, Section 25 of the Louisiana Constitution](#), the [Judiciary Commission of Louisiana](#) may investigate claims of judicial misconduct or disability. The Commission addresses concerns about a judge's willful misconduct relating to his official duty, or willful and persistent failure to perform his duty, or persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or conduct while in office which would constitute a felony, or that he has a disability that seriously interferes with the performance of his duties and said disability is or is likely to become permanent. (Rule XXIII, Sec 3 of the Rules of the Louisiana Supreme Court). The Supreme Court Rule governing the Judicial Council can be found [here](#). The Rules of the Judiciary Commission can be found [here](#).

Procedures. Complaints made to the Commission should be in writing and should be signed by the complainant. Upon receipt of a complaint, the Commission will commence a preliminary investigation if it is found that the complaint isn't obviously unfounded or frivolous and if the alleged facts, if true, would constitute conduct in violation of the Code of Judicial Conduct or of 1974 La. Const. art. V, Sec 25C (LSC Rule XXIII, Sec 3). After the preliminary investigation has

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been completed, if the commission concludes that a hearing should be instituted, the commission shall issue notice to the judge and begin procedures according to Rule XXIII, Sec 4. Discipline may include censure, suspension with or without salary, removal from office, or involuntary retirement (LSC Rule XXIII, Sec 2e).

Confidentiality. Every effort shall be made by members of the Commission to keep confidential the fact that a complaint has been made or that an investigation is taking place. No statement may be issued by any member of the Commission, or by any staff member, or by Special Counsel, concerning a particular complaint or investigation. No Commission member may make or respond to contacts with the media, the general public, or persons involved in Commission proceedings concerning allegations, investigations or other Commission proceedings, or the administration of the Commission, unless so authorized by the Commission. When sources other than the Commission cause notoriety concerning a judge or the Commission itself and the Commission deems that extreme circumstances dictate that the best interests of the judge or the Commission would be served, it may issue a public statement through its Chief Executive Officer or its Chair. Such a statement shall never infringe upon [Rule XXIII, Section 23 of the Rules of the Supreme Court of Louisiana](#) that all documents, evidence and proceedings before the Commission are to be confidential. Subsequent to the filing of a proceeding in the Supreme Court concerning the discipline of a judge, pursuant to [Supreme Court Rule XXIII, Sections 10 through 12](#), the members, staff, and Special Counsel of the Commission shall refer or forward all inquiries regarding that filing to the Chief Executive Officer, who may, at his or her discretion, refer the matter to a designee, which may include the Special Counsel, for proper and timely response.

Immunity.

Section 23.

(b) Commission members shall be immune from suit for all conduct in the course of their official duties to the same extent and in like manner as judges of courts of record of this State.

Louisiana Lawyers Assistance Program

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Maine

Authority and Application: Pursuant to an [order of the Main Supreme Judicial Court](#), effective July 5, 1978, the [Judicial Responsibility and Disability Committee](#). The Judicial Responsibility and Disability Committee shall receive complaints concerning the performance or misconduct of any judge on the Supreme Judicial Court, the Superior Court, the District Court, the Probate Courts or the Administrative Court. (Order, point 6) There is no mention in the rules of alcohol or drug abuse or mental illness. On the commission's website, it defines misconduct as any violation of the Maine Code of Judicial conduct. The Rules of the Committee on Judicial Responsibility and Disability can be found [here](#).

Procedures. Upon receiving a complaint (signed and in writing), the committee makes an initial assessment and will then conduct further investigation as it deems fit (Rule 1). If the Committee determines that the complaint is unfounded, the matter shall be dismissed. The Committee shall

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hold a hearing at the request of a majority of the members of the Committee or of the person whose conduct is being investigated (Rule 1). Under Order, point 6A a recommendation for informal correction may be made at any stage of the proceedings, but shall not necessarily preclude further action on the complaint.

Confidentiality. All proceedings before the Committee shall be confidential and no information shall be published by the Committee unless by order of the Supreme Judicial Court, with exception of the scenarios listed in Rule 6.

Immunity. Members of the Committee and its staff shall be immune from liability for any conduct in the course of their official duties relating directly or indirectly to discipline and the rules of the Court and the Committee governing the Committee's operation and proceedings. In the absence of malice, a complaint and any witness shall be immune from liability based upon the filing of a complaint or the giving of any testimony in a proceeding before the Committee. (Order establishing Committee on Judicial Responsibility and Disability, Rule 12)

Maine Assistance Program for Lawyers and Judges

Director: William Nugent maineasstprog1@myfairpoint.net

Maryland

Authority and Application: Pursuant to [Article VI, Sections 4A and 4B, of the Maryland Constitution](#), the [Commission on Judicial Disabilities](#) investigates complaints against Maryland judges and, when warranted, conducts hearings concerning such complaints and takes certain actions or makes recommendations for other actions to the Court of Appeals. Specifically, the Commission addresses sanctionable conduct which means misconduct while in office, the persistent failure by a judge to perform the duties of the judge's office, or conduct prejudicial to the proper administration of justice. (Md. Rule 16-803k(1)). The Rules governing the Commission, 16-803 through 16-810 can be found [here](#).

Reporting. [Maryland's Code of Judicial Conduct](#) addresses the issue of judicial impairment and directs action at a point prior to a judge's involvement in disciplinary procedures. Canon 3(f) directs a judge who has a "reasonable belief" that another judge is impaired to take appropriate action, which may include referral to a judicial assistance program. The Comments to Rule 2.14 clarifies that referring a judge to an assistance program may satisfy the judge's responsibility under this rule.

Canon 3. Performance of Judicial Duties

F. Disciplinary Responsibilities

(1) A judge should take or initiate appropriate corrective measures with respect to the unprofessional conduct of another judge or a lawyer.

(2) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Commission on Judicial Disabilities of facts known to that judge that raise a substantial question as to another judge's fitness for office.

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(3) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Attorney Grievance Commission of facts known to the judge that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(4) Acts of a judge required or permitted by Canon 3F(1), (2), or (3) shall be absolutely privileged.

COMMENT: Permitting a judge to take "corrective" measures gives the judge a wide range of options to deal with unprofessional conduct. Appropriate corrective measures may include direct communication with the judge or lawyer who is believed to have committed the violation or other direct action if available. There may be instances of professional misconduct that would warrant a private admonition or referral to a bar association counseling service.

Procedures. Upon receiving a complaint that indicates that a judge may have a disability or have committed sanctionable conduct, the Investigative Counsel may make further inquiry, which may result in closing the file and dismissing the complaint or proceeding to undertake a preliminary investigation. (Rule 16-805(a-d)). If the complaint is not dismissed, the counsel shall conduct a preliminary investigation. Following a preliminary investigation, the Counsel shall make one of the following recommendations: dismissal, with or without a warning; a private reprimand or a deferred discipline agreement; authorization of a further investigation; or the filing of charges. (rule 16-805(f)). Further investigation may take place, under Md. Rule 16-806. Md. Rule 16-807 governs dispositions that may be issued without proceeding on charges, which include dismissal, private reprimand, and deferred discipline. The Commission may recommend that charges be filed, however, and procedures will ensue according to Rule 16-808.

Medical Examinations. Under Rule 16-808(g)(4), when the disability of the judge is an issue, the Chair of the Commission may order the judge to submit to a mental or physical examination pursuant to Rule 2-423.

Diversion. Procedures that allow for diversion may be found in Md. Rule 16-805, 806 and 807, which allows for deferred discipline agreements. On the Commission's website, "disability" is defined as a judge's "mental or physical disability that seriously interferes with the performance of a judge's duties and is or is likely to become permanent." The following are examples provided: alcohol or drug abuse; senility; physical illness; and mental illness.

Rule 16-805. Complaints; preliminary investigations

(f) Recommendation by Investigative Counsel. Upon completion of a preliminary investigation, Investigative Counsel shall report to the Board the results of the investigation in the form that the Commission requires. The report shall include one of the following recommendations: (1) dismissal of any complaint and termination of the investigation, with or without a warning, (2) entering into a private reprimand or a deferred discipline agreement, (3) authorization of a further investigation, or (4) the filing of charges.

(j) Board's report to commission.

(1) Contents. Upon receiving Investigative Counsel's final report and recommendation concerning a further investigation or a preliminary investigation if no further

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investigation was conducted and subject to subsection (j)(2) of this Rule, the Board shall submit to the Commission a report that includes one of the following recommendations: (A) dismissal of any complaint and termination of the investigation with or without a warning; (B) entering into a private reprimand or deferred discipline agreement; or (C) upon a determination of probable cause, the filing of charges, unless the Board determines that there is a basis for private disposition under the standards of Rule 16-807. The Board may not recommend a dismissal with a warning, a private reprimand, or a deferred discipline agreement unless the respondent judge has consented to this remedy.

Rule 16-806. Further investigation

(d) Recommendation by Investigative Counsel. Within the time for completing a further investigation, Investigative Counsel shall report the results of the investigation to the Board or the Commission in the form that the Commission requires. The report shall include one of the following recommendations: (1) dismissal of any complaint and termination of the investigation, with or without a warning, (2) entering into a private reprimand or a deferred discipline agreement, or (3) the filing of charges.

Rule 16-807. Disposition without proceedings on charges

(c) Deferred discipline agreement.

(1) The Commission and the judge may enter into a deferred discipline agreement if, after an investigation:

(A) The Commission concludes that the alleged sanctionable conduct was not so serious, offensive, or repeated as to warrant formal proceedings and that the appropriate disposition is for the judge to undergo specific treatment, participate in one or more specified educational programs, issue an apology to the complainant, or take other specific corrective or remedial action; and

(B) The judge, in the agreement, (i) agrees to the specified conditions, (ii) waives the right to a hearing before the Commission and subsequent proceedings before the Court of Appeals, and (iii) agrees that the deferred discipline agreement may be revoked for noncompliance in accordance with the provisions of subsection (c)(2) of this Rule.

(2) The Commission shall direct Investigative Counsel to monitor compliance with the conditions of the agreement and may direct the judge to document compliance. Investigative Counsel shall give written notice to the judge of the nature of any alleged failure to comply with a condition of the agreement. If after affording the judge at least 15 days to respond to the notice, the Commission finds that the judge has failed to satisfy a material condition of the agreement, the Commission may revoke the agreement and proceed with any other disposition authorized by these rules.

(3) The Commission shall notify the complainant that the complaint has resulted in an agreement with the judge for corrective or remedial action. Unless the judge consents in writing, the terms of the agreement shall remain confidential and not be disclosed to the complainant or any other person. An agreement under this section does not constitute discipline or a finding that sanctionable conduct was committed.

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(4) Upon notification by Investigative Counsel that the judge has satisfied all conditions of the agreement, the Commission shall terminate the proceedings.

Confidentiality. All proceedings under Rules 16-805 and 16-806 are confidential. Upon the filing of a response to charges alleging sanctionable conduct or expiration of the time for filing a response, the charges and all subsequent proceedings before the Commission on them shall be open to the public. If the charges allege only that the judge has a disability, the charges and all proceedings before the Commission on them shall be confidential. (See Rule 16-810).

MSBA's Lawyer Assistance Program

Director: James P. Quinn jamesq@msbar.org

Massachusetts

Authority and Application: Pursuant to [Massachusetts General Laws Chapter 211C](#), the Commission on Judicial Conduct has the authority to receive information, investigate, conduct hearings, and make recommendations to the supreme judicial court concerning allegations of judicial misconduct and allegations of mental or physical disability affecting a judge's performance. (Section 2(1)). The Rules of the Commission on Judicial Conduct can be found [here](#).

Reporting. [Canon 3D of the Code of Judicial Conduct](#) addresses the disciplinary responsibilities of judges, indicating that if a judge has knowledge of facts indicating a substantial likelihood that another judge has committed a violation of the Code or Rules of Professional Conduct that raises a significant question about that judge's honest, integrity, trustworthiness, or fitness for judicial office, that judge shall report the problem to the appropriate authority. The commentary section refers to "abuse of alcohol in public" as one example of such behavior.

D. Disciplinary Responsibilities

(1) A judge having knowledge* of facts indicating a substantial likelihood that another judge has committed a violation of the Code that raises a significant question about that judge's honesty, integrity, trustworthiness, or fitness for judicial office shall inform the Chief Justice of this court and of that judge's court. A judge having knowledge* of facts indicating a substantial likelihood that another judge has committed a violation of the Code that does not raise a significant question of that judge's honesty, integrity, trustworthiness, or fitness for judicial office shall take appropriate action.

(2) A judge having knowledge* of facts indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct that raises a significant question as to that lawyer's honesty, integrity, trustworthiness, or fitness as a lawyer shall inform the Bar Counsel's office of the Board of Bar Overseers.

Commentary:

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This Section requires judges to report conduct indicating a substantial likelihood of a serious violation of professional conduct by judges or lawyers together with the factual basis for this conclusion. Even an apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. The word “significant” in the Section refers to the seriousness of the possible offense and not the quantum of evidence of which the judge is aware.

Judges are required by this Section to participate actively in maintaining and preserving the integrity of the judicial system. The rule is necessary because judges make up a significant group that may have information about colleagues’ misconduct. For this reason, judges have an opportunity and a special duty to protect the public from the consequences of serious misconduct and the potential harmful results of other violations of the Code.

The following examples are not exhaustive but include misconduct that has been found in particular factual circumstances to raise a significant question about honesty, integrity, trustworthiness, or fitness for judicial office: tampering with or attempting to influence improperly a judicial action of another judge; giving false testimony under oath; tampering with or falsifying court papers to support judicial action; grossly abusing the bail statutes; failing to recuse at a hearing when the judge is engaged in a personal financial venture with lawyers or parties; misusing appointment power to show favoritism; using court employees during regular work hours for private benefit; engaging in inappropriate political activity, such as attending fundraisers, soliciting money for candidates or causes, and lobbying except on matters concerning the law, the legal system, or the administration of justice; engaging in a pattern of any of the following activities: abuse of alcohol in public, indifference to case law or facts, use of injudicious or abusive language on the bench, or failure to devote full-time to judicial work.

Other Code violations by a judge that are less serious still require appropriate action by the judge who has knowledge of them. Examples include but are not limited to: speaking or being the guest of honor at an organization’s fund-raising event; serving as a director of a family business; serving as the executor of an estate of a relative or person with whom the judge had no close familial relationship; frequently starting court business late or stopping it early; soliciting advice about pending cases from a friend who is a law professor without disclosure; placing or leaving a bumper sticker for a political candidate on a vehicle the judge regularly drives; frequently delaying making decisions in cases. Appropriate action by a judge who has knowledge of these less serious Code violations may include: speaking to the other judge directly; asking someone else who may be more appropriate to speak to that judge; reporting to the presiding judge of the court where the violation occurred or where that judge often sits; reporting to the Chief Justice of that judge’s court; and speaking to Judges Concerned for Judges or calling the judicial hotline maintained by Lawyers Concerned For Lawyers, Inc. This list of actions is illustrative and not meant to be limiting.

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While a measure of judgment is required in complying with this Section, a judge must report lawyer misconduct that, if proven and without regard to mitigation, would likely result in an order of suspension or disbarment, including knowingly making false statements of fact or law to a tribunal, suborning perjury, or engaging in misconduct that would constitute a serious crime. A serious crime is any felony, or a misdemeanor a necessary element of which includes misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit the above crimes. Section 3D(2) does not preclude a judge from reporting a violation of the Massachusetts Rules of Professional Conduct in circumstances where a report is not mandatory. Reporting a violation is especially important where the victim is unlikely to discover the offense. If the lawyer is appearing before the judge, a judge may defer making a report under this Section until the matter has been concluded, but the report should be made as soon as practicable thereafter. However, an immediate report is compelled when a person will likely be injured by a delay in reporting, such as where the judge has knowledge that a lawyer has embezzled client or fiduciary funds and delay may impair the ability to recover the funds.

Procedures. A Commission proceeding relating to the conduct of a judge is initiated when the Commission receives a written or oral complaint, or when the Commission by motion creates its own complaint, on the basis of reasonable information (Rule 6a). After the complaint is screened by the Executive Director an investigation may be initiated (Rule 6h). After this investigation, if the Commission finds that there has been no misconduct, the complaint will be dismissed. After the investigation, if the Commission finds that there has been misconduct, the following sanctions may be applied: private reprimand, admonish the judge, direct professional counseling or assistance for the judge, impose conditions on the judge's future conduct, or issue formal charges (Rule 7). If formal charges are filed, procedures will follow Rules 8-11. If a complaint or statement of allegations involves the mental or physical health of a judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce his medical records (Rule 12)

Medical Examinations. If a complaint or statement of allegations involves the mental or physical health of a judge, a denial of the alleged disability or condition constitutes a waiver of medical privilege and the judge shall be required to produce his medical records (Rule 12).

Diversion. Rule 7 allows for informal discipline, which may involve directing professional counseling or assistance for the judge.

Rule 7. Sufficient Cause for Formal Charges

- A. Following the expiration of the twenty-one (21) days allowed for the judge's response, for any proceeding not dismissed, the Commission shall thereafter hold a formal meeting which shall be conducted in private, at which the rules of evidence need not be observed. The judge shall have the right to make a personal appearance with his attorney, but not to be present during the Commission deliberations.
- B. At this meeting the Commission shall vote to dispose the case in one of the following ways:

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(3) If it finds that there has been conduct that is or might be cause for discipline but for which an informal adjustment is appropriate, it may, with the agreement of the judge, so inform or admonish the judge, direct professional counseling or assistance for the judge, or impose conditions on the judge's future conduct. The complainant shall be notified that the matter has been so resolved. When either conditions or treatment is prescribed, the Commission shall provide for supervision, enforcement thereof, or both.

Confidentiality. All proceedings prior to a determination of sufficient cause and the filing of formal charges shall be confidential. Records, files and reports of the Commission shall be confidential and disclosures are only allowed in specific indicated instances. Upon the filing of formal charges, the formal charges, the answer, the evidentiary hearings, and the final recommendation by the Commission as to the disposition, all become public. (Rule 5b4). Proceedings may remain confidential, even after a finding of sufficient cause, if the judge, the Commission, and the complainant, if any, all concur (Rule 5d). The identity of the complainant will be revealed to the judge if the Commission investigates the complaint.

Lawyers Concerned for Lawyers
Jeffrey Fortgang drjeff@lclma.org

Michigan

Authority and Application. Pursuant to [Article 6, Section 30 of the Michigan Constitution](#) and [Chapter 9.200 of the Michigan Court Rules](#), the [Judicial Tenure Commission](#) investigates violations of the Code of Judicial Conduct or the Rules of Professional Conduct. Specifically, a judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice (Court Rule 9.205(b)). The Commission's internal operating procedures can be found [here](#).

Procedures. Investigations may be initiated by a written request, verified on oath by the complainant (IOP 9.207a-1), referred by the Attorney Grievance Administrator (IOP 9.207a-4), or initiated by the Supreme Court, the State Court Administrator or the Attorney Grievance Commission (IOP 9.207a-5) or the Commission (IOP 9.207a-6). The Executive Director then, at his or her discretion, may open a file, conduct a preliminary investigation (IOP 9.207b-2) and if the Commission approves, begin an investigation (IOP 9.207a-7). The Commission may dismiss a grievance without conducting an investigation (IOP 9.207b-3, IOP 9). Or, the Commission may conduct additional investigation (IOP 9.207b-8 & 9). Under IOP 9.207b-12, the Commission may dismiss an investigation at any point. A hearing on formal complaints may proceed according to IOP 9.209a - IOP 9.210-b.

Diversion. Although nothing in the rules explicitly mentions diversion programs or processes, the IOP indicates that the Commission advocates negotiating resolutions to judicial misconduct matters to the extent that the interests of the public are protected and the integrity of the judiciary may be preserved; proposed resolutions negotiated by the executive director are submitted to the Commission for consideration (IOP 9.220c-1). Additionally, before a formal complaint has been filed, the Commission may impose conditions, which may include a period of monitoring.

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Rule 9.207 Investigation; Notice

(B) Investigation. Upon receiving a request for investigation that is not clearly unfounded or frivolous, the commission shall direct that an investigation be conducted to determine whether a complaint should be filed and a hearing held. If there is insufficient cause to warrant filing a complaint, the commission may:

(3) dismiss the matter contingent upon the satisfaction of conditions imposed by the commission, which may include a period of monitoring,

Medical Examinations. In the course of an investigation, the Commission may request the judge to submit to a physical or mental examination. Failure of the judge to submit to the examination may constitute judicial misconduct. MCR 2.311B is applicable to the examination. See Rule 9.207E.

Confidentiality. The complaint shall identify only the respondent and those whose identification is necessary to provide adequate notice of specific allegations (IOP 9.209a-2). (A) Scope of Rule. Except as provided in this rule, all papers filed with the commission and all proceedings before it are confidential in nature and are absolutely privileged from disclosure by the commission or its staff. All the commission's investigative files and commission-generated documents are likewise confidential and privileged from disclosure. After the filing of a formal complaint, however, the following shall not be confidential: the complaint and all subsequent pleadings filed with the commission or master, all stipulations entered, all findings of fact made by the master or commission, and all reports of the master or commission (Rule 9.221).

Lawyers and Judges Assistance Program

Program Administrator: Martha Burkett mburkett@mail.michbar.org

Minnesota

Authority and Application: [Minn. Constitution, Art 6, Section 9](#), authorizes the legislature to “provide for the retirement, removal, or other discipline of any judge who is disabled, incompetent, or guilty of conduct prejudicial to the administration of justice.” Specifically the [Board of Judicial Conduct](#) is authorized to receive complaints, investigate, conduct hearings, make certain summary dispositions, and make recommendations to the Supreme Court concerning 1) allegations of judicial misconduct, 2) allegations of physical or mental disability of judges, 3) matters of voluntary retirement for disability, and 4) review of a judge’s compliance with Minn. Stat. Section 546.27 (Board Rule 2(a)(1)). The Rules of the Board of Judicial Standards can be found [here](#).

Reporting.

Rule 2.14. Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

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Comment

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Procedures. Upon receiving a written complaint, the Executive Secretary will first conduct a confidential investigation. As amended on July 1, 2009, the rules permit the Board, upon a finding of reasonable cause, to issue letters of caution, private admonitions, public reprimands, seek public discipline or commence a public hearing. The rules also permit the Board to defer a disposition, impose conditions on a judge’s conduct or require professional counseling or treatment. After a public hearing, a Panel’s recommendation of censure, suspension or removal can be imposed only by the Minnesota Supreme Court. (Rule 6, Rule 8-11).

Diversion. After an investigation, if the board finds there is reasonable cause to believe the judge committed misconduct, it may enter into a deferred disposition agreement for a period of time, and the agreement may specify the disposition upon completion (Rule 6(f)(5)(i)). A deferred disposition agreement may also be entered into at the time of disposition (Rule 11b). According to the definition section, a “deferred disposition agreement” is an agreement between the judge and the board or hearing panel for the judge to undergo treatment, participate in education programs or take other corrective action, based upon misconduct or disability that can be addressed through treatment or a rehabilitation program. “Disability” is a physical or mental condition of a judge that seriously interferes with the capacity of the judge to perform judicial duties, including, but not limited to, impairment due in whole or in part from habitual or excessive use of intoxicants, drugs, or controlled substances. A disability may be permanent or temporary. See deferred disposition rule below:

RULE 6

(5) If the board finds there is reasonable cause to believe the judge committed misconduct, it may:

- (i) enter into a deferred disposition agreement for a period of time, and the agreement may specify the disposition upon completion;
- (ii) if the misconduct appears to be of an isolated and non-serious nature, issue a private admonition, which may include conditions;
- (iii) issue a public reprimand, which may include conditions; or
- (iv) issue a Formal Complaint

RULE 11

(b) Disposition. If the hearing panel finds clear and convincing evidence of misconduct, the panel may:

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- (1) enter into a deferred disposition agreement for a specified period of time upon reasonable conditions and the agreement may specify the disposition upon completion;
- (2) issue a public reprimand; or
- (3) recommend any of the following sanctions to the Supreme Court
 - (i) Removal
 - (ii) Retirement
 - (iii) Imposing discipline as an attorney;
 - (iv) Imposing limitations or conditions on the performance of judicial duties
 - (v) Censure;
 - (vi) Imposing a civil penalty;
 - (vii) Suspension with or without pay; or
 - (viii) Any combination of the above sanctions

Medical Examinations. If a disability has been raised (see Rule 6d), and if the judge denies the disability, the Board shall determine whether there is credible evidence of a disability. If there is credible evidence of a disability, the denial constitutes a waiver of medical privilege as to records relevant to the alleged disability. If medical privilege is waived, the board may request that the judge consent to a physical or mental examination by a qualified medical practitioner designated by the board. The judge has the right to an additional independent medical examination provided by experts other than those designated by the board, but the examination shall be at the sole expense of the judge, and written reports of any examination shall be provided to the board as soon as medically feasible.

Confidentiality. Generally the identity of the complainant will be revealed to the judge. All proceedings of the Board are confidential until the formal statement of complaint and response has been filed with the Minnesota Supreme Court. (Rule 5).

Immunity. Information submitted to the board or its staff and testimony given in the proceedings under these rules shall be absolutely privileged, and no civil action predicated thereon may be instituted against the complainant or witness, or their counsel. Members of the board, referees, board counsel and staff shall be absolutely immune from suit for all conduct in the course of their official duties. (Rule 3).

Lawyers Concerned for Lawyers

Executive Director: Joan Bibelhausen jbibelhausen@mnlcl.org

Mississippi

Authority and Application: Pursuant to the [Mississippi Constitution Section 177A](#) and the [Mississippi Code of 1972, Title 9, Chapter 19](#), the [Commission on Judicial Performance](#) is authorized to enforce the standards of judicial conduct, inquiry into judicial disability and conduct, protect the public from judicial misconduct and disabled judges, and protect the judiciary from unfounded allegations (Commission Rule 1b). Specifically, grounds for discipline include: conviction of a felony, willful misconduct in office; willful and persistent failure to perform judicial duties; habitual intemperance in the use of alcohol or other drugs; conduct prejudicial to the administration of justice which brings the judicial office into disrepute; physical or mental disability seriously interfering with the performance of judicial duties, which disability is or is likely to become a permanent character; any willful violation of law constituting a serious misdemeanor or felony; any violation of the code of judicial conduct; and any violation of the

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rules of professional conduct as adopted by the Supreme Court. In the purpose section, it states “the purpose of the Commission is to be rehabilitative and educational as well as disciplinary” (Rule 1b)

Procedures. Upon receipt of a “proper information regarding a judge’s conduct or physical or mental condition,” the Commission will initiate a confidential inquiry (Rule 5a). After a preliminary inquiry is conducted, the Commission may dismiss the complaint or request that the complainant file a detailed, signed, sworn complaint against the judge (Rule 5d). The Commission may dispose of the case in any of the following ways: dismissal, private admonishment, a memorandum of understanding with the judge concerning his future conduct or submission to professional treatment or counseling, or a formal hearing (Rule 6b). A formal hearing may then proceed under Rule 8, after which, disciplinary action may include removal from office, suspension, fine, public censure or reprimand, or retirement (Rule 8f). Under Rule 9, the Commission may request a judge to submit to mental or physical exams or produce reports of recent examinations.

Diversion.

Rule 6. Probable Cause

B. Disposition. The Commission shall dispose of the case in one (1) of the following ways:

(3) The Commission may enter into a memorandum of understanding with the judge concerning his future conduct or submission to professional treatment or counseling.

Medical Examinations. Rule 9. Mental or Physical Disability.

When the mental or physical health of a judge is in issue, the Commission may request the judge either (1) to submit to examinations by licensed physicians chosen and paid by the Commission, or (2) to submit to the Commission all reports of recent examinations by licensed physicians relating to the alleged condition. If the judge fails to submit to the examinations or to submit all recent medical reports, such failure shall raise an adverse inference to the judge on such issue, unless the judge's failure was due to circumstances beyond his control. The judge shall be furnished a copy of the report of any examination conducted under this rule.

Confidentiality. All proceedings before the Commission shall be confidential, except upon unanimous vote of the Commission, as prescribed in Section 177A of the Mississippi Constitution of 1890. Confidentiality attaches upon the initiation of an inquiry and includes all records, files, and reports of the Commission. All proceedings before the Supreme Court and any final decisions made by the Supreme Court are made public as in other cases at law. (Rule 4a). By unanimous vote, the Commission may waive confidentiality and disclose such information deemed appropriate by the Commission (Rule 4b).

Lawyers and Judges Assistance Program

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Missouri

Authority and Application: Pursuant to [Article 5, Section 24 of the Missouri Constitution](#), the [Commission on Retirement, Removal and Discipline](#) is authorized to investigate complaints against justices and judges on the Supreme Court, court of appeals, circuit and associate circuit courts, municipal courts and members of judicial commissions. Specifically, the Commission on Retirement, Removal and Discipline, will investigate allegations that a judge has committed a crime or is guilty of misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude, or oppression in office (Rule 12.07). The Missouri Supreme Court Rules for the Commission on Retirement, Removal and Discipline can be found [here](#).

Procedures. Upon receiving a request in writing that a judge is unable to discharge the duties of his office with efficiency because of permanent sickness or physical or mental infirmity, the Commission shall conduct an investigation. If the investigation does not disclose sufficient cause to warrant further proceedings, the file will be closed. (Rule 12.05a). Otherwise, formal proceedings may be instituted as set forth in Rules 12.09 through 12.21, unless the judge resigns (Rule 12.05b). After formal proceedings, a judge may be removed from office, suspended from the performance of his duties for a period of time, or otherwise disciplined (Rule 12.07c). The Commission may require a physical or mental examination of the judge and may appoint a physician or physicians to make such an examination (Rule 12.11).

Medical Examinations.

12.11. Witnesses - Mental or Physical Examination

The Commission shall have power to administer oaths, compel the giving of testimony and may require a physical or mental examination of the respondent and may appoint a physician or physicians to make such examination.

Confidentiality. Except as otherwise provided in the rules, all papers filed in proceedings before the Commission shall be confidential unless and until the Commission files a recommendation with the Court that the judge be retired, removed, or disciplined. (Rule 12.21).

Missouri Lawyers Assistance Program

Director: Jim Brady jbrady@mobar.org

Montana

Authority and Application: Pursuant to Article [VII, Section 11 of the Montana Constitution](#), and the provisions of [Title 3, Chapter 1, Part 11 of the Montana Code Annotated](#), the [Judicial Standards Commission](#) is authorized to investigate conduct concerns of all judges as defined in the rules. Specifically, the grounds for discipline or removal include: any disability that seriously interferes with the performance of the officer's duty and is or may become permanent; willful and persistent failure to perform judicial duties; willful misconduct in office; violations of the Canons of Judicial Ethics which may include conduct prejudicial to the administration of justice which brings the judicial office into disrepute, or impropriety; and habitual intemperance. (Commission Rule 9). The Rules of the Judicial Standards Commission can be found [here](#).

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Procedures. Upon receiving a written complaint (rule 10) or receiving information indicating that a judge is guilty of some action set forth in Rule 9b, the Commission may make an initial inquiry of the judge (rule 10). The Commission may either dismiss the complaint, dispose the matter on the basis of an agreement with the judge, or proceed with formal procedures. (Rule 10). The Commission may impose the following sanctions: private admonition, private reprimand, public reprimand, censure, suspension, removal, permanent removal or retirement (Rule 9).

Diversion.

Rule 10. Complaints – Initial Investigations.

(g) After receipt of a complaint or of information indicating that a judge may have been guilty of conduct which might warrant discipline, or that a judge may be disabled, the Commission, before voting to hold a formal hearing, may delegate to one or more of its members the authority and responsibility to personally and confidentially confer with the judge subject to the inquiry, and to make informal recommendations to the judge concerning the subject matter of the inquiry and a satisfactory disposition thereof. If the judge agrees to the Commission's suggested disposition, the matter may be disposed of on the basis of the agreement reached. If such agreed disposition is made on the basis that it be made public, the Commission shall file a report of such disposition in the office of the Clerk of the Supreme Court and it shall become a matter of public record.

Reporting.

[Code of Judicial Conduct](#)

RULE 2.15. Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system.

Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.16.

Confidentiality. All papers filed and all proceedings before the Commission are confidential, provided, however, that the record filed by the Commission with the Supreme Court loses its confidential character upon its filing and, further provided, loses its confidentiality in the event that Sections 3-1-1121 through 1126, MCA are invoked. (Rule 7)

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Immunity. Communications or complaints to the Commission and testimony given in the proceedings are privileged and no evidence is admissible in any lawsuit against any complainant or witness. Members of the Commission, investigators, special counsel and staff members shall be immune from suit for any conduct in the course of their official duties. (Rule 8).

Montana Lawyers Assistance Program

Director: Michael Larson mlarson@montanabar.org

Nebraska

Authority and Application. Pursuant to [Article V, Section 30 of the Nebraska Constitution](#), the [Commission on Judicial Qualifications](#) has jurisdiction over reprimanding, disciplining, censuring, or suspending judges based on the following grounds: willful misconduct in office, willful disregard of or failure to perform his or her duties, habitual intemperance, conviction of a crime involving moral turpitude, disbarment as a member of the legal profession, conduct prejudicial to the administration of justice that brings the judicial office into disrepute (Section 5-123d). The Commission's disciplinary procedures for judges can be found [here](#).

Procedures. Upon receiving a written complaint or request alleging facts indicating that a judge or justice is subject to discipline, removal or retirement, the Commission shall make an initial informal inquiry to determine whether a preliminary investigation should be conducted (Section 5-103). After conducting a preliminary investigation, the Commission may dismiss the complaint, reprimand the judge, or order a formal open hearing to be held concerning the reprimand, discipline, censure, suspension, removal, or retirement of the judge (Section 5-104, 5-115).

Medical Examinations.

§ 5-120. Judicial retirement for disability.

(B) On Motion of the Commission: The commission may, on its own motion, require a judge or the judge's guardian to furnish such information as the commission requires concerning the mental or physical condition of the judge, or require the judge to submit to a medical examination at a time and place as ordered by the commission under the provisions of Neb. Rev. Stat. § 24-722.

Confidentiality. All papers filed with and proceedings before the commission or masters appointed by the Supreme Court prior to a reprimand or formal hearing shall be confidential. (Section 5-121).

Nebraska Lawyers Assistance Program

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Nevada

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Authority and Application: Pursuant to [Article 6, Section 21 of the Nevada Constitution](#) and the [Nevada Revised Statutes 1.425-1.4695](#), the [Commission on Judicial Discipline](#) is authorized to investigate complaints for censure and other disciplinary action of judges in Nevada. Specifically, grounds for investigation include willful misconduct, willful or persistent failure to perform the duties of his office or habitual intemperance; or aging which interferes with the proper performance of his judicial duties, or for mental or physical disability which prevents the proper performance of his judicial duties and which is likely to be permanent in nature. (Constitution, Section 21(8)a-b). The Procedural Rules of the Nevada Commission on Judicial Discipline can be found [here](#).

Reporting.

[Code of judicial Conduct](#)

Disability and Impairment. 2.14. Rule

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Procedure. Upon the receipt of a complaint (Rule 10), the Commission will either dismiss the complaint or authorize an initial investigation according to Rules 10-13. If the Commission makes a finding of probable cause of the allegations, a formal statement of the charges will be filed and proceedings become public (Rule 14). Formal procedures follow Rules 14-29. Disposition may include censure, removal, retirement or other discipline of a respondent (Rule 28).

Medical Examinations.

NRS 1.4665 Procedures for allegation of incapacity; informal resolution of complaint relating to incapacity; medical, psychiatric or psychological testing by physician; burden of proof.

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4. In attempting to resolve a matter informally, the Commission may request that the judge named in the complaint submit to medical, psychiatric or psychological testing by a physician licensed to practice medicine in this State who is selected by the Commission.

Diversion. NRS 1.4665 governs procedures when there has been an allegation of incapacity and allows for an informal resolution. See below

1. Except as otherwise provided in this section or in the procedural rules adopted by the Commission, the Commission shall use the same procedures with respect to allegations of incapacity as it uses with respect to allegations of misconduct.

2. The Commission shall attempt to resolve the following matters informally:
 - (a) A complaint received by the Commission which alleges that a judge is incapacitated;
 - (b) A matter in which the preliminary investigation reveals that a judge may have a physical or mental disability; and
 - (c) A matter in which the judge raises a mental or physical disability as an issue before the filing of the formal statement of charges.

3. An informal resolution by the Commission pursuant to subsection 2 includes, without limitation:
 - (a) Voluntary retirement by the judge; and
 - (b) If the disability can be adequately addressed through treatment, a deferred discipline agreement pursuant to NRS 1.468.

4. In attempting to resolve a matter informally, the Commission may request that the judge named in the complaint submit to medical, psychiatric or psychological testing by a physician licensed to practice medicine in this State who is selected by the Commission.

5. If the Commission is unable to resolve the matter informally pursuant to subsection 2, the Commission shall:
 - (a) Proceed as set forth in NRS 1.4667, 1.467 and 1.4673.
 - (b) Unless the judge has retained counsel at his or her own expense, appoint an attorney to represent the judge at public expense.

6. If a judge raises a mental or physical disability as an affirmative defense or in mitigation, the judge shall be deemed to have consented to medical, psychiatric or psychological testing and to have waived the psychologist-patient privilege and social worker-client privilege set forth in chapter 49 of NRS, as applicable. The Commission shall require the judge to produce relevant medical records and to submit to medical, psychiatric or psychological testing by a physician licensed to practice medicine in this State who is selected by the judge. If the judge refuses to produce medical records or submit to an examination, the Commission shall preclude the judge from presenting the medical records or evidence of the results of medical examinations conducted on behalf of the judge and may consider the refusal as evidence that the judge has an incapacity that

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seriously interferes with the performance of judicial duties of the judge and is likely to become permanent, or as evidence contradicting the claim of a disability by the judge as an affirmative defense or mitigating factor.

7. If a judge raises a mental illness or other disability as a defense or mitigating factor in a proceeding alleging misconduct, the judge has the burden of proving by a preponderance of the evidence that:

- (a) He or she has a serious mental illness or other disability;
- (b) The mental illness or other disability caused the misconduct;
- (c) He or she has undergone or is undergoing treatment for the mental illness or other disability;
- (d) The treatment has abated the cause of the misconduct; and
- (e) The misconduct is not likely to recur.

8. The findings of a physician selected by the Commission pursuant to this section are not privileged communications.

9. The provisions of this section do not prohibit a judge from having legal counsel and a physician of his or her choice present at a medical, psychiatric or psychological examination conducted pursuant to this section.

10. The Commission shall adopt procedural rules to carry out the provisions of this section.

NRS 1.468 Deferral of formal disciplinary action

1. Except as otherwise provided in subsections 2 and 3, if the Commission reasonably believes that a judge has committed an act or engaged in a behavior that would be addressed most appropriately through rehabilitation, treatment, education or minor corrective action, the Commission may enter into an agreement with the judge to defer formal disciplinary proceedings and require the judge to undergo the rehabilitation, treatment, education or minor corrective action.

2. The Commission may not enter into an agreement with a judge to defer formal disciplinary proceedings if the Commission has determined, pursuant to NRS 1.467, that there is a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the judge pursuant to NRS 1.4653.

3. The commission may enter into an agreement with a judge to defer formal disciplinary proceedings only in response to misconduct that is minor in nature.

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4. A deferred discipline agreement entered into pursuant to this section must be in writing and must specify the conduct that resulted in the agreement. A judge who enters into such an agreement must agree:
 - (a) To the specified rehabilitation, treatment, education or minor corrective action;
 - (b) To waive the right to a hearing before the Commission; and
 - (c) That the agreement will not be protected by confidentiality for the purpose of any subsequent disciplinary proceedings against the judge, and the agreement must indicate that the judge agreed to the terms set forth in paragraphs (a), (b) and (c). Such an agreement must expressly authorize the Commission to revoke the agreement and proceed with any other disposition of the complaint or formal statement of charges authorized by NRS 1.467 if the Commission finds that the judge has failed to comply with a condition of the agreement.

5. The Executive Director of the Commission shall monitor the compliance of the judge with the agreement. The Commission may require the judge to document his or her compliance with the agreement. The Commission shall give the judge written notice of any alleged failure to comply with any condition of the agreement and shall allow the judge not less than 15 days to respond.

6. If the judge complies in a satisfactory manner with the conditions imposed in the agreement, the Commission may dismiss the complaint or take any other appropriate action.

Confidentiality. Communications between the commission and its staff; deliberations of the commission; communications between general counsel or the executive director and members of the commission; and communications between general counsel or executive director and commission staff, prosecuting officers or commission investigators are all confidential (Rule 4). However, upon the filing of the formal statement of charges, these statements and documents later formally filed with the commission shall be made accessible to the public and hearings shall be open (Rule 6; Also see NRS 1.4683).

Immunity.

NRS 1.465 Immunity.

1. The following persons are absolutely immune from suit for all conduct at any time in the course of their official duties:
 - (a) Any member who serves on the Commission;
 - (b) Any person employed by the Commission;
 - (c) Any independent contractor of the Commission; and
 - (d) Any person who performs services pursuant to [NRS 1.450](#) or [1.460](#) for the Commission.
2. Except as otherwise provided in [NRS 1.4683](#), the following persons are absolutely immune from suit unless convicted of committing perjury before the Commission pursuant to [NRS 199.120](#) to [199.200](#), inclusive:
 - (a) A person who files a complaint with the Commission pursuant to [NRS 1.4655](#);

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(b) A person who gives testimony at a hearing held by the Commission pursuant to [NRS 1.4673](#) or [1.4675](#); and

(c) A person who gives a statement to an investigator of the Commission during an authorized investigation.

(Added to NRS by 1995, 800; A [1997, 1094](#); [2009, 1338](#))

Lawyers Concerned for Lawyers
Coordinator: Coe Swobe

New Hampshire

Authority and Applications. Pursuant to [New Hampshire Supreme Court Rule 38, 39 and 40](#), the [Judicial Conduct Committee](#) is authorized to investigate concerns regarding judicial conduct. Specifically, the Committee will docket complaints that establish a violation of the Code of Judicial Conduct. (Rule 50(5)).

Procedures: Upon receiving a grievance, the Committee will either dismiss the complaint if the subject of the grievance is not subject to the Code of Judicial Conduct. If the allegations do relate to the Code of Judicial Conduct, the Committee may initiate an inquiry (Rule 40(5)) and if there is a reasonable basis to docket a complaint, the written complaint shall be promptly drafted and docketed (Rule 40(6)). The Committee may then undertake an investigation of any complaint and any people contacted for information shall be informed of their obligation to maintain confidentiality as set forth in section (3). During the investigation, the Committee may resolve a matter with the consent of the judge. Such informal resolutions may take the form of written advice or admonishment, the requirement of remedial action, or the imposition of conditions (Rule 40(6)(f)). Upon the completion of the investigation, if the matter has not been informally resolved, the Committee shall determine whether the investigation has disclosed probable cause to warrant formal proceedings (Rule 40(9)). Procedures for a formal investigation and disposition can be found in Rule 40(9) - (13). Disposition may include informal resolution or adjustment, taking the form of an admonishment, a reprimand, the requirement for corrective action, and a requirement that the judge seek professional counseling or assistance (Rule 40(12)(c)).

Diversion. Although New Hampshire's rules do not explicitly provide for diversion procedures, there do exist rules for informal resolutions or adjustments which might be used in impairment cases. According to the definitions section, an informal resolution or adjustment is defined as "Discipline imposed by the committee when the committee determines that the judge has violated the Code of Judicial Conduct, but that the violation is not of a sufficiently serious nature to warrant the imposition of formal discipline by the court. Informal resolution may include admonishment of the judge, issuance of a reprimand, requiring corrective action, directing professional counseling or assistance, imposing conditions on the judge's conduct, or other similar remedies."

(8) *Preliminary Investigation.*

(f) During the course of its investigation, the committee may informally resolve the matter with the consent of the judge. Such informal resolution may take the form of written advice or admonishment, the requirement of remedial action, or the imposition of conditions, or any combination thereof. The committee may provide for monitoring or review by an administrative judge or other suitable person of any remedial action it may

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require or conditions it may impose in connection with an informal resolution or adjustment. The consent of the judge to informal resolution of the matter shall constitute a waiver of his or her right to a hearing.

Confidentiality. Except as otherwise provided, all proceedings before the committee, and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the committee in the course of its work, shall be confidential. (Rule 40(3)a). However, upon preparation and filing of a statement of formal charges, the committee's file (other than work produce, internal memoranda, and deliberations), the hearing, and the committee's disposition shall be public (Rule 40(3)c). Informal resolutions or adjustments are public.

Immunity. All persons shall be immune from civil liability for all of their statements made in good faith to the committee or to the supreme court or given in any investigation or proceedings pertaining to a grievance or complaint against a judge. The protection of this immunity does not exist as to: (a) any statements not made in good faith; and (b) any statements made to others. The committee, its staff, counsel, and investigators shall be immune from civil liability for any conduct arising out of the performance of their duties. (Rule 40(15)).

New Hampshire Lawyers Assistance Program

Executive Director: Cecie Hartigan cecieh@lapnh.org

New Jersey

Authority and Application: The [Advisory Committee on Judicial Conduct](#), established by the [New Jersey Statutes Annotated 2B:2A-10](#), reviews allegations related to judges being guilty of misconduct in office; willful failure to perform judicial duties; incompetence; intemperate conduct; engaging in partisan politics; or conduct prejudicial to the administration of justice that brings the judicial office into disrepute (2:15-8a). The Committee will also review allegations that a judge may be suffering from a mental or physical disability that interferes with the performance of judicial duties (2:15-8b).

Procedures. Upon receiving a complaint, the Committee will conduct a review and then may conduct a preliminary investigation (2:15-8e). Upon completion of a preliminary investigation, the Committee may dismiss the complaint if it finds that the allegations are without merit; initiate a formal proceeding pursuant to Rule 2:15-12; or communicate to the judge a private censure, reprimand, admonition, caution, or guidance concerning the conduct in question (2:15-10). At any time while a matter is pending before it, the Committee may conduct an informal conference with the judge and, in the discretion of the Committee and the matter may be disposed of consistent with Rule 2:15-10a or c. Formal proceedings may be instituted according to 2:15-12 to 25 and may result in public reprimand, censure, suspension, or removal.

Diversion.

2:15-10. Action on Completion of Preliminary Investigation

(c) if it finds conduct by the judge that does not constitute conduct for which there is probable cause that public discipline should be imposed but that is conduct of the type set

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forth in Rule 2:15-8(a) or other conduct that would reflect unfavorably on the judicial office if it were to become habitual or more substantial in character,

(1) communicate to the judge its private censure, reprimand, admonition, caution, or guidance concerning the conduct in question and so notify the person who brought the allegations before the Committee, with a copy of the communication being sent to the judge's Assignment Judge or, if applicable, the Presiding Judge of the Tax Court or the Presiding Judge for Administration of the Appellate Division. In the exercise of his or her discretion, an Assignment Judge may forward a copy of the communication to the judge's Superior Court or Municipal Court Presiding Judge, as may be applicable; or

(2) require the judge to appear for an informal conference pursuant to Rule 2:15-11.

Confidentiality. Except as provided by the rules, the record before the Committee shall be confidential and not available to any person except in the proper discharge of official duties. In all circumstances, prehearing conferences, deliberations of the Committee, and information subject to a protective order shall remain confidential. If, however, the Committee files a formal complaint, all further proceedings shall be public. (2:15-20).

Immunity. The members and staff of the Committee shall be absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties. Witnesses and persons who bring to the Committee allegations concerning a judge shall be absolutely immune from suit, whether legal or equitable in nature, for all communications to the Committee or to its staff and for any testimony given at proceedings before the Committee, a three-judge panel, or the Supreme Court. This immunity shall not extend to any other publication or communication of such information. (2:15-22).

New Jersey Lawyers Assistance Program
Director: William John Kane wkane@njlap.org

New Mexico

Authority and Application: [The Judicial Standards Commission](#), promulgated pursuant to the [Article 6, Section 32 of the Constitution of the State of New Mexico](#) and [NMSA Section 34-10-1 through 4](#), addresses allegations against judges concerning willful misconduct in office; persistent failure or inability to perform judicial duties; habitual intemperance; disability; and/or violations of the [Code of Judicial Conduct](#) (Rule 4). The Judicial Standards Commission Rules can be found [here](#). The Supreme Court Rules governing review of Judicial Standards Commission Proceedings can be found [here](#).

Reporting

21-214. Disability and impairment.

A. A judge who has a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to the Lawyer's Assistance Committee of the State Bar, Alcoholics

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Anonymous, Narcotics Anonymous, or other support group recognized by the New Mexico Disciplinary Board or the New Mexico Judicial Standards Commission.

B. Notwithstanding the provisions of Paragraph A of this rule, any incumbent judge who illegally sells, purchases, possesses, or uses drugs or any substance considered unlawful under the provisions of the Controlled Substances Act, shall be subject to discipline under the Code of Judicial Conduct.

Committee commentary. —

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system or the public at large. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending on the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. *See* Rule 21-215 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Procedure. Upon receiving a signed and notarized complaint, the Commission may conduct a prompt, discreet, and confidential initial inquiry and evaluation. The Commission may then dismiss the complaint, or if there is probable cause of misconduct that the Commission has authority to address, may proceed to issue a notice of preliminary investigation. (rule 14). Formal proceedings may be instituted, according to Rules 15 – 38. Rule 33 governs non-disciplinary dispositions, which may involve proposing professional counseling, mentorship, or other assistance for the judge (Rule 33c). Otherwise, following a formal hearing or based on admissions by a judge, the Commission may recommend the following: removal; retirement; discipline that may involve suspension, imposition of limitations or conditions on the performance of judicial duties, referral to appropriate training, professional counseling or assistance, public censure, fine, and assessment of costs and expenses (Rule 34). When there is a concern that a judge is or may be incapacitated by reason of psychological or physical disability, and the Commission finds good cause to do so, the Commission may order the judge to undergo a physical or psychological examination that the Commission deems necessary. The Commission may also require that a judge submit to drug testing. (Rule 10).

Diversion. Rule 33 governs non-disciplinary dispositions, which may involve proposing professional counseling, mentorship, or other assistance for the judge (Rule 33c).

Rule 33. Non-disciplinary dispositions

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The Commission may make any of the following dispositions:

- A. Dismissal of complaint. Upon determination after the issuance of a notice of preliminary investigation that there is insufficient cause to proceed to a hearing, the Commission may dispose of the case. The complainant and the judge shall be notified of the Commission's action;
- B. Privately informing the judge that the judge's conduct may be violative of the standards of judicial conduct.
- C. Proposing professional counseling, mentorship, or other assistance for the judge.
- D. Referral of the judge to appropriate training.

Confidentiality. All papers and pleadings filed with and proceedings before the Commission or its masters shall be confidential. Such papers include, but are not necessarily limited to, complaints against judges. Only when a record is filed by the Commission with the Supreme Court do the proceedings lose their confidential character. (Rule 8).

Immunity. Members of the Commission, Commission staff and special counsel shall be immune from suit as provided by law for all conduct in the course of their official duties. (Rule 7).

Judicial Standards Commission: <http://www.nmjsc.org/>

Judicial Standards Commission Rules:

http://www.nmjsc.org/docs/SKMBT_C55210041915041.pdf

Flow Chart: <http://www.nmjsc.org/docs/Flow%20Chart%20JSC%20Process%20post%205-1-10.pdf>

Lawyers Assistance Committee

Program Manager: Jill Anne Yeagley jyeag@unm.edu

New York

Authority and Application. Pursuant to [Article 6, Section 22 of the New York Constitution](#) and [Article 2-A of the Judiciary Law](#), the [Commission on Judicial Conduct](#) is authorized to investigate complaints regarding judicial conduct. Specifically, the Commission shall receive, initiate, investigate and hear complaints against any judge with respect to his qualifications, conduct, fitness to perform, or the performance of his official duties. (Commission Rule 7000.2). A judge may be admonished, censured or removed for cause, including but not limited to misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct on or off the bench, prejudicial to the administration of justice; or retired for mental or physical disability preventing the proper performance of his judicial duties. (7000.9). The Commission Rules can be found [here](#).

Procedures. Upon receipt of a complaint, or after an initial review and inquiry, a complaint may be dismissed by the Commission or, when authorized by the commission, an investigation may be undertaken (7000.3b). During the course of, or after, an investigation, the commission may dismiss the complaint, direct further investigation, request a written response from the judge who is the subject of the complaint, direct the filing of a formal written complaint or take any other action authorized by section 22 of article 6 of the Constitution or article 2-A of the Judiciary Law.

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(7000.3c). If the Commission determines that formal procedures are warranted, it will follow 7000.6 – 7000.7

Diversion. According to the [Commission’s Policy Manual](#), in appropriate cases, the Administrator and the respondent-judge may jointly propose and the Commission may approve deferring a disciplinary determination for a reasonable time, to permit the judge to complete a rehabilitation program or supplemental judicial education and training program.

Confidentiality. The confidentiality of the commission’s records shall be governed by section 45 of the Judiciary Law. All proceedings are, by law, confidential. A matter becomes public only if the Commission has determined that the judge should be admonished, censured, removed or retired, or if the judge under formal charges has waived confidentiality.

NY State Bar Lawyer Assistance Program

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NY City Lawyers Assistance Program

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North Carolina

Authority and Application: Pursuant to [N.C. Gen. Stat Section 7A-375\(g\)](#), the [Judicial Standards Commission](#) shall review complaints or information received to determine whether they allege that a judge has engaged in conduct which is in violation of the Code of Judicial Conduct, has engaged in willful misconduct in office, has willfully and persistently failed to perform the duties of his or her judicial office, has engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or is habitually intemperate, or allege that the judge is suffering from a mental or physical incapacity interfering with the performance of his duties, which incapacity is, or is likely to become, permanent (Rule 9). The Rules of the Judicial Standards Commission can be found [here](#).

Procedures. Upon receipt of a complaint, the Executive Director and the Commission Counsel will review each complaint and will either dismiss the complaint if the allegations are obviously unfounded or frivolous or conduct a preliminary review. The investigative panel may order a formal investigation to determine whether disciplinary proceedings should be instituted. (Rule 9). If the inquiry discloses conduct by a judge which requires attention but is not of such a nature as to warrant a public reprimand or a recommendation by the Commission that the judge be disciplined by the Supreme Court, the panel may issue a letter of caution to the judge or a public reprimand that may require the judge follow a corrective course of action (Rule 11). Such cautionary letters may not be issued after a disciplinary proceeding has been initiated, however. Subsequently, if the panel determines disciplinary measures need to be taken, disciplinary proceedings will be initiated, according to Rule 12. Rule 21 authorizes the ordering of medical examinations when the mental or physical condition or health of a judge is in issue.

Medical Examinations.

RULE 21. MEDICAL EXAMINATION

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When the mental or physical condition or health of the respondent judge is in issue, a denial of the alleged condition shall constitute a waiver of medical privilege for the purpose of the Commission proceeding, and the respondent judge shall be required to produce, upon request of Commission Counsel, his or her medical records relating to such condition. The respondent judge shall also be deemed to have consented to a physical or mental examination by a qualified licensed physician or physicians designated by the Commission. A copy of the report of such examination shall be provided to the respondent judge and to the Commission. The examining physician or physicians shall receive the fee of an expert witness, to be set by the Commission.

Confidentiality. Unless otherwise provided, confidentiality applies at all time prior to the issuance of a public reprimand or the institution of a disciplinary proceeding alleging misconduct by or incapacity of a judge. (Rule 6).

North Carolina Lawyer Assistance Program
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North Dakota

Authority and Application: Pursuant to [Chapter 27-23, N.D.C.C.](#), the [Judicial Conduct Commission](#) is authorized to investigate complaints against any judge in the state and to conduct hearings concerning discipline, removal, retirement, or transfer to incapacity inactive status of any judge. Specifically, the Commission may investigate claims that a judge has engaged in conduct that constitutes willful misconduct in office, willful failure to perform duties prescribed by law or by administrative rule of the supreme court, willful violation of the code of judicial conduct as adopted by the supreme court, or habitual intemperance. Additionally, the Commission may retire a judge for disability that seriously interferes with the performance of the judge's duties and is, or is likely to become, permanent. (27-23-03(3)). The Rules of the Judicial Conduct Commission can be found [here](#).

Procedures. Upon receiving a written and signed complaint, the Counsel will screen and may either dismiss the complaint or determine that further investigation is warranted. (Rule 10). After an investigation, the following may be recommended: dismissal; admonition or deferred discipline agreement; the filing of a petition for transfer to incapacity inactive status; direct the filing of formal charges (Rule 10d). Procedures for formal charges are governed by Rules 11 – 30.

Diversion. A deferred discipline agreement is defined as “a confidential agreement between the judge and the commission for the judge to undergo treatment, participate in education programs, or take other corrective action that is only available as a response to minor misconduct that can be addressed through treatment or a rehabilitation program.” (Terms Section). A deferred discipline agreement is included in Rule 8 as one of the sanctions that may be imposed upon a responded who has committed misconduct (Rule 8g). It is also included in Rule 10 as a disciplinary option after the investigation (Rule 10D(d)a)).

RULE 8. SANCTIONS IMPOSED; DEFERRED DISCIPLINE AGREEMENT

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Sanctions. These sanctions may be imposed upon a respondent who has committed misconduct:

G. [deferred discipline agreement](#) .

RULE 10. FILING OF COMPLAINTS, SCREENING, AND INVESTIGATION

D. Disposition After Investigation.

(2) The commission may adopt, reject or modify the recommendations of [disciplinary counsel](#) or direct that counsel conduct further investigation. If the commission finds misconduct for which the imposition of discipline is not warranted it may dismiss. If the commission finds that there is probable cause to believe the judge committed misconduct,

(a) it may propose an admonition or [deferred discipline agreement](#) to the respondent and if the respondent consents, it shall admonish the respondent or implement the deferred disciplinary agreement; in addition, it may assess costs against the respondent as a condition of the admonition or deferred disciplinary agreement;

(b) if the respondent does not consent to the admonishment or the deferred discipline, the commission may direct that [disciplinary counsel](#) either file [formal charges](#) or dismiss the [complaint](#) ; or

(c) it may direct that [disciplinary counsel](#) file [formal charges](#) .

Confidentiality. Before the filing and service of formal charges, all proceedings are confidential. After the filing and service of formal charges, all proceedings are public except for incapacity proceedings as provided in Rule 25 (Rule 6).

Immunity. Communications to the commission, counsel, or their staffs relating to misconduct or incapacity and testimony given in the proceedings are absolutely privileged, and no civil proceeding based thereon may be instituted against any complainant or witness. Members of the commission, counsel, and staff are absolutely immune in any civil proceeding for all conduct in the course of their official duties. (Rule 7).

Lawyers Assistance Program

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Ohio

Authority and Application: Pursuant to [Gov Bar R. V](#), the willful breach of the [Rules of Professional Conduct](#) or the [Code of Judicial Conduct](#) by a Justice, judge, or candidate for judicial office shall be punished by reprimand, suspension, disbarment, or probation. A breach of the Code of judicial Conduct may also be punished by retirement, removal, or suspension as provided by Gov. Jud. R. III. Specifically, the [Disciplinary Counsel](#) or Grievance Committee handle grievances alleging misconduct of a judge or candidate for judicial office, or alleging that a judge is unable to discharge the duties of judicial office by virtue of a mental or physical disability (Rule 2, Section 2). The Supreme Court Rule addressing disciplinary procedures for judges can be found [here](#).

Procedures. Upon receiving a complaint, the Disciplinary Counsel or the Certified Grievance Committee will review the grievance to determine whether an ethical violation is alleged. If no substantial credible evidence is found, the complaint will be dismissed. Otherwise, the Probable Cause Panel of the Board of Commissioners on Grievances & Discipline will conduct an investigation and determine if probable cause is found. See Disciplinary Process Chart [here](#).

Diversion. There are no diversion rules in Ohio.

Confidentiality. Unless the justice, judge, or judicial candidate against whom a grievance has been filed agrees otherwise, the grievance shall remain private until the probable cause panel has made a determination of probable cause. After a determination of probable cause has been made, the grievance, formal complaint, report of the hearing panel, order of the five-judge commission of five judges, record of the proceedings, and all hearings shall be public. (Rule 2, Section 7a).

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Oklahoma

Summary

Oklahoma Council on Judicial Complaints: <http://www.okbar.org/public/judges/council.htm>

Oklahoma Lawyers Helping Lawyers
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Oregon

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Authority and Application: The [Commission on Judicial Fitness and Disability](#) may investigate allegations that a judge's behavior may come within the purview of [Section 8, Article VII of the Constitution of the State of Oregon](#). (Rule 7). Section 8 indicates that a judge of any court may be removed or suspended from his judicial office by the Supreme Court, or censured by the Supreme Court for the following:

1. Conviction in a court of this or any other state, or of the United States, of a crime punishable as a felony or a crime involving moral turpitude; or
2. Wilful misconduct in a judicial office where such misconduct bears a demonstrable relationship to the effective performance of judicial duties; or
3. Wilful or persistent failure to perform judicial duties; or
4. Generally incompetent performance of judicial duties; or
5. Wilful violation of any rule of judicial conduct as shall be established by the Supreme Court; or
6. Habitual drunkenness or illegal use of narcotic or dangerous drugs.

The Rules of Procedure for the Commission on Judicial Fitness and Disability can be found [here](#).

Procedures. Upon receiving a complaint, the Commission shall make an investigation to determine whether formal proceedings should be instituted and a hearing held (Rule 7a). After the preliminary investigation, the Commission may either dismiss the complaint or proceed with a formal complaint under Rule 8. If the investigation reveals that the judge has a temporary disability, the Commission shall refer the complaint to the Chief Justice of the Supreme Court for consideration of informal disposition under ORS 1.303 under Rule 18, which might include an agreement by the judge to obtain professional assistance, supervision of compliance by the judge, or a recommendation of suspension (Rule 18g). Proceedings regarding temporary disability at this stage will not be public (Rule 18d). When a judge is charged with having a temporary or permanent disability, the Commission may direct that a subject judge, prior to a hearing, submit to a physical or mental evaluation (Rule 18e). After a public hearing following formal procedures, if the Commission finds violations by clear and convincing evidence, it shall recommend to the Supreme Court discipline in the form of censure, suspension or removal of a judge (Rule 16a).

Medical Examinations.

Rule 18. DISABILITY OF A JUDGE

e. Physical Examination

When a judge is charged with having a temporary or permanent disability, the Commission may direct that a subject judge, prior to a hearing, submit to a physical examination by one, two or three physicians licensed to practice in this state and appointed by the Commission to conduct the examination, or submit to a mental evaluation by one, two or three physicians, psychologists or other mental health professionals licensed to practice in this state and appointed by the Commission to conduct the evaluation, or submit to both that examination and evaluation. The persons appointed to conduct the examination or evaluation shall report thereon to the Commission. A copy of any report to the Commission shall be provided by the Commission to the subject judge. The cost of the examination, evaluation and reporting shall be paid by the Commission.

f. Failure to Take Physical Examination

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If a subject judge directed to submit to an examination or evaluation fails to do so, the judge may not present as evidence in the proceeding the results of any medical examination of the judge done at the instance of the judge, and the Commission or masters may consider the failure of the judge to submit to examination or evaluation as evidence that the judge has a disability.

Diversion.

Rule 18. DISABILITY OF A JUDGE

a. Preliminary Investigation

The Commission, upon receiving a complaint indicating that a judge has a disability, shall make such investigation as it deems necessary to determine the appropriate disposition of the complaint.

b. Referral to Chief Justice for Informal Disposition

If the investigation reveals that the judge has a temporary disability, the Commission shall refer the complaint to the Chief Justice of the Supreme Court for consideration of informal disposition under ORS 1.303.

c. Formal Proceedings

If the investigation reveals that the judge may have a permanent disability, then the Commission may proceed as provided under ORS 1.420 and Rule 8 of these rules.

d. Temporary Disability

When the Chief Justice refers a complaint concerning the temporary disability of a judge which has been the subject of proceedings under ORS 1.303, the Commission may hold a hearing to inquire into the alleged disability, or request the Supreme Court to appoint three qualified persons to act as masters, to hold a hearing and maintain a record on the matter referred to them and report to the Commission on the alleged disability. The hearing shall not be open to the public unless the subject judge requests a public hearing. The testimony and evidence given and received in the hearing shall not be public records. The subject judge shall have the right to be present at such hearing, to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. Except as otherwise provided herein, the hearing shall be conducted in accordance with the procedures for a formal proceeding under Rules 8 to 13.

g. Disposition: Temporary Disability

If, after hearing or after considering the record and report of the masters, the Commission finds that the subject judge has a temporary disability, the Commission may:

(1) enter into a disposition of the matter with the subject judge, which may include:

(A) agreement by the judge to obtain professional counseling, medical treatment or other assistance or to comply with other conditions with respect to the future conduct of the judge;

(B) supervision of compliance by the judge; and

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(C) if the judge fails to answer, investigation and hearing as provided in subsection d of this rule and, if appropriate, action by the Commission as provided in paragraph (2) of this subsection.

(2) If the Commission also finds that the conduct of the subject judge justifies suspension, the Commission shall recommend to the Supreme Court that the judge be suspended without loss of salary for a period not exceeding one year.

h. Procedure for Considering Violations of Code and Alleged Disability

When a complaint and investigation reveals that a judge has violated the Code of Judicial Conduct and may also have a disability, the Commission may:

(1) bifurcate the allegations and proceed separately under Rules 8 and 18, respectively; or

(2) stay further disciplinary proceedings until the disability proceeding is concluded.

The definitions section defines the term “disability.” “Disability” means a physical or mental condition of a judge, including, but not limited to, impairment derived in whole or in part from habitual or excessive use of intoxicants, drugs, or controlled substances, that significantly interferes with the capacity of the judge to perform judicial duties. A disability may be permanent or temporary. (Rule 2. Definitions).

Confidentiality.

Rule 6.STATUS OF DOCUMENTS AND PROCEEDINGS/CONFIDENTIALITY AND DISCLOSURE

a. Documents filed with the Commission and the investigation conducted by the Commission prior to a hearing pursuant to ORS 1.420 or 1.425 shall not be public records unless received as competent evidence in the course of a public hearing pursuant to ORS 1.420. The decision of the Commission after hearing or upon review of the record and report of matters shall be public records, together with the recommendations, if any, of the Commission to the Supreme Court. The decision of the Commission after hearing or upon review of the record and report of the masters under ORS 1.425 shall not be a public record, except for a decision and recommendation to the Supreme Court under ORS 1.425(4)(b).

b. Documents filed and testimony given in proceedings under ORS 1.420 and 1.425 are privileged communications which may not be received in evidence in any judicial proceedings other than those directly connected with the administration of ORS 1.410 to 1.480 unless expressly or impliedly waived by the person tendering the document to or testifying in such proceedings or except in a criminal prosecution for perjury or false swearing before the Commission.

c. Members of the Commission, masters appointed pursuant to ORS 1.420 or 1.425 and staff of the Commission shall not disclose or use any investigation testimony or documents which are not public records as defined in ORS 1.410 to 1.480 for any purpose other than in connection with their official duties in the administration of ORS 1.410 to 1.480. The Commission may, upon the request of a judge who has been the subject of a complaint not brought to hearing, state the disposition of the complaint and the reasons for its decision when the Commission finds that the complaint has been publicized and fairness requires such comment.

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d. All notices, papers and pleadings mailed to a judge or a complainant pursuant to these rules shall be enclosed in a cover marked confidential.

e. When the Commission receives information concerning a threat to the safety of any person or persons, information concerning such threat may be provided to the person or persons threatened, to persons or organizations responsible for the safety of the person or persons threatened, and to law enforcement and/or any appropriate prosecutorial agency.

Oregon Attorney Assistance Program

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Pennsylvania

Authority and Application. Pursuant to [Article V, Section 18\(a\)\(6\) of the Pennsylvania Constitution](#) and [Chapter 21 of Title 42, Judiciary and Judicial Procedures, the Judicial Conduct Board of Pennsylvania](#) is authorized to receive and investigate complaints concerning judicial conduct filed by individuals or initiated by the Board, including allegations that a Judicial Officer has violated the Rules of Professional Conduct. (J.C.B.R.P Chapter 1, Rule 3). The Board's internal operating procedures can be found [here](#).

Procedures. Upon the receipt of a written complaint, the Board shall initiate a preliminary inquiry to determine whether or not to authorize a full investigation (IOP 4.04). After reviewing the complaint, the Board shall take one or more of the following actions: dismiss the complaint; request the Chief Counsel to conduct a supplemental preliminary investigation; direct the Chief Counsel to proceed with a full investigation; defer further action during the pendency of a criminal matter; refer the matter to another appropriate agency (IOP 4.05). In assessing the judge's culpability, the following will be considered:

- whether the judge was suffering from personal or emotional problems
- whether the judge was suffering from physical or mental disability
- whether the judge was impaired by alcoholism or drug abuse
- whether the judge's problems were due to stress
- whether there was judicial precedent that the judge's conduct was unethical
- whether other judges have been disciplined for similar misconduct
- whether the judge asked for and complied with a judicial ethics advisory opinion
- whether the judge ignored others' efforts to persuade the judge to change his or her behavior (IOP 4.08)

Following the preliminary investigation, the Board may dismiss the complaint; dismiss the complaint with a letter of caution to the judge; dismiss the complaint with a letter of counsel; provide notice of a full investigation; or file formal charges (IOP 4.11).

Medical Examinations.

J.C.B.R.P Chapter 10
Rule 33: Examinations

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The Board may require a physical, psychiatric, or psychological examination of the Judicial Officer, and may appoint one or more professionals to make an examination and prepare a report, a copy of which shall be given to the Judicial Officer. The Judicial Officer's unjustified failure to submit to a physical, psychiatric, or psychological examination required by the Board may be considered as evidence of physical or mental disability.

Diversion. According to the Internal Operating Procedures 4.12, relief is available when impairment is suspected. Rule 4.12 also directs attention to the below rules addressing diversion procedures:

J.C.B.R.P Chapter 10
Special Procedures for Cases
Involving Mental or Physical Disability

Rule 32: Appointment of Counsel

In any case in which the allegations involve a Judicial Officer's mental disability, the Board may petition the Court to appoint a lawyer to represent the Judicial Officer if the Judicial Officer is without representation.

Rule 34: Disposition

(A) If the Board finds probable cause to file a Board Complaint alleging mental or physical disability, the Board shall promptly notify the Judicial Officer and provide the Judicial Officer with an opportunity to resign from judicial office or, when appropriate, to enter a rehabilitation program acceptable to the Board prior to the filing of the Board Complaint.

(B) When a Judicial Officer enters a rehabilitation program pursuant to paragraph (C), the Board may defer filing a Board Complaint for a reasonable period of time to permit the completion of the program, provided that the Judicial Officer:

- (1) actively participates in the rehabilitation program;
- (2) consents in writing to the release of information and records relating to his or her participation in the program; and
- (3) when determined necessary by the Board, agrees to a voluntary suspension of some or all of the Judicial Officer's duties.

(C) When a rehabilitation program is completed to the Board's satisfaction, the Board may:

- (1) dismiss the complaint; or
- (2) continue the matter pending a reevaluation after a period of judicial service specified by the Board.

Rule 35: Intervention

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(A) During the course of an investigation, upon the good faith belief that the alleged misconduct was caused by mental illness, drug dependency, addiction to alcohol, or temporary mental infirmity, the Board shall take one or more of the following actions:

- (1) request that the judicial officer resign from office;
- (2) request that the judicial officer seek appropriate treatment;
- (3) request that the judicial officer take a leave of absence from his or her judicial office until such time that the Board and the judicial officer agree that it is appropriate for the judicial officer to return to office;
- (4) upon application of the judicial officer, the Board may approve an appropriate treatment program.

Chapter 11
Special Procedures for Cases Involving
Substance Abuse

The Judicial Conduct Board recognizes that the judiciary, like the general population, includes individuals impaired by substance abuse¹. Because judges exercise a unique public trust, the Judicial Conduct Board, in devising its rehabilitative diversion procedure, desires to encourage affected members of the judiciary to seek help at the earliest possible moment so as to ensure maximum protection to the public against misconduct resulting from their impairment. The Board seeks to achieve this objective through a realistic plan to mitigate the harmful consequences of substance abuse to the judiciary and the public. The primary function of this Policy is the rehabilitation of the judge; a secondary modality is the prompt disposition of substance abuse related complaints, obviating costly and time consuming investigations, hearings and related proceedings.

JUDICIAL CONDUCT BOARD POLICY

The Judicial Conduct Board regards substance abuse as an illness and will regard misconduct caused by such an illness as mitigated by that fact, provided that the impaired judge obtains appropriate treatment for his/her problem. The Board encourages President Judges and administrative agencies to accommodate rehabilitation by any impaired judicial officer, provided that the President Judge and appropriate administrative agency have been made aware of the judge's condition and the accommodations sought by the judge do not impose an undue hardship on the court or agency.

This Policy is not intended to provide that substance abuse problems are an excuse for deficiencies in performance or behavior. Judges with substance abuse problems will be held to the same standards as other similarly situated individuals. The Judicial Conduct Board is committed to preserving the independence and integrity of the judiciary and assisting the recovery of judges suffering from substance abuse. It is the purpose of this Policy to encourage those judges who desire to seek help to do so at an early stage before their functioning or the judiciary itself is compromised.

The impairment of any judge's performance due to substance abuse may have an adverse impact on the court's functioning. For this reason, it is important for a judge with a substance abuse problem to seek help as early as possible.

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IN THE WORKPLACE

Possession or consumption of alcohol or other mood-changing chemicals while on court property or while performing judicial services constitutes misconduct on the part of a judge. Reporting to or remaining at the workplace under the influence of alcohol or other mood-altering drugs, is likewise regarded as misconduct. This prohibition does not apply to limited alcohol consumption at meals off of the court premises.

VIOLATIONS OF CRIMINAL STATUTES

The sale, manufacture, delivery, distribution, possession, processing, packaging, or otherwise trafficking, of controlled substances is a crime under the Drug, Device and Cosmetic Act of April 14, 1972, P.L. 233 No. 64 (35 Pa.C.S.A. § 780-101 et seq.) and any judicial officer found guilty of such conduct shall be ineligible for the diversionary treatment described in this policy. Any judicial officer convicted of Driving Under the Influence of alcohol or any controlled substance as defined in the Vehicle Code Act of 1976, June 17, P.L. 162 No. 81 § 1, as amended (75 Pa.C.S.A. § 3731) or granted Accelerated Rehabilitation Disposition ("ARD") on a charge, will be subject to discipline for such misconduct but such Judicial Officer may seek mitigation of any otherwise applicable sanctions so long as he/she cooperates in an approved treatment program described in this policy.

QUALIFIED TREATMENT PROGRAM

For the purpose of the Board's diversion program, a Qualified Treatment Program shall be one which is approved by both the Administrative Office of Pennsylvania Courts (AOPC) and this Board.

Rule 36: Petition for Rehabilitative Diversion

(A) When the Board finds probable cause to investigate a Complaint alleging misconduct involving substance abuse, the Board may notify the Judicial Officer of its investigation and provide the Judicial Officer with an opportunity to petition the Board for permission to enter a rehabilitative diversion program acceptable to the Board prior to the filing of formal charges with the Court of Judicial Discipline.

(B) Such petition shall be filed with the Board promptly. Absent Board approval, a petition shall not be considered if filed after the Judicial Officer's response to the Board's Notice of Full Investigation (see Rules of Procedure of the Judicial Conduct Board outlined in Rule 30B).

(C) The petition for rehabilitative diversion shall contain

(1) the Judicial Officer's verified statement that he/she desires to participate in a qualified treatment program;

(2) a release giving Board Counsel access of all information and records bearing on the rehabilitative program, including information concerning the applicant's past substance abuse and treatment, as well as the proposed rehabilitative program;

(3) a stipulation as to facts which are agreed to by the Judicial Officer and Board Counsel relevant to the formal charges; and agreement of the admissibility of such stipulation in any future proceeding before the Court of Judicial Discipline;

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- (4) a waiver by the Judicial Officer of the right to file pre-trial motions based on grounds then known to the applicant unless specifically modified as exceptions to the waiver; and
- (5) the Judicial Officer's consent to submit to testing for drug or alcohol consumption during any probationary period later imposed.

Rule 37: Evaluations

- (A) When any Judicial Officer under investigation applies for diversion under Rule 36 on the ground of his or her substance abuse, the Board may require the applicant to submit to such medical evaluations as it deems necessary. The Board shall appoint one or more healthcare professionals to examine the applicant and report their findings to the Board. A copy of any such report will be shared with the applicant. Failure to submit to examination will be considered by the Board in its disposition of any pending complaint.
- (B) All expenses incurred for such evaluations and reports shall be assessed against the Judicial Officer and shall be his or her sole responsibility.

Rule 38: Diversion Procedure

- (A) When a Judicial Officer enters a rehabilitation diversion program pursuant to this Chapter, the Board may defer filing formal charges with the Court of Judicial Discipline for a reasonable period of time to permit the completion of the program, provided that the Judicial Officer consents in writing to the release of treatment information and records relating to his or her participation in the program.
- (B) When a Judicial Officer satisfactorily completes an approved inpatient rehabilitation program, the Board shall continue the matter for a twelve (12) month probationary period, which may be conditioned on the Officer's continued participation in a recommended recovery program.
- (C) *Rescinded February 5, 2007, immediately effective.*
- (D) If the Board determines that the applicant Judicial Officer has abandoned the recovery program, or has violated the terms in any substantial way, the Board may direct the filing of charges before the Court of Judicial Discipline, or take such other action as may be appropriate in the circumstances

Confidentiality.

IOP 5.01 Confidentiality of JCB Proceedings in General

All complaints, processes, deliberations and records of the JCB shall be treated as strictly confidential, and shall not be divulged in any context or in any forum except when otherwise authorized by the Authority or in response to a court order. The respondent judicial officer may waive confidentiality with respect to the complaint, but the Board shall reserve judgment, in its discretion, whether or not to make the complaint public. A public response, if any is made by the JCB, should be limited to: (a) a Complaint (attached) was filed against the named respondent judicial officer; (b) the respondent judicial officer has the right to an attorney, (c) the JCB has the sole burden of proof

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which is by clear and convincing evidence; and (d) it is presumed at the respondent judicial officer has not committed any violation of the Code of Judicial Conduct. Of course, the complaint along with supporting evidence may be submitted to the Court of Judicial Discipline in connection with a JCB case.

Lawyers Concerned for Lawyers of Pennsylvania
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Rhode Island

Authority and Application. Pursuant to the [Title 8, Chapter 16](#), the [Commission on Judicial Tenure](#) will investigate complaints that allege that a justice of the supreme court, the superior court, the family court, the district court, the workers' compensation court, or the traffic tribunal, or a probate judge in any city or town in the state is guilty of a violation of the canons of judicial ethics, or of willful or persistent failure to perform his or her duties, disabling addiction to alcoholic beverages, drugs or narcotics, or conduct that brings the judicial office into serious disrepute, or that such a judge has a physical or mental disability that seriously interferes and will continue to interfere with the performance of his or her duties (Section 8-16-4).

Procedures. Upon receiving a complaint, the Commission will either dismiss it as frivolous or unfounded or will conduct a preliminary investigation (Section 8-16-4a). If the preliminary investigation discloses that a charge of judicial unfitness is supported by substantial evidence, it shall direct that a public hearing be held (Section 8-16-4b). If the preliminary investigation discloses that there exists a violation of the canons of judicial ethics and that the violation is not one of a serious nature, the Commission may in its discretion issue a private reprimand to the judge (Section 8-16-4d). Upon the completion of the hearings, the Commission may dismiss the case or may recommend to the Supreme Court the censure, suspension, immediate temporary suspension, reprimand, retirement, or removal from office of the judge under investigation (Section 8-16-4e).

Confidentiality.

Section 8-16-12. Rules of practice and procedure – Confidentiality of proceedings. The supreme court shall make and promulgate rules governing the practice and procedure under this chapter before the commission, and the supreme court shall insure the confidentiality of all proceedings involving complaints against a member of the judiciary, except for those proceedings that are expressly made public by this chapter.

§ 8-16-13. Closed meetings of the commission - Public hearings - Evidence to remain confidential until made public at hearing. The commission is hereby expressly authorized and permitted to conduct closed meetings for the conduct of all of its business other than public hearings held pursuant to § 8-16-4(c). All evidence obtained by the commission, and all evidence that the judge obtains from the commission through discovery or otherwise, shall remain confidential until it becomes the subject of testimony at the public hearing or is introduced into evidence at the public hearing.

§ 8-16-13.1. Related judicial proceedings - Confidentiality. Judicial proceedings in aid of or ancillary to a public hearing of the commission shall be open to the public, and all papers filed in connection with such judicial proceedings shall be public documents. All

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other judicial proceedings in aid of or ancillary to a commission proceeding, and all papers filed in connection with such judicial proceedings, shall be confidential.

Rhode Island Helping Lawyers

Executive Director: Helen D. McDonald hmcdonald@ribar.com

South Carolina

Authority and Application: Pursuant to [Rule 502 of the South Carolina Appellate Court Rules](#), grounds for discipline include violations of the [Code of Judicial Conduct](#) or the Rules of Professional Conduct or any other ethics codes; willful violations of a valid order of the Supreme Court Commission or panels of the Commission in a proceeding under these rules; a conviction of a crime of moral turpitude or serious crime; persistent failure to perform judicial duties or the performance of judicial duties in an incompetent or neglectful manner; habitual intemperance; consistent failure to timely issue orders, decrees, opinions or otherwise perform official duties without just cause or excuse; willful violation of valid court orders issued by a court; willful failure to comply with the terms of a finally accepted deferred disciplinary agreement or any terms of a finally accepted agreement for discipline by consent; and violation of the Judge's Oath of Office contained in Rule 502.1, SCACR. (Rule 7). The Rules for the [Commission on Judicial Conduct](#) can be found [here](#).

Procedures. Upon receiving a complaint, disciplinary counsel will evaluate the information and shall either dismiss the complaint if the information would not constitute misconduct if it were true, or refer the matter to another agency. If the information raises allegations that would constitute judicial misconduct or incapacity if true, the disciplinary counsel shall conduct an investigation (Rule 19a). Upon completion of an investigation, the disciplinary counsel may dismiss the complaint, issue a written caution or warning, propose an agreement for discipline by consent pursuant to Rule 21, recommend to an investigative panel that the matter be concluded with a letter of caution or a confidential admonition, or recommend to the investigative panel that formal charges be filed (Rule 19D). The investigative panel may adopt, reject or modify the recommendations of the disciplinary counsel. At that point, if it finds that there is reasonable cause to believe the judge committed misconduct for which the imposition of a sanction is warranted, the panel may accept an agreement for discipline by consent pursuant to Rule 21, execute a deferred discipline agreement, admonish the judge, or it may direct disciplinary counsel to file formal charges (Rule 19D(4)B). Otherwise, the panel may dismiss the case, issue a letter of caution, close the matter, or issue a confidential admonition (Rule 19D(4)).

Diversion. According to the Rule 2g (Terminology) a Deferred Discipline Agreement is "a confidential agreement between the judge and an investigative panel of the Commission for the judge to undergo treatment, participate in education programs or take other corrective action. It is only available as a response to misconduct that is minor and can be addressed through treatment or a rehabilitation program. A deferred discipline agreement can only be entered into prior to the filing and service of formal charges.

Rule 19D(4)(b) If the investigative panel finds that there is reasonable cause to believe the judge committed misconduct for which the imposition of a sanction is warranted, it may accept an agreement for discipline by consent pursuant to Rule 21; it may execute a deferred discipline agreement; it may admonish the judge pursuant to the provisions of Rule 19(d)(5); or, it may direct disciplinary counsel to file formal charges.

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RULE 19. SCREENING AND INVESTIGATION

(d) Disposition After Investigation.

(3) If disciplinary counsel believes there is evidence supporting the allegations against a judge, disciplinary counsel may:

(A) propose an agreement for discipline by consent to the judge pursuant to Rule 21;

(B) recommend to an investigative panel that the matter be concluded with a letter of caution or a confidential admonition; or,

(C) recommend to an investigative panel that formal charges be filed.

(4) The investigative panel may adopt, reject or modify the recommendations of disciplinary counsel

(B) If the investigative panel finds that there is reasonable cause to believe the judge committed misconduct for which the imposition of a sanction is warranted, it may accept an agreement for discipline by consent pursuant to Rule 21; it may execute a deferred discipline agreement; it may admonish the judge pursuant to the provisions of Rule 19(d)(5); or, it may direct disciplinary counsel to file formal charges.

RULE 21. DISCIPLINE BY CONSENT

(a) Agreement. At any stage in the proceedings, the judge and disciplinary counsel may agree to the imposition of a stated sanction(s) or the issuance of a letter of caution in exchange for the judge's admission of any or all of the allegations of misconduct involved in the proceedings. If the agreement is entered into after the filing of the formal charges, the agreement shall admit or deny the allegations contained in the formal charges. If the agreement is entered into before the filing of the formal charges, the agreement shall contain the specific factual allegations which the judge admits he or she has committed and the applicable provisions of the Code of Judicial Conduct or other ethical or disciplinary provisions that the judge has violated. The agreement shall be signed by disciplinary counsel, by the judge and, if the judge is represented by counsel, by the judge's counsel. The signature of the judge's counsel on the agreement shall indicate that counsel has advised the judge regarding the agreement and that counsel believes the judge is voluntarily entering into the agreement with a full understanding of the effect of the agreement.

(b) Affidavit. The judge shall also sign an affidavit stating that:

(1) the judge consents to the sanction(s) or letter of caution;

(2) the consent is voluntarily given;

(3) the matters admitted in the agreement and the facts stated in the affidavit are true.

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(c) Submission to Panel. The agreement and affidavit shall be submitted to an investigative panel if formal charges have not been filed, or to a hearing panel if formal charges have been filed on any of the allegations. Provided, if formal charges have been filed but not heard, an investigative panel can consider the proposed agreement and affidavit if the parties both agree in writing. The panel shall either reject the agreement, or submit the agreement and affidavit to the Supreme Court if it determines the agreement should be accepted. An investigative panel shall, however, finally approve or disapprove an agreement for an admonition, a deferred discipline agreement or a letter of caution and, if approved, shall impose the sanction or issue the letter of caution without submitting the matter to the Supreme Court.

(d) Action by Supreme Court. If the panel submits the matter to the Supreme Court, the Supreme Court shall either reject the agreement or issue a decision disciplining the judge which shall be based on the agreement. The decision shall comply with the requirements of Rule 27(e).

(e) Effect of Rejection of Agreement. If an agreement is rejected by the panel or the Supreme Court, the proceedings shall continue. The rejected agreement and affidavit shall be withdrawn and shall not be used against the judge in any further proceedings.

(f) Confidentiality. The agreement, affidavit and any statement or other documents submitted in mitigation shall remain confidential until the Supreme Court enters a decision disciplining the judge at which time the agreement, affidavit and any statement or other documents submitted in mitigation shall be available to the public. An agreement and affidavit which are rejected or which result in the imposition of an admonition, a deferred discipline agreement or a letter of caution by an investigative panel, shall not be available to the public at any time, nor shall any statement or other documents in mitigation filed therewith.

(g) Briefs and Oral Arguments. The Supreme Court may require the parties to submit briefs or participate in oral arguments in connection with the agreement. Either the judge or disciplinary counsel may move before the Supreme Court for permission for the parties to file briefs, to have oral arguments, or both in connection with the agreement, but the Supreme Court, in its discretion, may proceed to take action on the agreement without briefs, without oral arguments, or without either, notwithstanding a request from one or both of the parties.

RULE 7. GROUNDS FOR DISCIPLINE; SANCTIONS IMPOSED; DEFERRED DISCIPLINE AGREEMENT

(a) Grounds for Discipline. It shall be a ground for discipline for a judge to:

(8) willfully fail to comply with the terms of a finally accepted deferred disciplinary agreement or any terms of a finally accepted agreement for discipline by consent;

Confidentiality.

Rule 12. Access to Disciplinary Information

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(a) General Rule. Except as otherwise provided in these rules or ordered by the Supreme Court, the members of the Commission, the staff of the Commission, disciplinary counsel, the staff of disciplinary counsel, the members of the Supreme Court and the staff of the Supreme Court shall not in any way reveal the existence of the complaint, while the matter remains confidential, except to persons directly involved in the matter and then only to the extent necessary for a proper disposition of the matter. A violation of this provision may be punished as a contempt of the Supreme Court.

(b) When Misconduct Proceedings Become Public. When formal charges are filed regarding allegations of misconduct, the formal charges and any answer shall become public 30 days after the filing of the answer or, if no answer is filed, 30 days after the expiration of the time to answer under Rule 23. Thereafter, except as otherwise provided by these rules or the Supreme Court, all subsequent records and proceedings relating to the misconduct allegations shall be open to the public inclusive of a letter of caution or admonition issued after the filing of formal charges. If allegations of incapacity are raised during the misconduct proceedings, all records, information and proceedings relating to these allegations shall be held confidential.

Rule 12c indicates instances in which disclosure by the Commission is permitted.

Immunity.

Rule 13. Immunity from Civil Suits

Communications to the Commission, Commission counsel, disciplinary counsel, or their staffs relating to misconduct or incapacity and testimony given in the proceedings shall be absolutely privileged, and no civil lawsuit predicated thereon may be instituted against any complainant or witness. Members of the Commission, Commission counsel and staff, and disciplinary counsel and staff shall be absolutely immune from civil suit for all conduct in the course of their official duties.

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South Dakota

Authority and Application: Discipline of judges in South Dakota is conducted by the Judicial Qualifications Commission pursuant to [South Dakota Constitue, Article V, section 9](#) and [SDCL ch. 16-1A](#). The rules governing judicial disciplinary proceedings are provided in the [Appendix to SDCL ch. 16-1A at section III](#). The Judicial Qualifications Commission receives, investigates and evaluates allegations of judicial misconduct, which includes actions that constitute “willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, disability that seriously interferes with the performance of the duties or conduct prejudicial to the administration of justice which brings a judicial office into disrepute.” (South Dakota Constitution, Article V, Section 9)

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Procedures. Upon receiving a written complaint, the commission shall commence an investigation upon a motion approved by a majority of the commission. The commission may then dismiss the complaint or give notice to the judge. The commission may then continue the investigation of the complaint until the matter is ready for commission determination. (Appendix to SDCL, ch. 16 1-A, section III(2)). In rendering a decision on the complaint, the commission shall 1) dismiss the complaint, 2) require investigation by commission counsel, 3) continue to correspond with the judge complaint against or take such further action as the commission deems appropriate, 4) expunge the complaint from the judges record if it has been dismissed, proceed to formal proceedings, issue a private reprimand or enter into a deferred discipline agreement. (Appendix to SDCL, ch. 16 1-A, section III(4))

Diversion.

20. Deferred Discipline Agreement (Appendix to SDCL, ch. 16 1-A, section III)

If it is determined after an investigation by the commission that the complaint is meritorious, but that formal disciplinary proceedings are not warranted, the commission and the judge may agree in writing to hold the proceedings in abeyance for a definite period, and may enter into a Deferred Discipline Agreement, provided the judge throughout the period complies with specified reasonable conditions. If such an agreement is entered into, complainant shall be notified that the matter is being held in temporary abeyance, but that it remains under active consideration by the commission. Upon satisfactory compliance, the commission may thereafter dismiss the proceedings and notify the complainant and such other persons as the commission deems appropriate.

Confidentiality. 1. Proceedings Confidential – Violation as Contempt (Appendix to SDCL, ch. 16 1-A, section III)

“All proceedings involving allegations of misconduct by or the disability of a judge shall be kept confidential until the commission's recommendation to the Supreme Court is filed or the accused requests that the matter be public, or the investigation is predicated upon a conviction of the judge for a crime as defined in SDCL 16-1A-12. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. Any violation by any person of the requirement of confidentiality shall constitute contempt and shall be punishable as such by the Supreme Court. This section shall not be construed to deny access to relevant information by authorized agencies investigating the qualifications of judicial candidates, other jurisdictions investigating qualifications for admission to practice, or law enforcement agencies investigating qualifications for government employment.”

Judicial Qualifications Commission: <http://www.sdjudicial.com/jqc/Default.aspx>
Lawyers Concerned for Lawyers
Co-Chair: Rebecca A. Porter rporterlaw@rushmore.com

Tennessee

Authority and Application. Pursuant to [Tenn. Code Ann. Section 17-5-301](#), offenses of which the court may take cognizance shall include the following:

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- (1) Willful misconduct relating to the official duties of the office;
- (2) Willful or persistent failure to perform the duties of the office;
- (3) Violation of the code of judicial conduct as set out in Tenn. Sup. Ct. R. 10;
- (4) The commission of any act constituting a violation of so much of the Tennessee Rules of Professional Conduct as set out in Tenn. Sup. Ct. R. 8 as is applicable to judges;
- (5) A persistent pattern of intemperate, irresponsible or injudicious conduct;
- (6) A persistent pattern of discourtesy to litigants, witnesses, jurors, court personnel or lawyers;
- (7) A persistent pattern of delay in disposing of pending litigation; and
- (8) Any other conduct calculated to bring the judiciary into public disrepute or to adversely affect the administration of justice.

The Rules of Practice and Procedures of the [Board of Judicial Conduct](#) can be found [here](#).

Reporting. According to the [Canons of Judicial Conduct](#), if a judge has a reasonable belief that another judge is impaired, he or she shall take appropriate action, which may include a referral to a lawyer or judicial assistance program.

Rule 2.14 Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. *See* RJC 2.15.

Procedures. Upon receiving a written complaint, the disciplinary counsel will make a report and recommendation to the investigative panel. The investigative panel will then review the matter and will either authorize a full investigation, give further instructions to the Disciplinary Counsel, or dismiss the complaint (Rule 6, Section 2b). If a full investigation is completed, the panel will review the report and recommendations made by the disciplinary counsel and will either approve, modify or disapprove the recommendations (Rule 6, Section 2c). If there is probable cause to believe that a judge has committed a judicial offense, the investigative panel shall either direct disciplinary counsel to file formal charges or direct the counsel to attempt settlement upon a

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stated sanction approved by the investigative panel (Rule 6, Section 2d). Charges that are frivolous or unfounded may be dismissed by the investigative panel (Rule 6, Section 3). Formal charges may proceed according to Tenn. Code Ann. Section 17-5-304e.

Diversion. Tenn. Code Ann. Section 17-5-301. General powers – Disciplinary counsel.

- (f) The court has the power to impose any or any combination of the following sanctions:
- (1) Suspension without impairment of compensation for such period as the court determines;
 - (2) Imposition of limitations and conditions on the performance of judicial duties, including the issuance of a cease and desist order;
 - (3) Private reprimand or private censure by the investigative panel; provided, that a private reprimand or private censure, whether imposed by the court or by an investigative panel, may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of the sanction to be imposed;
 - (4) Entry into a deferred discipline agreement;
 - (5) Public reprimand or public censure; and
 - (6) Entry of judgment recommending removal of the judge from office.

(g) For purposes of this part, the following definitions apply:

- (1) "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 court 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;

Confidentiality. Rule 8.

Except for hearings conducted pursuant to Tenn. Code Ann. 17-5-308 or sanctions required to be public, matters that come before the Board are confidential. Individual members of the Board will not discuss any matter pending before the Board, except with other members of the Board and with Disciplinary Counsel. However, nothing in the Rule shall prohibit the complainant, respondent-judge, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding under these Rules or from disclosing any documents or correspondence filed by, served on, or provided to that person. In addition, if it becomes apparent that allegations of misconduct by a judge have become a matter of public record independent of any action by the Board and that continued silence by the Board may be detrimental to the public interest, may lead to bringing the judiciary into public disrepute or may adversely affect the administration of justice, the chairperson in his or her discretion may 1) confirm that an investigation is in progress, 2) clarify the procedural aspect of any proceedings, and 3) explain the rights of the subject of the investigation to a fair hearing without prejudgment.

Immunity. 17-5-306. Immunity from civil suit

Members of the court, disciplinary counsel and their staff shall be absolutely immune from civil suit for all conduct in the course of their official duties.

Tennessee Lawyers Assistance Program

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Texas

Authority and Application. The Commission is governed by [Article 5, Sec. 1-a, of the Texas Constitution](#), [Chapter 33 of the Texas Government Code](#), and the [Procedural Rules for the Removal or Retirement of Judges](#). The Commission will conduct an investigation of allegations that a judge may be guilty of willful or persistent conduct which is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, or that he has a disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature (Rule 4a).

Procedures. Upon receipt of a verified statement, the Commission may make a preliminary investigation and if the allegations are unfounded or frivolous, will dismiss the complaint (Rule 3). If sufficient cause exists to warrant a full inquiry into the facts and circumstances, the Commission will conduct such a full investigation (Rule 4). If after the investigation has been completed, the Commission concludes that formal proceedings should be instituted, the matter shall be entered in a docket (Rule 10).

Diversion. None. Only contains the following language on the main page of the Commission's website:

Judges who need assistance because of alcoholism, substance abuse, addiction, or mental health issues may reach other judges, who are in recovery or who have gone through treatment, by calling a helpline sponsored by the American Bar Association. Both judges in need of help and those interested in serving as a peer-to-peer volunteer should call 800-219-6474 during business hours Central time. All information is confidential and protected by statute. The National Judges' Assistance Helpline is a service of the ABA Commission on Lawyer Assistance Programs Judicial Assistance Initiative and administered by the Texas Lawyers' Assistance Program

Medical Examinations.

Sec. 33.023. PHYSICAL OR MENTAL INCAPACITY OF JUDGE.

(a) In any investigation or proceeding that involves the physical or mental incapacity of a judge, the commission may order the judge to submit to a physical or mental examination by one or more qualified physicians or a mental examination by one or more qualified psychologists selected and paid for by the commission.

(b) The commission shall give the judge written notice of the examination not later than 10 days before the date of the examination. The notice must include the physician's name and the date, time, and place of the examination.

(c) Each examining physician shall file a written report of the examination with the commission and the report shall be received as evidence without further formality. On request of the judge or the judge's attorney, the commission shall give the judge a copy of the report. The physician's oral or deposition testimony concerning the report may be required by the commission or by written demand of the judge.

(d) If a judge refuses to submit to a physical or mental examination ordered by the commission under this section, the commission may petition a district court for an order

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compelling the judge to submit to the physical or mental examination. Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 7, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 13, eff. Sept. 1, 2001.

Confidentiality.

Rule 17.

All papers filed with and proceedings before the Commission shall be confidential, and the filing of papers with, and the giving of testimony before the Commission shall be privileged; provided that:

- (a) The formal hearing, and all papers, records, documents, and other evidence introduced during the formal hearing shall be public.
- (b) If the Commission issues a public sanction, all papers, documents, evidence, and records considered by the Commission or forwarded to the Commission by its staff and related to the sanction shall be public.
- (c) The judge may elect to open the informal appearance hearing pursuant to Rule 6(b).
- (d) Any hearings of the Special Court of Review shall be public and held at the location determined by the Special Court of Review. Any evidence introduced during a hearing, including papers, records, documents, and pleadings filed in the proceedings, is public.

Immunity. 33.006 of Texas Government Code

- (a) This section applies to:
 - (1) the commission;
 - (2) a member of the commission;
 - (3) the executive director of the commission;
 - (4) an employee of the commission;
 - (5) a special master appointed under Section 1-a(8), Article V, Texas Constitution;
 - (6) special counsel for the commission and any person employed by the special counsel; and
 - (7) any other person appointed by the commission to assist the commission in performing its duties.
- (b) A person to which this section applies is not liable for an act or omission committed by the person within the scope of the person's official duties.
- (c) The immunity from liability provided by this section is absolute and unqualified and extends to any action at law or in equity.

Texas Lawyers Assistance Program

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Utah

Authority and Application. Pursuant to [Article VIII, Section 13 of the Utah Constitution](#) and the [Utah Code Ann., Title 78A, Chapter 11](#), the [Judicial Conduct Commission](#) has jurisdiction over judges in evaluating allegations that misconduct occurred before or during service as a judge and in evaluating allegations of disability during service as a judge. (R595-1-2). Specifically, the Commission may issue an order, subject to the Supreme Court's review and issuance of a final

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order, that any judge be reprimanded, censured, suspended, removed from office, or involuntarily retired, for:

- (a) action which constitutes willful misconduct in office;
- (b) final conviction of a crime punishable as a felony under state or federal law;
- (c) willful and persistent failure to perform judicial duties;
- (d) disability that seriously interferes with the performance of judicial duties; or
- (e) conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Also, the Supreme court may, on its own motion, suspend or remove a judge from office if the judge develops a physical or mental disability that seriously interferes with the performance of his judicial duties as provided in the Utah Constitution, Article VIII, Section 13, Paragraph 4;

The Commission's rules of procedure can be found [here](#).

Reporting.

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Procedures. Upon receiving a written complaint, the executive director will review the complaint and conduct a preliminary investigation. If the executive director finds that there is reasonable cause to support a finding of misconduct, the investigator shall recommend a full investigation. (R595-3-7). The Commission may direct the executive director to file a formal complaint (R595-3-8) and proceed according to 595-3-9 to R595-3-14. The Commission may dismiss a complaint or formal complaint with a warning or on conditions of no further misbehavior if the judge stipulates that the conduct occurred, the Commission finds that the stipulated conduct constitutes misconduct, and the Commission finds the misconduct is troubling but relatively minor misbehavior and that no public sanction is warranted (R595-4-1). Otherwise, in determining an

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appropriate sanction for misconduct, the Commission shall consider the following non-exclusive factors:

- A. the nature of the misconduct;
 - B. the gravity of the misconduct;
 - C. the extent to which the misconduct has been reported or is known among court employees, participants in the judicial system or the public, and the source of the dissemination of information;
 - D. the extent to which the judge has accepted responsibility for the misconduct;
 - E. the extent to which the judge has made efforts to avoid repeating the same or similar misconduct;
 - F. the length of the judge's service on the bench;
 - G. the effect the misconduct has had upon the confidence of court employees, participants in the judicial system or the public in the integrity or impartiality of the judiciary;
 - H. the extent to which the judge profited or satisfied his or her personal desires as a result of the misconduct; and
 - I. the number and type of previous sanctions imposed against the judge.
- (R595-4-2).

Diversion. There are no procedures in the rules governing the judicial conduct in Utah that provide for diversion in the event that a judge is impaired.

Medical Examinations.

78A-11-108. Involuntary disability retirement or removal of a judge.

(2) The commission shall order a medical examination and report.

Confidentiality. Under Rule 595-1-3, confidentiality of Commission proceedings and records is governed by the Constitution of Utah and applicable state statute. Rule 595-3-14 indicates that proceedings involving allegations of mental or physical disability are confidential. Title 78A, Section 112 of the Utah Code indicates that except as otherwise provided, complaints, papers, testimony, or the record of the commission's confidential hearing may not be disclosed by the commission, masters, or any court until the Supreme Court has entered its final order in accordance with this section

Utah Lawyers Helping Lawyers

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Authority and Application. Pursuant to the [Supreme Court Rules for Disciplinary Control of judges](#), the [Judicial Conduct Board](#) has the authority to investigate and discipline judges in the state of Vermont. Specifically the rules shall be applicable to any complaint charging a judge with:

- (1) violation of the Code of Judicial Conduct;
 - (2) violation of the Rules of Professional Conduct;
 - (3) offenses involving moral turpitude;
 - (4) conviction of a felony;
 - (5) misfeasance or malfeasance in office;
 - (6) wilful misconduct or conduct prejudicial to the administration of justice al-though not related to judicial duties nor constituting conduct in office which nevertheless:
 - (a) brings or tends to bring the office into disrepute or disrespect, or
 - (b) renders the judge unfit to act or command public confidence;
 - (7) wilful and persistent failure to perform judicial duties;
 - (8) habitual intemperance;
 - (9) physical or mental disability that:
 - (a) seriously interferes with the performance of judicial duties, and
 - (b) is likely to be permanent, and
 - (c) will continue to interfere with the performance of judicial duties;
 - (10) temporary physical or mental disability; or
 - (11) violation of the Judicial Branch Policy and Procedures Regarding Gender Bi-as and Sexual Harassment in the Work Place.
- (Rule 2. Scope of the Rules)

Procedures. Upon receipt of a complaint, the Board will conduct an initial inquiry and determine if an investigation is necessary. If an investigation is deemed necessary, the Board will engage the disciplinary counsel to carry out the investigation. Where probable cause exists, the Board may consider the seriousness of the transgression, whether there is a pattern of violations by the judge, and the effect of the judge’s actions on others or on the judicial system. At this point, the board may pursue a deferred discipline agreement, issue a written warning, dismiss the complaint, or pursue any other action authorized by the rules. If there is no probable cause for a formal complaint, the Board will dismiss the complaint at this time. A formal complaint may also be filed according to Rule 7(4) and may proceed according to Rule 9. (See Rule 7).

Diversion. Vermont’s rules do incorporate diversion procedures. The rules indicate the criteria for when such agreements are appropriate. Deferred discipline was originally approved by the Supreme court as a temporary rule in 2002, with sunset provisions. It was later amended to eliminate the sunset and make deferred discipline a permanent part of the rules. Here, if a deferred discipline agreement occurs after the filing of a formal complaint, the public will be given notice.

- (7) “Deferred discipline agreement” means a confidential agreement between the judge and the Board setting forth conditions for the judge to undergo treatment, counseling, education, or other corrective action. It is available only as a response to misconduct that does not require prosecution and sanctions and that can be addressed through nondisciplinary means. (Rule 1. Definitions)

RULE 7. INITIAL INQUIRY, INVESTIGATION, AND FORMAL COMPLAINT

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(3) Determination of Probable Cause. Where probable cause exists, in determining whether or how to proceed further the Board may consider the seriousness of the transgression, whether there is a pattern of violations by the judge, and the effect of the judge's actions on others or on the judicial system. The Board in its discretion may proceed to the Formal Complaint process, pursue a deferred discipline agreement, issue a written warning, dismiss the complaint, or pursue any other action authorized by these rules. If the investigation reveals to the satisfaction of the Board that no probable cause exists for a Formal Complaint, it shall dismiss the complaint. When a complaint is dismissed, the Board shall issue a closure letter in conformity with Rule 11.

RULE 8. ALTERNATIVES TO A FORMAL COMPLAINT

(3) Deferred discipline agreement. The Board may propose a deferred discipline agreement in any case in which it believes a violation has occurred but (a) the conduct is not a serious violation, and (b) the conduct did not appear to cause significant harm to any person, and (c) the judge admits the violation, and (d) there is no evidence of a pattern of similar violations by the judge, and (e) it appears to the Board that the conduct at issue is not likely to be repeated by the judge. Such an agreement may also be entered into if the Board considers it important to avoid future violations (for example, by assuring that substance abuse treatment or counseling is obtained) even when the current violation might not otherwise merit a Formal Complaint.

Deferred discipline may not be imposed except by agreement. The agreement may impose terms and conditions as an alternative to discipline. Such terms and conditions may include, but are not limited to, education, psychological counseling, substance abuse programs, monitoring or review by the Administrative Judge or other suitable person, and--with the concurrence of the Administrative Judge--limitations on the performance of judicial duties. The Board may direct the Administrative Judge to monitor compliance with the conditions of the agreement, and may direct the judge to document compliance. The Board shall inform the Administrative Judge and the complainant that the complaint has resulted in a deferred discipline agreement, but unless the judge consents in writing, shall not inform the complainant of the terms of the agreement. If such an agreement is entered into after the filing of a Formal Complaint, the fact that a deferred discipline agreement has been entered into shall be made public, although the terms thereof shall remain confidential except when disclosure is permitted pursuant to Rules 6.(8), 6.(9), or 6.(27), above. In addition, such agreements may be reviewed and considered by the Board if relevant to determining whether to proceed on any future complaint filed with the Board, or what sanction to impose in any future proceeding before the Board.

Copies of all deferred discipline agreements, once signed by the Board and the judge, shall be provided to the Supreme Court.

Upon successful completion of all terms or conditions, the complaint will be dismissed. Subject to the disclosure provisions of Rule 6, the deferred discipline agreement shall remain confidential upon dismissal. A judge's failure to comply with a material term or condition of the agreement, without just cause, may result in the revocation of the agreement and further disciplinary action authorized by these rules, and may constitute an independent basis for discipline separate from the underlying complaint.

If the judge does not consent to enter into a deferred discipline agreement, the Board may pursue any other action authorized by these rules.

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Mental Examinations.

RULE 6. GENERAL PROVISIONS

(3) The Board shall have, but is not limited to, the following powers:

(c) to require a judge to submit to physical or mental examination by qualified experts;

and

(d) to employ investigators, medical experts, stenographic reporters and other employees, for purposes of a particular matter only, as the Board in its discretion determines to be necessary to carry out its functions and purposes.

Confidentiality. Except as otherwise provided by the rules, communications during proceedings before the Board are confidential. After formal filing, however, proceedings are public.

RULE 6. GENERAL PROVISIONS

(7) All communications between or among Board members, all meetings of the Board, and all communications between the Board and disciplinary counsel or special counsel shall be confidential. No member of the Board may discuss the substantive internal communications, or the deliberations, of the Board with anyone outside the Board, its staff or its counsel. Except as otherwise provided by these rules, all papers, files, transcripts and communications in proceedings before the Board shall be confidential. After the service of a Formal Complaint upon a judge, the Formal Complaint, all subsequent pleadings, exhibits and rulings of the Board, and any hearing related to the Formal Complaint, shall be public.

Lawyers Concerned for Lawyers

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Virginia

Authority and Application. Pursuant to [Title 17.1, Chapter 9 of the Code of Virginia](#), the [Judicial Inquiry and Review Commission](#) is authorized to investigate charges that would be the basis for retirement, censure, or removal of a judge. Specifically, the Commission will investigate allegations that the judge has engaged in misconduct while in office, or that he has persistently failed to perform the duties of his office, or that he has engaged in conduct prejudicial to the proper administration of justice (see [Article VI, Section 10 of the Virginia Constitution](#)).

Procedures. Upon receiving a complaint, the Commission will dismiss the complaint if it has no merit or may establish the inquiry as a charge and the Commission may direct further investigation or propose an informal conference with the judge. Upon determination that the charge, if well founded, would be the basis for retirement, censure, or removal of a judge, the Commission may proceed with a formal hearing. (3b). In the discretion of the Commission, a judge who is alleged to have violated the Canons of Judicial Conduct may be invited to meet with the Commission or a member or members to discuss informally the allegations and possible solutions (Rule 4). After an investigation has been concluded, the Commission may take any of the following actions: remove the charges from the docket, file a complaint against the judge in the Supreme Court of Virginia, place the judge on a period of supervision under such terms and conditions as the Commission shall determine, or if the Commission finds the charges to be well

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founded under 15.a., the Commission shall transmit its findings and final order to the legislature in accordance with Va. Code Section 17.1-918. (Rule 15).

Diversion. Although Virginia does not have any rules that explicitly address judicial diversion, it does provide a rule on informal conferences that might be used in impairment cases.

4. INFORMAL CONFERENCES.

In the discretion of the Commission, a judge who is alleged to have violated the Canons of Judicial Conduct may be invited to meet with the Commission or a member or members to discuss informally the allegations and possible solutions. Counsel may represent the judge but no witnesses will be permitted to testify. If the judge and the Commission do not resolve the matter at such an informal conference, the Commission may remove the matter from the Commission's docket or give the judge notice of a formal proceeding. The Commission may proceed directly to a formal proceeding without first holding an informal conference. Informal conferences shall not be governed by these rules.

Medical Examinations.

§ 17.1-912. Physical or mental examination.

A. Whenever the Commission has probable cause to believe a judge is unable to perform his duties as a judge because of excessive use of alcohol or drugs or physical or mental illness, the Commission, after preliminary investigation by informal conference, may direct that the judge submit to a mental or physical examination by a health care provider approved by the Commission after consultation with the judge. The health care provider's report shall be in writing. Upon request, the judge shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any health care provider regarding the judge's mental or physical condition.

B. Any judge ordered to be examined pursuant to this section shall be afforded reasonable notice and an opportunity for a hearing before such examination is conducted as to any matters regarding the examination and as to whether there is probable cause to believe that the judge is unable to perform his duties as a judge because of excessive use of alcohol or drugs or physical or mental illness. During such hearing, the judge shall have the right to call witnesses on his behalf.

C. All costs related to examinations conducted at the direction of the Commission shall be paid out of sums appropriated for the operation of the Commission. The failure of a judge to submit to an examination ordered pursuant to this section or to provide waivers and releases required by this section shall constitute grounds for a new charge.

Confidentiality. All Commission matters are confidential unless the Commission files a formal complaint against the judge in the Supreme Court of Virginia or, pursuant to statute, reports information to the General Assembly when the judge is being considered for re-election. See Rules 8 and 16 and § 17.1-913 of the Virginia Code.

Lawyers Helping Lawyers

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Washington State

Authority and Application. Pursuant to [Article IV, Section 31 of the Washington State Constitution](#), the [Commission on Judicial Conduct](#) adopted rules of procedure and rules for confidentiality. Any conduct that violates the [Code of judicial Conduct](#) is grounds for discipline that shall be issued or administered in open session (Rule 6). The Commission's rules of procedure can be found [here](#).

Procedures. Upon receiving a complaint, the investigative officer will make a preliminary investigation and evaluation. The investigative officer shall recommend to the commission that it authorize a full investigation when there is evidence supporting the allegations. The investigative officer may recommend a full investigation when there are grounds to believe that evidence supporting the allegations could be obtained by subpoena or further investigation. When there are no such grounds, the matter shall be dismissed. (Rule 17c(1)). Formal procedures are governed by rules 19-26.

Diversion. Washington does not have any rules that explicitly address judicial diversion.

Medical Examination. If the complaint alleges that a respondent is suffering a possible physical and/or mental incapacity which may seriously impair the performance of judicial duties, or is exhibiting conduct which may be the result of such incapacity, the commission may order a respondent to submit to physical and/or mental examinations conducted at commission expense by a practitioner or health care provider selected by the commission. (rule 17c(2)).

RULE 17. SCREENING AND INVESTIGATION

(c) Preliminary investigation.

(2) If the complaint alleges that a respondent is suffering a possible physical and/or mental incapacity which may seriously impair the performance of judicial duties, or is exhibiting conduct which may be the result of such incapacity, the commission may order a respondent to submit to physical and/or mental examinations conducted at commission expense by a practitioner or health care provider selected by the commission. The failure or refusal of a respondent to submit to physical and/or mental examinations ordered by the commission may, in the discretion of the commission, preclude respondent from presenting the results of other physical and/or mental examinations on his or her behalf.

Confidentiality. Before the commission files a statement of charges alleging misconduct by or incapacity of a judge, all proceedings, including commission deliberations, investigative files, records, papers and matters submitted to the commission, shall be confidential by the commission, disciplinary counsel, investigative officers, and staff except as provided by Rule 11a. After the filing of a statement of charges, all subsequent proceedings shall be public, except as may be provided by protective order (11b).

Lawyer Assistance Program

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West Virginia

Authority and Application. Pursuant to [Article VIII, Section 3 of the West Virginia Constitution](#), the Supreme Court of Appeals of West Virginia has the power to promulgate rules of procedure for the courts. The [Judicial Investigation Commission](#) shall investigate all complaints of violation of the [Code of Judicial Conduct](#) made against judges (Rule 2.2). Specifically, the Counsel will investigate violations of the Code of judicial Conduct or allegations that because of advancing years and attendant physical or mental incapacity, a judge should not continue to serve (Rule 2.7). The rules of judicial disciplinary procedure can be found [here](#).

Procedures. The Office of Disciplinary Counsel shall conduct investigations as may be directed by the Commissions (Rule 2.2). As to each complaint received and investigation conducted by the Office of Disciplinary Counsel, a written report shall be filed with the Commission. The report shall recommend whether the Office of Disciplinary Counsel believes there is probable cause to formally charge the judge with a violation of the Code of Judicial Conduct or that the judge, because of advancing years and attendant physical and mental incapacity, should not continue to serve (Rule 2.6). Within 60 days of the report by the Counsel, the Commission shall determine whether to formally charge the judge, continue the investigation, issue a written admonishment, or close the case (Rule 2.7).

Diversion. West Virginia does not have rules that explicitly address judicial diversion.

Confidentiality

The details of complaints filed or investigations conducted by the Office of Disciplinary Counsel shall be confidential, except that when a complaint has been filed or an investigation has been initiated, the Office of Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge. (Rule 2.4)

Immunity

All information provided, documents filed or testimony given with respect to any investigation or proceeding under these rules shall be privileged in any action for defamation. All members of the Commission, the Judicial Committee on Assistance and Intervention, the Office of Disciplinary Counsel, and their employees, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this State for any conduct in the course of their official duties. (Rule 2.5).

West Virginia Committee on Assistance & Intervention
Executive Director: Tim Tinder tindert@wvbar.org

Wisconsin

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Authority and Application. The statutes governing the [Wisconsin Judicial Commission](#) are found at [secs. 757.81-757.99 of the Wisconsin Statutes](#). The Commission's administrative rules appear in [Chapters JC 1-6](#) of the Wisconsin Administrative Code. In addition, the Commission has adopted guidelines, or internal policies and procedures, which, while not published, are public and available upon request. The Commission shall investigate any possible misconduct or permanent disability of a judge or circuit or supplemental court commissioner. Misconduct constitutes cause under article VII, section 11, of the Wisconsin Constitution. (JC 4.01)

Reporting.

SCR 60.04 A judge shall perform the duties of judicial office impartially and diligently.

(3) In the performance of the duties under this section the following apply to disciplinary responsibilities:

(a) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this chapter should take appropriate action. A judge having personal knowledge that another judge has committed a violation of this chapter that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(b) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the rules of professional conduct for attorneys should take appropriate action. A judge having personal knowledge that a lawyer has committed a violation of the rules of professional conduct for attorneys that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority. This paragraph does not require a judge to report conduct disclosed through a judge's participation in a group to assist ill or disabled judges or lawyers when such information is acquired in the course of assisting an ill or disabled judge or lawyer.

(c) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted under par. (a) or (b) are part of a judge's judicial duties and shall be absolutely privileged and no civil action predicated on those acts may be instituted against the judge.

Procedures. The Executive director shall make an initial determination of whether the allegations indicates the existence of a cause justifying review by the Commission (JC 4.01). Based on an initial screening, the screening committee shall recommend that the allegation be dismissed or shall authorize an investigation (JC 4.02). After an investigation under JC 4.03, and upon a finding of probable cause that a judge or circuit or supplemental court commissioner has engaged or is engaging in misconduct or that a judge or circuit or supplemental court commissioner has a permanent disability, the Commission shall file a formal complaint with the Supreme Court. (757.85). Alternatively the Commission may refer the matter back to the executive director for further investigation, dismiss the allegation, enter into an agreement with the judge for treatment (see below), file a formal complaint with the supreme court, or make such other disposition of the matter as is appropriate under the circumstances (JC 4.08). The Supreme Court shall then review the findings of fact, conclusions of law and recommendations under 757.89 and determine appropriate discipline in cases of misconduct and appropriate action in cases of permanent disability (757.91).

JUDICIAL ASSISTANCE INITIATIVE
REPORT ON JUDICIAL DIVERSION PROGRAMS AND POLICIES - APPENDIX

Medical Examinations. (2) Medical records or reports obtained by the commission during an investigation of an allegation of permanent disability or as a result of the judge's or court commissioner's participation in a treatment program under s. JC 4.08 (5) may be considered by the commission at any stage of its proceedings. (JC 5.02)

Diversion

JC 4.08 Commission finding. Following the conclusion of proceedings under s. JC 4.07, the commission shall do any of the following:

5) Find that any misconduct or disability specified in the allegation is caused by a mental or physical condition for which treatment is appropriate and, with the agreement of the judge or court commissioner, hold open the allegation until the judge or court commissioner completes an appropriate treatment program. Upon successful completion of the program and demonstration that the conduct is unlikely to be repeated, the allegation shall be dismissed. Otherwise, a finding shall be made under sub. (6) or (7).

Confidentiality

(1) (a) All proceedings under ss. 757.81 to 757.99 relating to misconduct or permanent disability prior to the filing of a petition or formal complaint by the commission are confidential unless a judge or circuit or supplemental court commissioner waives the right to confidentiality in writing to the commission. Any such waiver does not affect the confidentiality of the identity of a person providing information under par. (b).

(b) Any person who provides information to the commission concerning possible misconduct or permanent disability may request that the commission not disclose his or her identity to the judge or circuit or supplemental court commissioner prior to the filing of a petition or a formal complaint by the commission.

(2) If prior to the filing of a formal complaint or a petition an investigation of possible misconduct or permanent disability becomes known to the public, the commission may issue statements in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge or circuit or supplemental court commissioner to a fair hearing without prejudgment, to state that the judge or circuit or supplemental court commissioner denies the allegations, to state that an investigation has been completed and no probable cause was found or to correct public misinformation.

(3) The petition or formal complaint filed under s. 757.85 by the commission and all subsequent hearings thereon are public.

(4) This section does not preclude the commission, in its sole discretion, from:

(a) Referring to the director of state courts information relating to an alleged delay or an alleged temporary disability of a judge or circuit or supplemental court commissioner.

(b) Referring to an appropriate law enforcement authority information relating to possible criminal conduct or otherwise cooperating with a law enforcement authority in matters of mutual interest.

(c) Referring to an attorney disciplinary agency information relating to the possible misconduct or incapacity of an attorney or otherwise cooperating with an attorney disciplinary agency in matters of mutual interest.

(d) Disclosing to the chief justice or director of state courts information relating to matters affecting the administration of the courts.

(e) Issuing an annual report under s. 757.97

JUDICIAL ASSISTANCE INITIATIVE
REPORT ON JUDICIAL DIVERSION PROGRAMS AND POLICIES - APPENDIX

Immunity

- (1) A complaint or communication alleging judicial misconduct or permanent disability with the commission, executive director, commission staff or panel and testimony in an investigation under this section is privileged.
- (2) A presiding judge, executive director or a member of the commission, commission staff or panel is immune from civil liability for any conduct in the course of the person's official duties under ss. 757.81 to 757.99.

Wisconsin Lawyer Assistance

Coordinator: Linda Albert lalbert@wisbar.org

Wyoming

Authority and Application. The [Commission on Judicial Conduct and Ethics](#), pursuant to the [State of Wyoming Constitution, Article 5, Section 6](#) authorizes the removal of a judicial officer from office or the imposition of discipline for “conduct that constitutes willful misconduct in office, or habitual intemperance, or for conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or for a violation of the [code of judicial conduct](#).” (Section 6(f)(4)). According to the Commission rules, “Judicial misconduct” is defined as “any action occurring during the judge’s tenure, that constitutes, including, but not limited to, the following: (1) willful misconduct in office, (2) willful or persistent failure to perform duties, (3) habitual intemperance to include alcohol or substance abuse, or (4) conduct prejudicial to the administration of justice that brings the judicial office into disrepute (Rule 2(1)). The rules governing the Commission on Judicial conduct and Ethics can be found [here](#).”

Procedures. Upon receipt of a complaint alleging facts indicating that a judge has engaged in judicial misconduct, criminal misconduct, civil misconduct, or that the judge has a disability, the investigatory panel shall review the information and shall either dismiss the complaint, make an investigation or direct the disciplinary counsel to make an investigation, require that the judge submit to physical and/or mental examinations, or if, after investigation the panel finds reasonable cause to believe the judge engaged in misconduct, then formal proceedings shall be instituted (Rule 13b).

Medical Examinations

- (3) Physical or mental evaluation. If an investigation indicates that the physical or mental health of the judge is in issue, the investigatory panel may require that the judge submit to physical and/or mental examinations of the judge by independent examiners. The results of the examination shall be transmitted to the judge and to the presiding officer for consideration by the panel. Service of the results of examination shall be in accordance with these rules. The failure of the judge to testify or to submit to an examination ordered by a panel may be considered, unless it appears that such failure was due to circumstances beyond the judge's control. (Rule 13b(3)).

Diversion. According to Rule 6g, the adjudicatory panel has the duty and authority to proceed with deferred discipline agreements.

- (g) Powers and duties of adjudicatory panel

JUDICIAL ASSISTANCE INITIATIVE
REPORT ON JUDICIAL DIVERSION PROGRAMS AND POLICIES - APPENDIX

(1) The adjudicatory panel shall have the duty and broad authority to:
(A) appoint disciplinary counsel, if needed, to proceed with investigation, deferred discipline agreement, or formal proceedings; evaluate all information or allegations reaching the attention of the adjudicatory panel or from any source that reasonably gives rise to the need for further inquiry or investigation; maintain records and files confidentially in accordance with these rules; review notices of formal proceedings and amended notices of formal proceedings concerning allegations of judicial misconduct, criminal misconduct, civil misconduct, or disability; conduct reviews and make inquiries; impose temporary discipline or interim suspension as are provided for in these rules; refer violations of any of these rules concerning confidentiality to appropriate authorities; refer criminal violations to appropriate prosecuting authorities; issue subpoenas; conduct hearings and other proceedings; issue letters requiring remedial action; issue or recommend deferred discipline agreements; issue stipulated private censures; rule on prehearing motions; conduct hearings and other proceedings related to formal proceedings; make findings, conclusions and recommendations to the Wyoming Supreme Court; or dismiss the case.

Confidentiality. Unless as otherwise permitted by Rule 10, or unless revealed in public documents or a public hearing, all proceedings before the Commission and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the Commission in the course of its work shall be confidential. However, a record filed by the Commission with the Wyoming Supreme Court loses its confidential character upon its filing. Exceptions to confidentiality are provided in Rule 10b.

Wyoming Lawyer Assistance Program
Tony Lopez lopezlaw@qwest.net

**2012 Council of Chief Judges of the
State Court of Appeals**

Houston, Texas

**Solve My Problem -
*Appellate Mediation***

*Appellate Alternative Dispute
Resolution Programs*

Appellate Alternative Dispute Resolution (ADR) Programs

Alabama Court of Civil Appeals The Supreme Court of Alabama

Appellate Mediation Program Contacts:

Celeste Sabel
Appellate Mediation Administrator, Supreme Court of Alabama
300 Dexter Avenue
Montgomery, Alabama 36104
Phone: 334-229-0672
Email: csabel@appellate.state.al.us

Rebecca Oates
Appellate Mediation Administrator, Alabama Court of Civil Appeals
300 Dexter Avenue
Montgomery, Alabama 36104
Phone: 334-229-0729
Email: roates@appellate.state.al.us

Program Overview:

The Appellate Mediation Program allows for mediation of counseled civil appeals pending in the Supreme Court of Alabama and the Alabama Court of Civil Appeals. Selection for mediation is made on a case-by-case basis. Record and transcript preparation is stayed in appellate cases which may be referred to mediation. Upon completion of mediation, the mediator submits a report notifying the Appellate Mediation Office of the outcome of the mediation. If the parties settle, they will file a motion to dismiss the appeal with the appropriate appellate clerk's office. If the parties reach an impasse, the case is put back on the appropriate court's appellate docket.

Statute and/or Court Rule Authorizing Program:

Rule 55, Alabama Rules of Appellate Procedure and the Alabama Rules of Appellate Mediation

Amount of Court Oversight:

Rule 55, Alabama Rules of Appellate Procedure, provides for the Appellate Mediation Program in the Supreme Court of Alabama and the Alabama Court of Civil Appeals. The program is coordinated by an Executive Director and operates, in each court, under the direct supervision of an Appellate Mediation Administrator, an attorney employed by the respective court. The courts are not involved in the mediation program on a day-to-day basis. If the parties and/or their attorneys fail to comply with the Rules of Appellate Mediation, the Mediation Office or the opposing party may move for sanctions. The courts may impose sanctions for the failure of parties to comply with the rules governing appellate mediation, however, any motion for sanctions will not be presented to the court until after the case is decided on the merits.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Selection, Qualification, and Training of Neutrals:

Parties will be given the opportunity to mutually select a mediator. Parties will be provided with the Appellate Mediator Roster of attorneys who have successfully completed a specialized appellate mediation training sponsored by the Appellate Mediation Office and the Alabama Supreme Court Commission of Dispute Resolution. In the event the parties do not agree on a mediator, the Appellate Mediation Administrator will appoint a mediator from the Alabama Appellate Mediator Roster.

An approved appellate mediator is someone who is a former judge or an attorney in good standing with the Alabama State Bar who has filed an application to be approved as an appellate mediator, has agreed to mediate at least two cases per year *pro bono*, if requested by the mediation office, has agreed to adhere to the Alabama Code of Ethics for Mediators, and has agreed to be bound by the Alabama Rules of Appellate Mediation and waive any claims against the appellate court in connection with the mediation.

Parties may also choose, as a mediator, a person who is not on the Alabama Appellate Mediator Roster as long as the chosen mediator is in good standing with the relevant licensing board of his/her profession and agrees to adhere to the Alabama Code of Ethics for Mediators, be bound by the Alabama Rules of Appellate Mediation and waive any claims against the appellate court in connection with the mediation

Referral Process:

All civil matters within the jurisdiction of the Supreme Court of Alabama and the Alabama Court of Civil Appeals, where all parties are represented by counsel, shall be eligible for referral to the appellate mediation program. The Appellate Mediation Administrator will review the Case-Screening Form and Confidential Statement provided by the parties and, if the case is referred to mediation, all appellate proceedings will be stayed pending resolution of the mediation. Selection of cases for mediation is based on the Administrator's determination that the case should be referred to mediation after reviewing the facts, the order appealed from, record excerpts, and the standard of review the appellate court will employ. The Supreme Court of Alabama and the Alabama Court of Civil Appeals may refer a case to mediation at any time during the appellate process.

Number of Available Neutrals:

Currently, 166 mediators are listed on the Alabama Appellate Mediator Roster, but parties may choose their own mediator as well, so long as the mediator complies with the Alabama Rules of Appellate Mediation (See discussion above).

Payment/Costs/Funding:

Mediators will advise the parties of their fee (or hourly fee) prior to mediation. The parties shall mutually agree on how to divide the fees. If the Appellate Mediation Office appoints the mediator (usually because the parties cannot agree upon a mediator), then the fee

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

and incidental expenses shall be shared equally between the parties. At the request of the Appellate Mediation Office, all appellate mediators must mediate two cases each year *pro bono*.

Follow-up Questions: None.

Arizona Court of Appeals, Division 1

Arizona Appellate Settlement Conference Program Contact:

Erica Bianchi-Jones, Esq.
Settlement Conference Attorney
State Courts Building
1501 West Washington, Room 203
Phoenix, Arizona, 85007
Phone: 602-542-4824

Program Overview:

Most civil matters are eligible for appellate mediation, including domestic relations and worker's compensation cases. Parties may be selected by the settlement conference attorney for participation in the program or parties can voluntarily file a Motion for Participation. Active and retired appellate judges serve as mediators. Formal appellate briefs are not necessary, although the parties are required to file a confidential settlement statement before the conference is held. Certain deadlines are stayed for the duration of the mediation proceedings.

Statute and/or Court Rule Authorizing Program:

Rule 30 of the Arizona Rules of Civil Appellate Procedure

Amount of Court Oversight:

The Program is run by the court and the Settlement Conference Attorney oversees implementation of the program. The court is also involved in assignment of cases to the program.

Selection, Qualification, and Training of Neutrals:

Neutrals are current and retired appellate judges.

Referral Process:

The court's Settlement Conference Attorney selects cases that it deems most likely to benefit from alternative dispute resolution to the program after reviewing the appellate record considering factors such as complexity of the issues and whether the parties have an on-going relationship. Within three days after either payment of appellant's filing fee or order exempting appellant from paying a filing fee, the Court enters an order notifying the parties to

Appellate Alternative Dispute Resolution (ADR) Programs

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a selected case that the case has been assigned to the Program and instructing the parties to submit settlement statements to the Settlement Conference Attorney. The order stays normal appellate briefing deadlines, but not payment of fees, posting bonds, or filing notices of cross-appeals or civil appeals docketing statements.

Additionally, a party may file a Motion for Participation before the filing of the opening brief that states why the case should be referred to the program along with copy of the civil appeals docketing statement, which the court may grant or deny. Participation once selected is mandatory unless the court grants a party's objection to assignment.

Number of Available Neutrals:

The court currently utilizes one retired appellate judge and the 16 current appellate judges.

Payment/Costs/Funding:

Parties will not be charged for the services of the appellate mediators.

Arizona Court of Appeals, Division 2

Arizona Appellate Settlement Conference Program Contact:

Geri Mose Mahrt, Esq.
Settlement Conference Attorney
400 West Congress
Tucson, Arizona 85701
Phone: 520-628-6054
Fax: 520-628-6059
E-mail: mahrt@apltwo.ct.state.az.us

Program Overview:

Under the Arizona Appellate Settlement Conference Program, most civil matters are eligible for appellate mediation. Parties may be selected by the court for participation in the program or parties can voluntarily file a Motion for Participation. Active and retired appellate judges co-mediate with the court's Settlement Conference Attorney. Formal appellate briefs are not necessary, although the parties are required to file a confidential settlement statement before the conference is held. Certain deadlines are stayed for the duration of the mediation proceedings.

Statute and/or Court Rule Authorizing Program:

Rule 30 of the Arizona Rules of Civil Appellate Procedure

Appellate Alternative Dispute Resolution (ADR) Programs

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Amount of Court Oversight:

The court runs the program and the Settlement Conference Attorney oversees implementation of the program.

Selection, Qualification, and Training of Neutrals:

Upon assignment of a case to the Program, the Settlement Conference Attorney and a judge jointly mediate a case.

Referral Process:

The Settlement Conference Attorney selects cases for assignment it deems most likely to benefit from alternative dispute resolution. Several factors, such as likelihood of settlement, are considered when determining what cases to refer to the program. Certain matters, such as cases involving child custody disputes, revocation of a driver's license, forfeiture appeals arising from a criminal matter, and matters of first impression in which the parties agree they want a legal resolution in the form of a published opinion, are generally not referred to mediation.

Within three days after the appellant has filed the Notice of Appeal, the court may enter an order notifying the parties that the case has been assigned to the Program. The order shall stay the normal appellate briefing schedule pending completion of the settlement process. The order stays posting bonds for costs on appeal, filing notices of cross-appeals, ordering certified transcripts, or transmitting indexes of records on appeal. The assignment order shall also notify the appellant that the filing fee shall be paid within ten days.

Additionally, a party may file a Motion for Participation stating reasons that the case should be assigned to the program before the filing of the opening brief, which the court may grant or deny. Participation once selected is mandatory unless the court grants a party's objection to assignment.

Number of Available Neutrals:

Currently, six sitting judges, three retired judges, and one conference attorney are available for co-mediation.

Payment/Costs/Funding:

Parties will not be charged for the services of the appellate mediators.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

California Court of Appeals, Second Appellate District

Mediation Program Contact:

Theresa Carter-Mata
Mediation Coordinator
Ronald Reagan State Building
300 South Spring Street, 2nd Floor
Los Angeles, California 90013-1213
Phone: 213-830-7136
E-mail: Theresa.carter-Mata@jud.ca.gov

Program Overview:

The Second District participates in a court-wide voluntary mediation program conducted prior to the time the record is required to be filed. Notice is sent by the Superior Court to the appellant upon filing of a notice of appeal and if all parties desire to participate in the program, a form is returned to the superior court triggering the process. The mediation process is presided over by a volunteer attorney who is an appellate or mediation specialist. If the parties do not originally opt to enter the mediation program, but later desire to explore mediation or settlement with the help of the court, the clerk's office of the Second District should be contacted. Participation in the Mediation Program does not affect the court schedule for preparation of the record or for briefing.

Statute and/or Court Rule Authorizing Program:

The Mediation Program is authorized by the Court's Internal Operating Procedures. While no formal rules have been adopted for the Program, participants are advised that California Rules of Court, rule 3.850, et seq, as adopted by the Judicial Council, are recommended as general guidelines.

Amount of Court Oversight:

The program is run by the court and the Mediation Coordinator oversees implementation of the program.

Selection, Qualification, and Training of Neutrals:

Mediators must have at least seven years experience as a practicing lawyer, experience in appellate law or mediation training, and successful completion of the court's Appellate Mediation Training. The Mediation Coordinator matches mediators to specific disputes. Mediators must also agree to adhere to the Program's policies and procedures and the Judicial Council Ethical Rules of Conduct for Mediators.

Referral Process:

If the parties have indicated their agreement to mediate on the Mandatory Docketing Statement, or otherwise choose to participate in the Mediation Program, the Court will issue an

Appellate Alternative Dispute Resolution (ADR) Programs

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order setting the date and time of the mediation, appoint a mediator, and describe the court's requirements for participation, including providing the mediator with information and assuring that the appropriate individuals appear at the mediation. Although the Mediation Program is voluntary, once the parties agree to participate, it becomes mandatory that they comply with the procedures set forth in the court's scheduling order or risk the imposition of sanctions.

Number of Available Neutrals:

The current roster of mediators contains 200 mediators.

Payment/Costs/Funding:

Mediators will volunteer a total of six hours of time for the mediation, which will normally include two hours of preparation time to conduct pre-mediation conferences and to read and analyze materials provided by counsel in advance of the mediation and four hours of time in mediation sessions. After a total of six hours of preparation and/or mediation, mediators are permitted to charge the parties for additional mediation services rendered, at their hourly rate, provided all parties agree.

California Court of Appeals, Fourth Appellate District, Division 2

Civil Appellate Settlement Program Contact:

Jacqueline Hoar
Settlement Conference Coordinator
3389 12th Street
Riverside, California 92591
Phone: 951-248-0233

Program Overview:

The court of appeal mandatory settlement program uses volunteer attorneys and, to a lesser extent, the court's justices as mediators. Based on a review of the judgment or order appealed and input from the parties, the Presiding Justice decides which civil appeals are accepted for settlement and orders them accepted into the program. Participation is mandatory once the appeal has been accepted. The court permits the filing of the record but stays briefing. The mediator conducts the conference in the court settlement suite, often requiring additional sessions. Settled cases are disposed by settlement agreement or dismissal or by stipulated decisions. Cases not settled resume the normal appellate process beginning with briefing.

Statute and/or Court Rule Authorizing Program:

Local Rule 4

Appellate Alternative Dispute Resolution (ADR) Programs

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Amount of Court Oversight:

The program is run by the court and the Settlement Conference Coordinator oversees implementation of the program.

Selection, Qualification, and Training of Neutrals:

The court maintains a list of attorneys from the local bar association who have developed expertise in specified areas of law, are generally respected in the legal community, and are willing to mediate settlement conferences at the court. Mediators specializing in the area of law involved in the appeal are matched with the case. Once selected, the mediator is screened for conflicts with the parties and counsel. All attorneys volunteer one hundred percent of their time to the court.

These attorneys are designated as settlement conference mediators and preside over every settlement conference unless otherwise ordered. A justice may also be designated as a settlement conference mediator and preside over a settlement conference if so ordered.

Referral Process:

All civil appeals are eligible for the settlement program, which do not include juvenile dependency, delinquency or truancy cases. The referral decision process begins when the settlement coordinator receives a copy of the civil case information statement (CCIS) with attached copy of the judgment or order appealed. The CCIS is a form used by the California Court of Appeals to screen civil appeals for jurisdictional defects. The settlement coordinator reviews the CCIS for each case according to policies set by the Presiding Justice. Most appeals pass this screening, and the settlement coordinator then obtains settlement conference information statements (SCIF's) from the parties. SCIF's elicit information about the character of the action, the issues on appeal, previous settlement negotiations, and preliminary settlement offers the parties are willing to make. SCIF's are confidential and not served on, or shared with, opposing counsel. Once a group of SCIF's have been received, the settlement coordinator delivers them to the Presiding Justice, who decides whether to admit each appeal to the settlement program. At this point, the parties' participating in the settlement conference program is mandatory. The settlement coordinator selects the mediator according to area of expertise, availability, and the appropriateness of the mediator for the particular appeal. Once selected, the mediator is screened for conflicts with the parties and counsel. The settlement coordinator sets the settlement conference on a date convenient to the mediator and notifies the parties in writing, generally giving at least 30 days advance notice. The parties are required to file settlement conference statements at least 15 days before the settlement conference. Prior to the settlement conference, copies of the SCIF's and settlement conference statements are sent to the mediator. Typically, by the time of the settlement conference, the record on appeal has been filed and is made available to the mediator the day of the conference.

Number of Available Neutrals:

The program uses a roster of approximately 45 mediators.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Payment/Costs/Funding:

Mediators volunteer one hundred percent of their time to the court. Only the settlement conference coordinator's salary is a cost of the program. Parties participate in the settlement conference program at no cost.

Florida Court of Appeals, Fifth District (Fifth District Court of Appeal)

Appellate Mediation Program Contacts:

Primary Point of Contact:

Judge William D. Palmer
Fifth District Court of Appeal
300 Beach Street
Daytona Beach, FL 32114

Program Coordinator

Penny Cooper
(386) 947-1547
cooperp@flcourts.org

Program Overview:

The Fifth District Mediation Program is different from previous appellate mediation programs in the state. Selections of cases appropriate for mediation are made by one of three screening judges on the court. The parties complete and file with the court a mediation questionnaire setting forth the issues involved in the appeal and their position on whether mediation would be helpful.

Mediation is mandatory once a case is selected, within a limited time span, so that the delay will not significantly affect the course of the appeal if mediation fails, and so that most of the costs of the appeal can be avoided if the mediation is successful. The parties select private mediators and pay for the mediation themselves.

Statute and/or Court Rule Authorizing Program:

Chapter 44, Florida Statutes.

Amount of Court Oversight:

Rules for mediation are set out in the Florida Rules for Appellate Procedure.

Florida Supreme Court Administrative Order dated July 8, 2003, AOSC03-32, In Re: Committee on Alternative Dispute Resolution Rules and Policy. The administrative order directs the Committee to monitor and recommend amendments to court rules governing

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

alternative dispute resolution procedures, to recommend changes in policies and training standards, and to make other recommendations that would improve the use of mediation to supplement the judicial process. The order further directs the Committee to perform such other assignments related to alternative dispute resolution as may be requested by the Chief Justice. The Court has since extended the Committee's charge through successive reappointments and the regular appointment of new members filling expiring terms.

Selection, Qualification, and Training of Neutrals:

Mediators who are certified as family, dependency and/or circuit civil mediators are eligible to join the roster of mediators available for selection upon completion of an appellate mediation training sponsored by the DCA. At this time, the Supreme Court of Florida has not adopted certification requirements for appellate mediators. There is a training program implemented by the Fifth District Court of Appeals.

Referral Process:

Selections of cases appropriate for mediation are made by one of three screening judges on the court. The parties are free to select their own mediator from a list of mediators who are certified in civil, family or dependency mediation and who have taken the appellate mediation training conducted by the court. The parties, in almost all cases, mutually agree on a mediator, so the court has rarely had to randomly select a mediator.

Number of Available Neutrals:

More than 250 mediators have completed the training district wide and are eligible for selection as mediators.

Payment/Costs/Funding:

Varies depending on mediator, court referred is \$200/hr, select pro bono.

Hawaii Intermediate Court of Appeals

Hawaii Appellate Mediation Program Contact:

Elizabeth Kent

Director

Center for Alternative Dispute Resolution

417 South King Street, Room 207

Honolulu, Hawaii 96813

Phone: 808 - 539-4238

Fax: 808- 539-4416

E-mail: Elizabeth.R.Kent@courts.state.hi.us

Appellate Alternative Dispute Resolution (ADR) Programs

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Program Overview:

The Hawaii Appellate Mediation program is administered by the Center for Alternative Dispute Resolution, which is run by the Hawaii State Judiciary. The Center utilizes volunteers to facilitate mediation of cases that the Center selects as prime candidates for mediation. Deadlines on preparation of transcripts, the record, and briefs shall be stayed pending further notification from the appellate clerk upon acceptance into the appellate mediation program.

Statute and/or Court Rule Authorizing Program:

The program is guided by its own rules, the Rules of the Hawaii Appellate Mediation Program. (Rules of Appellate Procedure 3.1 and 33)

Amount of Court Oversight:

The Program is run by the court and implemented by the Center for Alternative Dispute Resolution.

Selection, Qualification, and Training of Neutrals:

Mediators are volunteers who are retired judges, justices, or long-practicing attorneys. By agreement of all parties, an outside mediator may be selected to lead mediation.

Referral Process:

Most civil cases are eligible for participation in the Program and the Center chooses what cases would most benefit from mediation services. A Notice of Mandatory Mediation is sent to parties whose cases have been selected by the Center for mediation. Parties may also voluntarily opt into mediation. Parties may choose private mediators, but must pay for those costs.

Number of Available Neutrals:

The center currently utilizes approximately 35 volunteers.

Payment/Costs/Funding:

Mediation is provided by the Center at no cost, but the parties are free to independently arrange sessions with a private mediator at agreed price.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Idaho Court of Appeals & Supreme Court

Appellate Settlement Conference Program Contact:

Patti Tobias
Administrative Director of the Courts
P.O. Box 83720
Boise, Idaho 83720-0101
Phone: 208-334-2246
Fax: 208-947-7590
E-mail: ptobias@idcourts.net

Program Overview:

The Idaho Court of Appeals has a voluntary mediation program available in most civil cases. The settlement conferences are administered by current and retired Supreme Court justices; however, the Court has recently approved changes to the settlement program that will take effect in the form of amendments to Idaho Appellate Rule 49 sometime in 2010. Since its inception in 1990, 59% of the 421 cases participating in the program have been settled.

Statute and/or Court Rule Authorizing Program:

Idaho Appellate Rule 49

Amount of Court Oversight:

The program is directly administered by the court.

Selection, Qualification, and Training of Neutrals:

Each of the five Supreme Court Justices serve as conference judges and a retired, former Chief Justice is also available for settlement conferences if needed. However, once the approved amendments take effect, the Administrative Director of the Courts will maintain a list of settlement justice and judges, and current justices will not be on the list. The list will consist of retired justices of the Supreme Court and retired judges from the Court of Appeals.

Referral Process:

The Supreme Court/Court of Appeals Clerk's Office sends a letter to counsel in civil cases (except for those cases involving the Department of Labor, Public Utilities Commission, and juvenile cases) notifying them the Supreme Court offers voluntary settlement conferences in civil and Industrial Commission cases. If counsel for both Appellant and Respondent decide in favor of that option, the case will be scheduled for a settlement conference with one of the justices or Court of Appeals judges on a rotating basis. Once the approved changes take effect, a case may be submitted for a settlement conference when the court receives a request pursuant to a written agreement of all parties.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Number of Available Neutrals:

There are currently six neutrals available to conduct settlement conferences.

Payment/Costs/Funding:

The settlement conferences are currently free of charge. The approved changes to the procedure provide that the parties are responsible for the payment of any costs involved.

Kentucky Court of Appeals

Prehearing Conference Attorneys

Mr. Phil Swain & Ms. Leona Power
360 Democrat Drive
Frankfort, KY 40601-9230
Tel: 502-573-7920

Program Overview:

The Prehearing Conference is held to consider the possibility of settlement, the simplification of issues, the contents of the record, the time for filing of the record and briefs, and any other matter which the judge or conference attorney determines may aid in the handling or disposition of the proceedings. Discussions occurring during the Prehearing Conference are confidential and are not to be disclosed except to the extent disclosed by the prehearing order. The prehearing order shall recite the actions taken and the agreements reached by the parties and shall govern the subsequent course of the proceedings.

Statute and/or Court Rule Authorizing Program:

Kentucky Revised Statutes, Rules of Civil Procedure, Rule 76.03 (Prehearing Conference)

Amount of Court Oversight:

The Prehearing Conference is conducted by a judge of the Court of Appeals that has been designated by the Chief Judge of the Court of Appeals or a staff attorney of the court, known as a conference attorney, designated by the Chief Judge of the Court of Appeals. A judge who participates in a prehearing conference or becomes involved in settlement discussions shall not sit as a member of the panel assigned to hear the appeal.

Selection, Qualification, and Training of Neutrals:

No special training provided or required since conferences are held by the judges and staff attorneys of the Court of Appeals.

Referral Process:

All civil cases shall be reviewed to determine if a prehearing conference would be of assistance to the Court or the parties, and any party may move for a prehearing conference at

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

the time of filing the prehearing statement or supplemental statement. Exceptions include prisoner applications seeking relief relating to confinement or conditions of confinement as well as appeals from Circuit Court orders determining paternity, dependency, abuse, neglect, domestic violence, and juvenile status offense.

Number of Available Neutrals: Not provided

Payment/Costs/Funding: None noted

Michigan Court of Appeals

Court Settlement Program Contact:

Dave Baumhart, Director
Settlement Office
3020 West Grand Boulevard, Suite 14-300
Detroit MI 48202
Phone: (313) 972-5690
Email: dbaumhart@courts.mi.gov

Program Overview:

The Court of Appeals may, at any time prior to submission, direct the parties of an appeal to appear in person or by phone for a settlement conference. The purpose of the conference is to simplify the issues of the appeal, consider the possibility of settlement, and discuss any other matters that may aid in the handling of the appeal. Once an appeal has been selected for a settlement conference, participation is mandatory unless good cause can be shown to the court that the appeal is inappropriate for the program.

Following completion of the settlement conference, the mediator shall provide the court with a report stating the action taken at the conference and the agreements made by the parties. Once the report is entered into the court record, all subsequent proceedings are limited to those issues not disposed of through the processes of the conference.

Statute and/or Court Rule Authorizing Program: MCR 7.213

Amount of Court Oversight:

The program is run by the court, and the Settlement Director is the court's designated mediator. By agreement of all parties, an outside mediator may be selected to facilitate the settlement conference.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Selection, Qualification, and Training of Neutrals:

The current Settlement Director is a former litigator with 30 years of litigation experience, who has been trained in the practice of mediation and has been employed full-time for the past 10 years by the Court to mediate settlement of cases on appeal.

If an outside mediator is chosen, that person must be an attorney, licensed in Michigan, who possesses either mediation-type experience or expertise in the subject matter of the case.

Referral Process:

All civil appeals are examined by the Settlement Director to determine if a settlement conference would be appropriate. Certain types of negligence cases are automatically assigned to participate while certain other types (such as termination of parental rights) are known not to be amenable to the process.

Attorneys and/or the parties to an appeal may also contact the Settlement Office directly to request that a settlement conference be held.

Number of Available Neutrals: Not stated

Payment/Costs/Funding:

There is no charge for settlement conferences conducted by the Settlement Office. If an outside mediator is hired, the parties will be responsible for the mediator's fees.

Note: This program was closed August 28, 2009 due to budget cuts.

Minnesota Supreme Court

ADR Program Contact:

Jill Goski, Program Director

Michelle Conlin, Program Assistant (mail sent to this contact)

Education & Organization Development

120 Minnesota Judicial Center

25 Rev. Dr. Martin Luther King Jr. Boulevard

St. Paul, MN 55155

Email: adr@courts.state.mn.us

Phone: 651-297-7589

Program Overview:

A great majority of the civil cases, including marital dissolutions, filed in Minnesota State courts are settled without a trial. Yet, most cases do not settle until after the parties and

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

courts have spent a lot of time, money, and emotional energy, and the taxpaying public has borne a great deal of expense.

Minnesota courts recognize the effectiveness of ADR as a tool for settling conflicts. In response, the courts provide parties and their attorneys, if represented, with ADR information when they file a civil case. The parties must consider whether to use ADR to help resolve the dispute.

Different types of ADR:

Adjudicative Processes:

- Arbitration
- Consensual Special Magistrate
- Moderated Settlement Conference
- Summary Jury Trial

Evaluative Processes:

- Early Neutral Evaluation
- Neutral Fact-Finding

Facilitative Processes

- Mediation

Hybrid Processes

- Mini-Trial
- Mediation-Arbitration
- Other (Parties may by agreement create an ADR process.)

Statute and/or Court Rule Authorizing Program:

Amount of Court Oversight:

Rule 114 of the Minnesota General Rules of Practice describes the procedures for deciding whether to use ADR.

Selection, Qualification, and Training of Neutrals:

The Office of Supreme Court Continuing Education maintains two ADR Neutrals Rosters, civil (non-family) and family. The neutrals on these rosters are professionals with a wide variety of backgrounds, some, but not all of whom, are attorneys. Neutrals on a facilitative/hybrid panel are required to complete 40 hours of training prior to serving in family law matters. Those on the civil non-family panel must attend 30 hours of training. There are additional training requirements for neutrals on the adjudicative and evaluative panels. All neutrals on the family law roster have had 6 hours of training on domestic abuse issues.

Appellate Alternative Dispute Resolution (ADR) Programs

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Referral Process:

Rule 114 mandates that the court provide parties with information on ADR. Parties are required to discuss the use of ADR and address this issue in the informational statement filed with the court. If the parties are unable to make a decision on the use of an ADR process or a neutral, the court may order the parties to any number of ADR alternatives. This does not mean parties are required to settle their differences through ADR. They are required, however, to at least discuss their differences with the neutral and attempt to resolve their differences prior to a trial. If an ADR process is chosen, the parties should select an independent third party, called a neutral, from the ADR Neutrals Roster.

Number of Available Neutrals:

Searchable roster available online: http://www.mncourts.gov/apps/adr/adr_query.asp

Payment/Costs/Funding:

Parties are responsible for paying the neutral for their services. Typically, fees are based on an hourly rate established by the neutral. ADR services provided by some organizations have established a sliding fee scale based on the parties' incomes. It is assumed that the parties will split the cost of the ADR process equally. Parties may, however, agree on a different allocation. Parties should be sure to discuss fees and payments prior to entering into an ADR agreement.

Follow-up Questions:

935 on the civil facilitative/hybrid roster and 537 neutrals on the civil adjudicative/evaluative roster.

Minnesota Court of Appeals

ADR Program Contact

Ms. Aimee Gourlay
120 MN Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155
Tel: 651-297-7590
Fax: 651-297-1173
agourlay@gw.hamline.edu

Program Overview:

The court was awarded a grant to conduct a pilot ADR program at the intermediate appellate level. The grant tolls in July 2010, at which point the court will make a decision as to whether or not they will adopt the program. Necessary rules and a Currently, the only cases referred to the program are select family cases. The court makes a referral to a small mediator panel (trained by appellate mediators in CA). The court has not established official

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

rules, but the pilot program loosely follows the ADR rules for the district courts. All mediators must meet the district court requirements. The court determines if mediation is appropriate, referrals are on a case-by-case basis.

Statute and/or Court Rule Authorizing Program: n/a

Amount of Court Oversight:

There is an advisory and steering committee that includes court of appeals judges and there will be judicial representation on the rules committee if/when the program is adopted.

Selection, Qualification, and Training of Neutrals: (from the pamphlet on ADR at the district court level)

The Office of Supreme Court Continuing Education maintains two ADR Neutrals Rosters, civil (non-family) and family. The neutrals on these rosters are professionals with a wide variety of backgrounds, some, but not all of whom, are attorneys. Neutrals on a facilitative/hybrid panel are required to complete 40 hours of training prior to serving in family law matters. Those on the civil non-family panel must attend 30 hours of training. There are additional training requirements for neutrals on the adjudicative and evaluative panels. All neutrals on the family law roster have had 6 hours of training on domestic abuse issues.

You have to be selected for the appellate program on a separate application and there is an additional one day of training.

Referral Process:

The court considers it for all cases that would be eligible for the program. There are certain types of cases that they do not consider this for such as child in need of protective services hearings. There is no “opt in” function for parties, however, there is an “opt out.”

Number of Available Neutrals: Roster: http://www.mncourts.gov/apps/adr/Adr_rpt.asp

The above roster is the state court roster for everyone. Really for purposes of the program right now there are only about 24 qualified.

Payment/Costs/Funding: Sliding fee scale.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Missouri Court of Appeals, Eastern District

Appellate Settlement Program Contact:

Angie Chapman
Secretary of the Appellate Settlement Program
1 Post Office Square
815 Olive Street
St. Louis, Missouri 63101
Phone: 314-539-4300

Program Overview:

The Missouri Court of Appeals, Eastern Division has an Appellate Settlement Program that is implemented by retired judges serving as Settlement Judges. After the notice of appeal and supplemental filings are filed, a Settlement Judge screens all civil cases and selects those cases that the judge determines are appropriate for possible settlement. Once a case is placed on the settlement docket, the time requirements for ordering the record on appeal and filing the record and briefs may be suspended. If settlement efforts fail, the case is returned for regular processing. The policy of the Court of Appeals is that no information about any case selected and processed for settlement docket shall be disclosed to any other judge. The settlement judge is barred from sitting on any case that was before him or her as a settlement judge.

Statute and/or Court Rule Authorizing Program:

Local Rule 320

Amount of Court Oversight:

The Appellate Settlement Program is administered by the court's Settlement Judges and supervised by the Court Administrator.

Selection, Qualification, and Training of Neutrals:

Settlement judges for the Court are retired appellate court judges.

Referral Process:

A Settlement Judge screens all civil cases and selects cases that are deemed most susceptible to settlement. Deadlines for court proceedings may be stayed for the duration of the settlement process. Parties may also request participation in the program

Number of Available Neutrals:

Two retired judges currently serve as Settlement Judges.

Payment/Costs/Funding:

Parties participate in the Program at no cost.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Follow-up Questions: None.

New Mexico Court of Appeals

Appellate Mediation Office Contact:

Mr. Robert Rambo, Appellate Mediator
Appellate Mediation Office, New Mexico Court of Appeals
P.O. Box 2008
Santa Fe, NM 87504
Tel: 505-827-4942
Fax: 505-827-6642

Program Overview:

The Appellate Mediation Office may schedule and conduct mediation conferences in any matter pending before the Court. The conferences are designed to reduce the time and expense of civil appeals by addressing any matter that may aid in their disposition. The conferences offer parties and their counsel confidential, risk-free opportunities to communicate about underlying interests, self-evaluate their cases, and explore possibilities for voluntary settlements with an informed, neutral mediator.

Counsel shall participate in every scheduled mediation conference and in related discussions. Generally, a party may participate but need not unless required by the Appellate Mediator. Conferences are conducted by telephone unless the Appellate Mediation Office directs otherwise.

The Appellate Mediator may cause an order to be entered controlling the course of the mediation proceedings. The Appellate Mediator is a delegate of the Court. All conference orders and other directives from the Appellate Mediation Office shall be treated as any other Court directive.

Statute and/or Court Rule Authorizing Program:

Rule 12-313 NMRA 2003 and Ct. App. Order No. 1-42

Amount of Court Oversight:

The Appellate Mediation Office operates under the direct supervision of an Appellate Mediator; an employee of the Court designated to oversee implementation of the program. Judges, their law clerks, prehearing staff attorneys, and administrative personnel of the Court shall not have access to information related to settlement that is generated by the activities of the Appellate Mediation Office.

Selection, Qualification, and Training of Neutrals: Not stated

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Referral Process:

Any civil matter pending before the Court is eligible except appeals in which one of the parties is incarcerated or in which a non-attorney is a pro se party* and in cases involving the revocation of a driver's license, a petition for extraordinary relief, or an appeal arising out of the Mental Health and Developmental Disabilities Code and the Children's Code.

The Mediation Office will select cases at random from the pool of eligible appeals, and other cases may be referred by the Court to the program either before or after briefing. Additionally, counsel for either party may request a mediation conference by contacting the Mediation Office in writing. Such requests will be kept confidential and generally accepted in any eligible civil appeal.

Number of Available Neutrals: One, the Appellate Mediator.

Payment/Costs/Funding:

No fee for mediation services through the court. Parties are permitted to utilize a private mediator, in which case there would be a fee involved.

The Supreme Court of Ohio

Case Mediation Section Contact:

Jacqueline C. Hagerott, Mediation Counsel
65 South Front Street
Columbus, Ohio 43215
Phone: 614-387-9422
Fax: 614-387-9409
E-mail: jacqueline.hagerott@sc.ohio.gov

Program Overview:

The Supreme Court selects cases for mediation conferences from cases originating in courts of appeals, mandatory appeals from administrative agencies, original actions, and other non-felony cases that the Supreme Court deems appropriate. The Supreme Court attempts to select cases for mediation that do not raise novel legal questions.

The mediation counsel convenes the parties in confidential negotiating sessions, facilitating the negotiations, and monitoring settlement solutions until the parties have concluded their case. The Supreme Court schedules mediation conferences in selected cases. Experienced mediation attorneys conduct the conferences. The goal of mediation is to offer participants a confidential, risk-free opportunity to evaluate their case candidly with an experienced mediator to explore the possibility of resolving any disputed issues, whether substantive or procedural.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

The Supreme Court may suspend the briefing schedule until the parties complete negotiations, and the parties should review the Court's entry referring the case to mediation for any orders related to the due dates for briefs. The mediator has the authority to return cases to the regular docket and terminate stays if the parties are not making progress in resolving their case. Entries lifting stays, including entries returning cases to the regular docket, will set forth when briefs will be due.

Statute and/or Court Rule Authorizing Program:

Rules of Practice of the Supreme Court of Ohio

- S.Ct. Prac. R. 2.6. Request for Mediation.
- S.Ct. Prac. R. 17.1. Referral of Cases for Mediation.
- S.Ct. Prac. R. 17.2. Privileges and Confidentiality.

Amount of Court Oversight:

The Supreme Court may issue orders to supervise mediation. At the conclusion of the mediation, the Supreme Court will enter an appropriate order. The Section is managed by the lead mediation counsel for the Supreme Court who oversees all aspects of the program working closely with the Office of the Clerk of Court.

Selection, Qualification, and Training of Neutrals:

If additional mediators are needed, they are recommended by the Director of Judicial and Court Services Division of the Supreme Court in collaboration with the lead mediation counsel and approved by the Supreme Court. They are experienced mediators who are currently working for other appellate courts who have had considerable training and experience in mediation.

Referral Process:

The Supreme Court may, sua sponte or on motion by a party, refer to its mediator for mediation any case that originated in the court of appeals, any appeal from an administrative agency, any original action, or pursuant to S.Ct. Prac. R. 2.6 any civil case that the Supreme Court deems appropriate. The mediator may conduct mediation conferences at which the parties shall explore settling the case, simplifying the issues, and expediting the procedure, and may consider any other matter that might aid in resolving the case. Unless otherwise provided by Court order, referral of a case for mediation does not alter the filing deadlines prescribed by these rules.

Number of Available Neutrals:

The Supreme Court has one full-time mediation counsel on staff.

Payment/Costs/Funding:

There is no cost for the mediation services offered by the Supreme Court.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Ohio Sixth District Court of Appeals

Mediation Program Contact:

Frances King, Esq.

Court Mediator

One Constitution Ave

Toledo, Ohio 43604

Phone: 419-213-4755

E-mail: king@co.lucas.oh.us

Program Overview:

The Court of Appeals offers a mediation service conducted by the Court Mediator to litigants who have a case pending in the court. The mediation itself is held at the court of appeals and usually lasts at least one and one-half to two hours. The scheduling of mediation does not stay the deadline for filing briefs or the transcript of proceedings. Any party may call the mediator and request that the court issue a *sua sponte* order extending the deadline for transmitting the record or filing a brief. Thereafter, if the mediator determines that the parties are negotiating in good faith, additional extensions of time will be recommended by the mediator on a party's oral request.

Statute and/or Court Rule Authorizing Program:

Sixth District Local Appellate Rule 13

Amount of Court Oversight:

The program is run by the court and the Court Mediator conducts all sessions. However, the judges are not involved in the program.

Selection, Qualification, and Training of Neutrals:

The Court Mediator has a J.D. from the University of Toledo, and has extensive training as a mediator. She completed 18 hours of mediation training at Capital University in Columbus, Ohio, and 40 hours of mediation training at National Judicial College in Reno, Nevada. The mediator has attended numerous CLE seminars on settlement techniques, negotiation strategies and advanced mediation skills sponsored by the Ohio Supreme Court. She also attends at least two advanced mediation skills seminars each year.

Referral Process:

The Court Mediator reviews the notice of appeal, the trial court's judgment, and the docketing statement in all civil and administrative appeals to determine whether mediation will be scheduled. If mediation is scheduled, the court will notify the attorneys, or the parties if unrepresented, of the name of the mediator and the date, time and location of the mediation.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Number of Available Neutrals:

All mediation is conducted by the Court Mediator.

Payment/Costs/Funding:

Mediation is available to parties at no cost.

Ohio Eighth District Court of Appeals

Appellate Court's Prehearing Conference Program Contact:

Ute Lindenmaier Vilfroy
Court Administrator & Magistrate
Cuyahoga County Court House
One Lakeside Avenue #202
Cleveland, Ohio 44113-1085
Phone: 216-443-6396
E-mail: ulv@8thappeals.com

Program Overview:

Ohio's Eighth District Court of Appeals operates a Prehearing Conference program that is designed to provide an opportunity for the parties to consider the possibility of settlement, simplify issues, and address any other matters that may aid in the disposition of the proceedings by the court.

Civil appeals are screened by the Conference Attorney early in the process and all suitable cases are scheduled for mediation. In 2008, the Eighth District had 1,799 new filings (appeals and original actions). The conferencing program mediated 376 appeals. The program settled 138 cases (40%) and dismissed 78 (20%) for jurisdictional reasons.

Statute and/or Court Rule Authorizing Program:

Local Appellate Rule 20

Amount of Court Oversight:

The program is directly administered by the court's staff.

Selection, Qualification, and Training of Neutrals:

Retired appellate court judge and the court's conference attorney perform mediation. The Conference Attorney has received specialized training in negotiation and mediation through Capital University and served as a staff attorney for a number of years before appointment as a conference attorney.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Referral Process:

Docketing statements for appeals are reviewed by a conference attorney to determine whether the Program would assist the courts or parties. Any party may request mediation, but the request does not have to be granted. If an appeal is selected for a mediation conference, the office of the conference attorney will schedule an appointment within 21 days of the filing of the notice of appeal, which counsel and parties are required to attend unless excused by the court.

Number of Available Neutrals:

The court currently has two available staff members that perform mediation and preside over the prehearing conference program.

Payment/Costs/Funding:

The court provides conferences for no cost.

Ohio Tenth District Court of Appeals

Prehearing Conference Program Contact:

David A. Doyle, Esq.
Conference Attorney and Appellate Mediator
Franklin County Court House
373 South High Street, 24th Floor
Columbus, Ohio 43215-4578
Phone: 614-462-4023
E-mail: dad Doyle@co.franklin.oh.us
Fax: 614-462-7249

Program Overview:

The Ohio Tenth District Court of Appeals has a Prehearing Conference Program available to eligible civil cases that are selected by the Appellate Mediator or the court. Parties may also submit a request to undergo mediation. All mediation is performed by the court appointed Appellate Mediator. The deadlines on appeal continue as usual. However, upon motion filed, the court will consider extending the times on appeal in short increments if conducive to settlement and helpful to the parties.

Statute and/or Court Rule Authorizing Program:

Local Rule 4

Amount of Court Oversight:

The Program is directly administered by the court's staff Appellate Mediator.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Selection, Qualification, and Training of Neutrals:

The court appointed Appellate Mediator administers the settlement conference program and conducts the conferences. Mr. Doyle has mediated over 3,400 cases encompassing a broad range of civil and administrative cases with a resolution rate of 56%. Mr. Doyle also has considerable experience as a trial court mediator at the state trial court and federal district court levels.

Referral Process:

The Appellate Mediator performs mediation in about half of the eligible cases filed. Cases that have issues amenable to mediation, such as appeals of money judgments or foreclosure disputes, will be referred, while cases with clear lack of final appealable orders, multiple out of state counsel, or administrative appeals with a governmental board, agency or commission will not likely be referred.

Initial mediation session for selected parties is mandatory and rarely cancelled. Parties can also request mediation by any informal channels or formal channels, such as a formal motion filed, but the request does not have to be granted. A court may also refer a case to mediation; however, these referrals may be more problematic as parties have invested more resources in the case at that point.

Number of Available Neutrals:

The court's Appellate Mediator currently performs all mediations.

Payment/Costs/Funding:

Mediation is offered at no charge to the parties.

Ohio Twelfth District Court of Appeals

Mediation Program Contact:

Gregory M. Clark, Esq.
Conference Attorney
1001 Reinartz Blvd.
Middletown, Ohio 45042
Phone: 513-425-6609
Fax: 513-425-8751

Program Overview:

The Ohio Twelfth District Court of Appeals operates a Mediation Program that utilizes the court's Conference Attorney to perform all mediation sessions. All civil cases are eligible for assignment to the Program and participation is mandatory once a case is selected. A party

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

may also request to participate in the program. The scheduling of a prehearing mediation conference does not automatically stay the time in which briefs or the transcript of proceedings must be filed.

The primary purposes of the prehearing mediation conference are to explore settlement possibilities through mediation, to simplify the issues in the appeal or original action if settlement is not possible, and to address any anticipated procedural problems.

Statute and/or Court Rule Authorizing Program:

Local Rule 21

Amount of Court Oversight:

The program is run by the court and directly administered by the court's Conference Attorney.

Selection, Qualification, and Training of Neutrals:

The Conference Attorney has been working for the court since 1999. He has undergone substantial training in mediation at the National Judicial College and various other mediation certification programs.

Referral Process:

After reviewing docketing materials, a judge, administrator, or the Conference Attorney refers cases when it has determined a prehearing mediation conference would be of assistance to the parties or the court. If a prehearing mediation conference is deemed advisable, participation is mandatory and the court shall notify the parties of the date, time and location of the prehearing mediation conference.

In addition, any party may request a prehearing mediation conference by contacting the conference attorney or by written motion to the court. Such requests may be made confidentially if the requesting party desires. Such requests shall be submitted as soon as possible after initiation of the appeal. Requests for a prehearing mediation conference may or may not be granted by the court.

Number of Available Neutrals:

The Conference Attorney performs all mediation sessions.

Payment/Costs/Funding:

The mediation services are offered at no cost to the parties.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Superior Court of Pennsylvania, Western District

ADR Program Contact:

Ms. Anne Begler
310 Grant Street, Suite 603
Pittsburgh, PA 15219-2297
412-565-7592

Program Overview:

The Appellate Mediation Program was established in October of 2006 in the Eastern District and was expanded to the Western District in September of 2008. The purpose of the Mediation Program is to facilitate settlement or otherwise to assist in the expeditious handling of appeals. It is intended to provide litigants with a prompt, effective, alternative means of creatively resolving disputes without many of the expenses associated with litigation. The mediation process occurs on a fast-track basis during the pre-briefing stage of appeal. Once a case is selected for mediation by the Mediation Coordinator, participation is mandatory. If a case is not resolved in mediation, it will be returned to the docket to be reviewed and resolved by the court in the normal appeals process. According to a press release from the Administrative Office of Pennsylvania Courts, approximately one in three cases chosen for mediation in the Superior Court of Pennsylvania, Eastern District end in settlement.

Statute and/or Court Rule Authorizing Program:

Amount of Court Oversight:

Selection, Qualification, and Training of Neutrals:

Referral Process:

All civil appeals to the Superior Court of Pennsylvania, Western District, are referred to the Mediation Program. By telephone or letter directed to the Court Mediator, Parties may request mediation. In all cases, however, the Mediator will determine which cases are appropriate for mediation. In eligible cases, and simultaneously with the filing of the initial Docketing papers required by the Prothonotary, the Appellant shall submit a separate Mediation Statement. Following review of these materials, the Mediator may designate the appeal for mediation. The Mediator shall promptly schedule a mediation session. If a case is referred for mediation, a briefing schedule shall not be deferred during the pendency of mediation unless the Court determines otherwise. A referral to mediation shall not defer or extend the time for ordering any necessary transcripts. The appellate process will proceed as if mediation had not been considered or initiated.

Number of Available Neutrals: One, the Court Mediator.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Payment/Costs/Funding:

Superior Court of Pennsylvania, Eastern District

ADR Coordinator Contact:

Mr. P. Douglas Sisk
Director, Office of Court Mediation, Superior Court of PA
530 Walnut Street, Suite 311
Philadelphia, PA 19106
215-560-2360
Douglas.Sisk@pacourts.us

Program Overview:

The Appellate Mediation Program was established in October of 2006 to facilitate settlement or otherwise to assist in the expeditious handling of appeals. It is intended to provide litigants with a prompt, effective, alternative means of creatively resolving disputes without many of the expenses associated with litigation. The mediation process occurs on a fast-track basis during the pre-briefing stage of appeal. Once a case is selected for mediation by the Mediation Coordinator, participation is mandatory. If a case is not resolved in mediation, it will be returned to the docket to be reviewed and resolved by the court in the normal appeals process. According to a press release from the Administrative Office of Pennsylvania Courts, approximately one in three cases chosen for mediation in the Superior Court of Pennsylvania, Eastern District end in settlement.

Statute and/or Court Rule Authorizing Program:

No.1 Administrative Order of the Superior Court (October 6, 2006)

Amount of Court Oversight:

Selection, Qualification, and Training of Neutrals:

Referral Process:

All civil appeals to the Superior Court of Pennsylvania, Eastern District, are referred to the Mediation Program. By telephone or letter directed to the Court Mediator, Parties may request mediation. In all cases, however, the Mediator will determine which cases are appropriate for mediation. In eligible cases, and simultaneously with the filing of the initial Docketing papers required by the Prothonotary, the Appellant shall submit a separate Mediation Statement. Following review of these materials, the Mediator may designate the appeal for mediation. The Mediator shall promptly schedule a mediation session. If a case is referred for mediation, a briefing schedule shall not be deferred during the pendency of mediation unless the Court determines otherwise. A referral to mediation shall not defer or

Appellate Alternative Dispute Resolution (ADR) Programs

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extend the time for ordering any necessary transcripts. The appellate process will proceed as if mediation had not been considered or initiated.

Number of Available Neutrals: One, the Court Mediator.

Payment/Costs/Funding:

Rhode Island Supreme Court

Appellate Mediation Program Contact:

Erika Kruse

Licht Judicial Complex, Office of Alternative Dispute Resolution

250 Benefit Street

Providence, Rhode Island 02903

Phone: 401-222-3266

Program Overview:

The Rhode Island Supreme Court has an Appellate Mediation Program that offers mediation services provided by retired judges. Most civil cases that have been appealed from a final judgment are eligible for participation in the Program with the exception of family court appeals, petitions for extraordinary or post-conviction relief, petitions for habeas corpus, prisoner litigation, pro se cases, and juvenile cases.

Within 20 days of filing a notice of appeal, all parties are required to file the Mediation Eligibility Form, and if applicable, the confidential Mediation Statement. After reviewing the forms, the Appellate Mediation Program will attempt to schedule mediation sessions in eligible cases within 30 days. Mediation sessions are scheduled to last at least one hour with additional sessions scheduled as needed.

The time period for ordering a transcript in cases eligible for mediation will be extended to 60 days from the filing of the notice of appeal. Otherwise, the usual timeline for an appeal applies.

Statute and/or Court Rule Authorizing Program:

Provisional Rule A of the Supreme Court Rules of Appellate Procedure

Amount of Court Oversight:

The program is run by the court and the Office of Alternative Dispute Resolution oversees implementation of the mediation program.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Selection, Qualification, and Training of Neutrals:

Retired Judges provide mediation services.

Referral Process:

The Appellate Mediation Program has discretion in determining the assignment and scheduling of eligible cases. The Court may order mandatory participation in appellate mediation sessions, and the Court also encourages parties in any civil case to request participation in the program on a voluntary basis.

Number of Available Neutrals:

Eight retired justices currently participate in the program, but the court may call on outside mediators if necessary.

Payment/Costs/Funding:

Mediation services are provided at no cost to the parties.

Texas Court of Appeals, 4th District

Program Contact:

Veronica Burris, Legal Assistant III
Fourth Court of Appeals
Cadena-Reeves Justice Center
300 Dolorosa, Suite 3200
San Antonio, Texas 78205
Phone: (210) 335-2635
Fax: (210) 335-2762
e-mail: veronica.burris@courts.state.tx.us

Program Overview:

The ADR Justice serves as a neutral. If the Court refers a civil case to the program via its own motion, then participation is mandatory.

Statute and/or Court Rule Authorizing Program: Local Rule 2

Amount of Court Oversight: Limited

Selection, Qualification, and Training of Neutrals: Not involved

Referral Process:

On a party's motion, or on the court's own initiative after reviewing the addendum to the docketing statement, the Court may refer a civil case to alternative dispute resolution.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Number of Available Neutrals: Parties agree on the mediator.

Payment/Costs/Funding:

The court is not involved in the payment process of mediators.

Texas Court of Appeals, 5th District

Alternative Dispute Mediation Program Contact:

Lisa Matz, Clerk of Court

Fifth Court of Appeals

George L. Allen, Sr. Courts Building

600 Commerce St., Suite 200

Dallas, Texas 75202

Phone: 214-712-3450

Fax: 214-745-1083

e-mail: lisa.matz@5thcoa.courts.state.tx.us

Program Overview:

In civil cases, the parties are required to file a docketing statement when the notice of appeal is filed. A section of the docketing statement pertains to Alternative Dispute Resolution/Mediation. The Chief Justice appoints one or two justices on the court to a mediation review committee. Based on the information provided by the parties and the case type, a judge will determine if the case is suitable for referral to mediation. To send the case to mediation, the judge will issue an order and set a timetable for completing the mediation. Upon completion, parties are required to notify the court whether or not the parties have reached an agreement. If the parties do not reach an agreement, the case will proceed according to the appellate timetables.

Statute and/or Court Rule Authorizing Program:

Chapter 154 of the Texas Civil Practice and Remedies Code *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 154.001-.073 (Vernon 1997).

Amount of Court Oversight:

After the court makes the initial determination to send the case to mediation, there is minimal oversight. In some cases, parties may ask the court for additional time to complete the mediation. Parties are required to notify the court of whether or not the case has settled. No details of the mediation are disclosed to the court.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Selection, Qualification, and Training of Neutrals:

By written request, an attorney or non-attorney mediator may ask the court to add their name to the list of neutrals. All attorney and non-attorney mediators on the neutral list have had training in mediation.

Referral Process:

The court refers cases to mediation two ways. First, parties may ask the court to send the case to mediation and sometimes request a specific mediator. Second, upon filing, the court determines if a case is appropriate for mediation.

Number of Available Neutrals:

Currently, the court has approximately 200 neutrals on a list of available neutrals; however, there are many other capable neutrals in the area.

Payment/Costs/Funding:

The parties pay their own mediation fees or costs.

Texas Court of Appeals: 13th District

Appellate Mediation Program Contact:

Dorian Ramirez, Clerk of Court
13th District Court of Appeals
Nueces County Courthouse
901 Leopard, 10th Floor
Corpus Christi, Texas 78401
Phone: 361-888-0416
Fax: 361-888-0794
E-mail: dorian.ramirez@13thcoa.courts.state.tx.us

Program Overview:

Parties have to complete ADR section of docketing statement.

The following cases are the types that are mediated: (1) cases in which both parties agree to mediate; (2) money judgments up to \$20,000 exclusive of costs and interest; (3) family law cases excluding custody disputes, termination of parental rights, and juvenile cases; (4) forfeiture of property cases; (5) there may be occasions when a panel will order post-briefing mediation.

If someone needs to contact the court about mediation, they must go through the clerk.

Appellate Alternative Dispute Resolution (ADR) Programs

(continued)

Statute and/or Court Rule Authorizing Program:

TEX. CIV. PRAC. & REM. CODE ANN. §§ 154.001-.073 (Vernon 1997 & Supp. 2003).

Amount of Court Oversight:

The court has a mediation committee made up of a justice, clerk and chief staff attorney.

The Court prefers that parties select their own mediator. If the parties can't agree on a mediator, the court will select one for them.

Selection, Qualification, and Training of Neutrals:

Application for appointment as a mediator must be completed.

Referral Process:

Cases meeting the following criteria are automatically referred to mediation: (1) cases in which both parties agree to mediate; (2) money judgments up to \$20,000 exclusive of costs and interest; (3) family law cases excluding custody disputes, termination of parental rights, and juvenile cases; and (4) forfeiture of property cases. On the Court's own initiative, a case may be referred to mediation after briefing but prior to submission.

Number of Available Neutrals: N/A

Payment/Costs/Funding: N/A

2012 Council of Chief Judges
of the State Courts of Appeal

33rd Annual Conference

Solve My Problem

*E-filing in North Carolina:
Lessons Learned and
Tips for Success*

Christie S. Cameron Roeder
Clerk, North Carolina Supreme Court
Friday, November 16, 2012
Houston, Texas

E-filing in North Carolina: Lessons Learned and Tips for Success

1. Communicate regularly with your Chief and stay on the same page
2. Designate a staff member to lead the development effort
3. Bring as many of the people affected into the design process as you can! Can't be overstated. (Clerk's staff, administrators, judges, attorneys, etc)
4. Investigate other e-filing systems (phone calls, online visits, on-site visits)
5. Investigate your rules, and how you want to enhance them?
6. Will you have an "in-house" system or a vendor system?
 - a. Vendor paid by-the-hour or fixed rate?
 - b. Who owns the end product? (You, Vendor, both?)
 - c. Who maintains the end product and at what cost?
 - d. When is the product considered complete?
 - e. What type of training will be given?
 - f. Are improvements/refinements part of the purchase price?
7. Think through the key decisions "up front":
 - a. What documents are you going to allow to be filed electronically?
 - b. What is your "day" for filing electronically?
 - c. What type of signature is requested for the filing attorney and their associates
 - d. What file formats will you allow?
 - e. Who can e-file? Attorneys only? Pro se?
 - f. How will you conduct your registration process?
 - g. How will the clerk be notified of new documents?
 - h. What if the system is down and the office is closed? Snow day?
 - i. How will the filing party be notified that the document has been accepted or rejected?
 - j. Will you allow service to the other parties via the e-filing site? How?
 - k. How will exhibits and attachments be handled?
 - l. Will the e-filed documents be available on the web? How about juvenile cases?
 - m. What will the fee be, if any, and how will your normal fees be collected?
 - n. What type of document management system will you use to store the documents?
 - o. How will you get the case management system and the e-filing system to "speak" with one another so that the information is transferred seamlessly?
8. Trial Runs – TAKE PLENTY OF TIME WITH THIS STEP!
 - a. Find attorneys willing to "test" the new system
 - b. Run the test system independently of your "live" system
 - c. Let the Clerk's Office work with it for a while to develop a comfort level
9. Marketing
 - a. Use the Press
 - b. Demonstrate to the Law firms and bar associations through CLE programs
 - c. Offer places to train
 - d. Have line-by-line instructions on the web site with video demonstrations

2012 Council of Chief Judges
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Solve My Problem

2012 E-Filing Survey as Compiled by the
National Conference of Appellate Court Clerks

Christie S. Cameron Roeder
Clerk, North Carolina Supreme Court
Friday, November 16, 2012
Houston, Texas

2012 E-Filing Survey as compiled by the
National Conference of Appellate Court Clerks

Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??	
Alabama Supreme Court	Robert Griffith	334-229-0700	Yes	N/A											
Alabama Court of Civil Appeals	John Wilkerson, Jr.	334-229-0733	Yes	N/A	In-House	N/A	About 5 Years	Yes	No	Yes	In-House	Yes	N/A	In-house	See Note 19
Alabama Court of Criminal Appeals	Lane Mann	334-229-0752													
Alaska Supreme Court and Court of Appeals	Marilyn May	907-264-0606	No	Yes	Vendor	GeoNorth	N/A	Yes	No	Will be	Yes	N/A	N/A	RFP	See Note 1
Arizona Supreme Court	Rachelle Resnick	602-452-3396	Yes	N/A	Vendor	Intresys	Pilot 11/1/10, transition to mandatory e-filing	Yes	No	No	N/A	No	OnBase	RFP	See Note 2
Arizona Court of Appeals Div. 1	Ruth Willingham	602-542-4821	Yes	N/A	Vendor	Intresys	Pilot 11/1/10, transition to mandatory e-filing	Yes	No	No	N/A	No	OnBase	RFP	See Note 3
Arizona Court of Appeals Div. 2	Dan Baillargeon	520-628-6954	Yes	N/A	In-House	N/A	About 10 years	Yes	No	Yes	In-House	No	SIRE	In-house	See Note 20

2012 E-Filing Survey as compiled by the
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Arkansas Supreme Court and Court of Appeals	Denisse Parks Tim Holtouff	501-682-6834 501-682-9400	No	Yes	In-House	Context	Pilot	Yes	No	Not Yet	It will be				See Note 21
California Supreme Court	Jorge Navarrefe (sp?)	415-865-7002	No	Yes	In-House	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 25
California Court of Appeal 1st District	Diana Hebert	415-865-7264													
California Court of Appeal 2nd District	Joseph Lane	213-830-7112	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 4
California Court of Appeal 3rd District	Colette Bermen??	916-654-0209	No	Yes											
California Court of Appeal 4th District	Frances	619-744-0760	No												See Note 22
California Court of Appeal 5th District	Charlene Ynson	559-445-5989	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 5
California Court of Appeal 6th District	Michael Yerly	408-277-1004													
Colorado Supreme Court	Bryan Medino	303-837-3787	No	Yes	In-House	N/A	N/A	N/A	Yes	It will be	N/A	N/A	N/A	N/A	See Note 58

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Colorado Court of Appeals	Christopher Ryan	303-837-3767													
Connecticut Supreme and Appellate Court	Michele Angers	860-757-2219	No	Yes	In-house	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 23
Mashntucket Pequot Tribal Court	Genevieve Salvatore	860-572-6156													
Delaware Supreme Court	Cathy Howard	302-739-4155	Yes	N/A	Vendor	LexisNexis	About 5 Years	Mostly	No	No CMS	N/A	Not sure	N/A	Not Sure	See Note 25
D.C. Court of Appeals	Julio Castillo	202-879-2725	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Florida Supreme Court	Brandon McCarthy	850-488-0125	Yes	N/A	In-House	N/A	About 7 Years +	Yes	Yes	It will be	It will be	It will be	N/A	Not Sure	See Note 27
Florida Court of Appeals 1st District	Karen (Chief Deputy)	850-488-6151	Yes	N/A	Vendor	Russ Vaughn	1 1/2 Year	Yes	Yes	Yes	Yes	Yes	N/A	Not Sure	See Note 28
Florida Court of Appeals 2nd District	James Birkhold	863-499-2290	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 29
Florida Court of Appeals 3rd District	Mary Blanks	305-229-3252	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Florida Court of Appeals 4th District	Marilyn Beuttenmuller	561-242-2000	No	Yes	In-house	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

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Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??	
Florida Court of Appeals 5th District	Susan Wright	386-255-8600	Yes	No	Vendor		Pilot	N/A	N/A	N/A	N/A	N/A	N/A	See Note 30	
Florida State Wide E-File Project	Tom Holland	850-487-7072	No	Yes	Vendor	Florida Association of Court Clerks	N/A	N/A	N/A	It will be	No	It will be	N/A	RFP	See Note 32
Georgia Supreme Court	Therese Barnes	404-656-6429	Yes	N/A	Vendor	TriVri	2 Years	Yes	No	Yes	Yes	Yes	N/A	Open Source	See Note 33
Georgia Court of Appeals	Holly Sparrow	404-651-8498	Yes	N/A	Vendor	TriVri	Since Dec 2009	Yes	No	No	It will be	Yes	N/A	Sole Source	See Note 36
Hawaii Supreme and Intermediate Court of Appeals	Naomi Komenaka	808-539-4919	Yes	N/A	Vendor	Wirevibe + In-house	About 18 months	Yes	No	Yes	See Note 34	Yes	FileNet	RFP	See Note 34
Idaho Supreme Court and Court of Appeals	Steve Kenyon	208-334-2210	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 6
Illinois Supreme Court	Melissa Roth	217-557-2021	Yes	N/A	Vendor	i2file	Pilot since 1/12/12	Yes	Not sure	No	It will be	Yes	See Note 37	RFI and Open Bid	See Note 37
Illinois Court of Appeals 1st District	Cindy Wile	312-793-5950	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 38
Illinois Court of Appeals 2nd District	Robert Mangan	847-695-3750	Yes	N/A	Vendor	i2file	October 2011	Yes	No	Not Sure	Not Sure	Yes	N/A	Not Sure	See Note 40

2012 E-Filing Survey as compiled by the
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Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??	
Illinois Court of Appeals 3rd District	Gist Fleshman (spoke with Berb)	815-434-5050	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 41	
Illinois Court of Appeals 4th District	Carla Bender	217-782-2586	No	Yes	Vendor	Goodin Assoc. Limited	6 Months	Yes	No	No	Yes	Yes	N/A	Don't know	See Note 42
Illinois Court of Appeals 5th District	John Flood	618-242-3120													
Indiana Supreme, Court of Appeals and Tax Court	Kevin Smith	317-232-2540	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 7	
Iowa Supreme and Court of Appeals	Donna Humpal	515-281-4101	No	Yes	Vendor + In-house	Tybera	N/A County pilot in 2009	Mostly	No	Being Integrated	No	Yes, other vendor	N/A	RFP	See Note 8
Kansas Supreme + Court of Appeals	Carol Green	785-296-3229	No	Yes	Vendor	Tybera	Nov-12	N/A	N/A	Being Integrated	No, in-house	With CMS	N/A	RFP with 3 bidders	See Note 9
Kentucky Supreme Court	Susan Clary	502-564-5444	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Kentucky Court of Appeals	Sam Givens, Jr.	502-573-7920	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 24	
Louisiana Supreme Court	Rachel Edelman	504-310-2308	Pilot		In-house		??	Limited	Yes	Yes	N/A	Yes	N/A	N/A	

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Louisiana Court of Appeal 1st Circuit	Christine Crow	225-382-3000	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 43
Louisiana Court of Appeal 2nd Circuit	Debbie Ware	318-227-3701	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Louisiana Court of Appeal 3rd Circuit	Roberta Barnette	337-433-9403	No	Yes	Probably in-house	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 45
Louisiana Court of Appeal 4th Circuit	Dennis Henricks	504-412-6001												
Louisiana Court of Appeal 5th Circuit	Peter Fitzgerald	504-376-1400	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 46
Maine Supreme Judicial Court	Matthew Pollack	207-822-4146	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 10
Maryland Court of Appeals	Bessie Decker	410-260-1508	No	Yes	Vendor	Tyler	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 44
Maryland Court of Special Appeals	Leslie Gradet	410-260-1450	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 46
Commonwealth of Massachusetts Supreme Judicial Court	Joan Kenny	617-557-1020	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

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Commonwealth of Massachusetts Appeals Court	Joseph Stanton	617-723-1518													
Michigan Supreme Court	Corbin Davis	517-373-0120	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		
Michigan Court of Appeals	Kim Houser	517-373-0786	Yes	N/A	Vendor	Tyler Technologies	4 Years	Yes	No	No	No	Not sure	N/A	Not Sure	See Note 48
Minnesota Supreme Court and Court of Appeals	Bridget Gernander	651-297-5529	No	Yes	Vendor	CourtTech	Looking at 2013	Yes for CMS	No	Yes	Yes	Yes	N/A	RFP and Sole Source	See Note 11
Mississippi Supreme Court and Court of Appeals	Betty Sephton	601-359-2175	No	Yes	N/A	N/A	N/	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 39
Missouri Supreme Court	Jo Ann Chojnacki	573-751-4377	Yes	N/A	In-House	N/A	Since Sept. 2011	Yes	See Note	See Note 49	No	No	Their CMS	Open Bid	See Note 49
Missouri Court of Appeals Eastern District	Laura Roy	314-539-4311	No	Yes	In-house	N/A	Going live April 2, 2012	N/A	N/A	It will be	No	N/A	N/A	N/A	See Note 52
Missouri Court of Appeals Western District	Terence Lord	816-889-3683	No	Yes	In-House	N/A	Going Live May 2012	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

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Missouri Court of Appeals Southern District	Sandra Skinner	417-895-6811	No	Yes	In-house	N/A	Going live June , 2012	N/A	N/A	It will be	Yes	Yes	N/A	See Note 53	
Montana Supreme Court	Rex Renk	406-444-3858	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	RFP	See Note 51	
Nevada Supreme Court	Tracie Linderman	775-684-1600	Yes	N/A	Vendor	Tybera	3 Years	Yes	No	No	No	No	SIRE	RFP	See Note 12
New Hampshire Supreme Court	Alison (Deputy Clerk)	603-271-2646	No	Yes	N/A	N/A	Looking at 2015	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
New Jersey Supreme Court	Gail Haney	609-984-7787	No	Yes	Vendor	CSI Technology Group	Getting started soon	N/A	N/A	It will be	Yes	Not sure	Not sure	RFP	See Note 13
New Jersey Superior Court Appellate Division	Karen	609-292-6995	No	Yes	Vendor	CSI Technology Group	Getting started soon	N/A	N/A	Yes	Yes	Yes	N/A	Open bid/sole	See Note 57
New Mexico Supreme Court	Kathleen Jo Gibson	505-827-4860	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 50
New Mexico Court of Appeals	Gina Maestas	505-827-4925													
New York Court of Appeals	Andrew Klein	518-455-7812													

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Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
New York Appellate Division Supreme Court 1st Dept	Susana Molina Rojas	212-340-0435													
New York Appellate Division Supreme Court 2nd Dept	April Agustino (Linda)	718-722-6307	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note55
New York Appellate Division Supreme Court 3rd Dept	Michael Novack	518-474-3609													
New York Appellate Division Supreme Court 4th Dept	Patricia Morgan	585-530-3100													
New York Appellate Term Supreme Court 1st Dept	Robert Kanter	212-374-8500													
New York Appellate Term Supreme Court 2nd Dept	Paul Kenny	347-401-9593													
North Carolina Supreme Court	Christie Cameron/ Marcus	919-831-5700 919-831-5747	Yes	N/A	In-house	N/A	At least 4 years	Yes	No	Yes	Yes	Yes	N/A	N/A	See Note 54

2012 E-Filing Survey as compiled by the
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Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??	
North Carolina Court of Appeals	John Connell	919-733-3561													
North Dakota Supreme Court and Court of Appeals	Penny Miller	701-328-2221													
Ohio Supreme Court	Amy Reitz	614-387-9540	No	Yes	N/A	N/A	N/A	N/A	N/A	It will be	N/A	See Note 79	See Note 79	N/A	
Oklahoma Supreme Court, Court of Criminal, and Court of Civil Appeals	Michael Richie	405-521-2163													
Oregon Supreme Court and Court of Appeals	Rebecca Osborne	503-986-5555													
Pennsylvania Supreme Court	Charles Johns Cindy Schmith	215-560-6374 717-795-2000	No	Yes	In-house	N/A	Pilot begins 3/19/12 at	N/A	N/A	Yes	Yes	Yes	N/A	N/A	See Note 59
Pennsylvania Superior Court	Karen Bramblett	215-560-5801	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 60

2012 E-Filing Survey as compiled by the
National Conference of Appellate Court Clerks

Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??	
Pennsylvania Commonwealth Court	Kristen Brown	717-255-1600													
Rhode Island Supreme Court	Debra Saunders	401-222-3272													
South Carolina Supreme Court	Daniel Shearouse	803-734-1080	No	Yes	Vendor	Ctrack	N/A	N/A	N/A	It will be	Yes	N/A	N/A	Open Bid	See note 61
South Carolina Court of Appeals	Tanya Gee	803-734-1890													
South Dakota Supreme Court	Shirley Jameson-Fergel	605-773-3511	No	Yes	Vendor	Tyler Technologies	Nov-11	N/A	N/A	Will be	Yes	It will be	N/A	RFP	See Note 64
Tennessee Supreme Court, Court of Appeals and Court of Criminal Appeals	Michael Catalano	615-741-2681	No	Yes	Vendor	LT CourtTech	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 14
Texas Supreme Court (Civil)	Blake Hawthorne	512-463-1312	Yes	N/A	Vendor	NIC	About 10 Years	Yes	Yes	No	In-house	No	N/A	RFP	See 35 Note
Texas Court of Criminal Appeals	Louise Pearson	512-463-1551	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 63

2012 E-Filing Survey as compiled by the
National Conference of Appellate Court Clerks

Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Texas Court of Appeals 1st District	Karinne McCullough (Hebert)	713-274-2700	Yes	N/A	State	NIC	Yes	N/A	No	In-house	No	N/A	N/A	See Note 65
Texas Court of Appeals 2nd District	Debra Spisak Megan (CDC)	817-884-1900	No	Yes	Vendor	N/A	N/A	N/A	Will be	No	N/A	N/A	N/A	See Note 66
Texas Court of Appeals 3rd District	Jeffrey Kyle	512-463-1709	Yes	No	State	NIC	About 1 Year	Yes	Yes	Will be	In-house	It will be	N/A	See Note 67
Texas Court of Appeals 4th District	Keith Hottle	210-335-2510	Yes	No	State	NIC	Since June 2011	Yes	No	Yes	In-house	No	State	See Note 68
Texas Court of Appeals 5th District	Lisa Matz	214-712-3450												
Texas Court of Appeals 6th District	Debbie Autrey	903-798-3046	Yes	N/A										
Texas Court of Appeals 7th District	Peggy Culp	806-342-2650	No	N/A	Vendor	State of Texas	N/A	N/A	N/A	Will be	No	N/A	N/A	See Note 70
Texas Court of Appeals 8th District	Denise Pacheco	915-546-2240	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 72
Texas Court of Appeals 9th District	Carol Flores	409-835-8402	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 69
Texas Court of Appeals 10th District	Sharri Roessler	254-757-5200												

2012 E-Filing Survey as compiled by the
National Conference of Appellate Court Clerks

Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??	
Texas Court of Appeals 11th District	Sherry Williamson	254-629-2638													
Texas Court of Appeals 12th District	Cathy Lusk	903-593-8471													
Texas Court of Appeals 13th District	Dorian Ramirez	301-888-0697													
Texas Court of Appeals 14th District	Christopher Prine	713-655-2840													
Texas Office of Court Administration	Casey Kennedy	512-463-1603	N/A	N/A	See Note 71	NIC	Since 2002	No	Yes	No	No	No	CMS	RFP	See Note71
Utah Supreme Court	Pat Bartholomew	801-238-7967	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Utah Court of Appeals	Lisa Collins	801-578-3907	No	Yes	In-house	N/A	N/A	N/A	N/A	It will be	Yes	It will be	N/A	N/A	See Note 75
Vermont Supreme Court	Lee Suskin	802-828-3278	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 62
Virginia Supreme Court	Patricia Harrington	804-786-2251	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 15
Virginia Court of Appeals	Cynthia McCoy (Justin Sultan)	804-371-8428													

2012 E-Filing Survey as compiled by the
National Conference of Appellate Court Clerks

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Washington Supreme Court	Ronald Carpenter	360-357-2077	No	Yes	In-house	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 16
Washington Court of Appeals Division 1	Richard Johnson	206-464-7750													
Washington Court of Appeals Division 2	David Ponzoha	253-593-2970													
Washington Court of Appeals Division 3	Renee Townsley	509-456-3082													
West Virginia Supreme Court of Appeals	Rory Perry, II	304-558-2601													
Wisconsin Supreme Court and Court of Appeals	John Voelker (Babi)	608-261-4300	Yes	N/A	In-house	N/A	About 5 years	Yes	No	Yes	Yes	N/A	N/A	N/A	See Note 76
Wyoming Supreme Court	Carol Thompson	307-777-7316	Yes	N/A	Vendor	LT CourtTech	Jul-08	Yes	No	Yes	Yes	Not sure	N/A	See Note 54	See Note 55
Guam Supreme Court	Hannah Gutierrez-Arroyo	671-475-3120	Yes												
U.S. Virgin Islands Supreme Court	Veronica Handy	340-774-2237	Yes												

2012 E-Filing Survey as compiled by the
National Conference of Appellate Court Clerks

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
United States Supreme Court	Gary Kemp	202-479-3029	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 78
U.S. Court of Appeals DC Circuit	Mark Langer (Sabrina)	202-216-7300	Yes	N/A	Other	Administrative Office of U.S. Courts	5 Years	Yes	N/A	See Note 73			N/A		See Note 73
U.S. Court of Appeals 1st Circuit	Richard Donovan (Susan)	617-748-9057	Yes	N/A	Other	Administrative Office of U.S. Courts	Since 2010	N/A	N/A	Yes	Yes	Yes	N/A		See Note 74
U.S. Court of Appeals 2nd Circuit	Roseann MacKechnie	212-857-8603													
U.S. Court of Appeals 3rd Circuit	Marcia Waldron	215-597-2995													
U.S. Court of Appeals 4th Circuit	Patricia Conner	804-916-2700													
U.S. Court of Appeals 5th Circuit	Charles Fulbruge, III	504-310-7700													
U.S. Court of Appeals 6th Circuit	Leonard Green	513-564-7000													
U.S. Court of Appeals 7th Circuit	Gino Agnello	312-435-5850													
U.S. Court of Appeals 8th Circuit	Michael Gans	314-244-2400													

2012 E-Filing Survey as compiled by the
National Conference of Appellate Court Clerks

Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??	
U.S. Court of Appeals 9th Circuit	Cathy Catterson	415-556-9800													
U.S. Court of Appeals 11th Circuit	John Ley, Jr.	404-335-6205													
U.S. Court of Appeal Federal Circuit	Jan Horbaly	202-633-6550													
U.S. Court of Appeals for the Armed Forces	William DeCicco	202-761-1448	Yes	N/A	In-house	N/A	About 18 months	Yes	No	No	N/A	No	See Note 132	Other (In-house)	See Note 17
U.S. Court of Appeals for Veterans Claims	Gregory Block	202-501-5970	Yes	N/A	Other	Administrative Office of U.S. Courts	4 Years	Yes	N/A	Yes	Yes	N/A	See Note 133	Other (In-house)	See Note 18
U.S. Court of Federal Claims	Brian Bishop	202-219-9657													
U.S. Court of International Trade	Leo Gordon	212-264-2814													
U.S. Tax Court	Robert DiTrollo	202-606-8754													
U.S. Army Court of Criminal Appeals	Malcom Squires	703-588-7908													
U.S. Air Force Court of Criminal Appeals	Steven Lucas	202-767-1550													

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Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
U.S. Coast Guard Court of Military Appeals	Jane Lim	202-267-0045												
U.S. Navy-Marine Corps Court of Criminal Appeals	Robert Troidl	202-685-7698												
Administrative Office of U.S. Courts	Michelle Shalcky (sp?)	202-502-1365	N/A	In-house w/Vendor Suport		Varies	Yes	Yes	Yes	Yes	Yes		Bid through Gov. Agency	See Note 77

2012 e-filing survey notes

#	Court	Notes
1	Alaska Supreme Court and Court of Appeals	They are in the process of developing a new CMS with Alaska vendor GeoNorth that will include e-filing, but haven't really started on that component yet. Could send a copy of their RFP. They are very happy with the way their CMS is coming along. They aren't currently planning to use a document management system.
2	Arizona Supreme Court	They went live with pilot on 11/01/10, and are currently out of pilot and transitioning to mandatory e-filing for attorneys. They would like enhancements to the existing product for both the filer and office modules. This is part of the Court's effort to have one e-filing system for the entire state. She is the business team lead for the three Arizona appellate Courts' transition to their new e-filing system.
3	Arizona Court of Appeals Div. 1	This is part of the Court's effort to have one e-filing system for the entire state.
4	California Court of Appeal 2nd District	Yes, investigating but not getting anywhere yet.
5	California Court of Appeal 5th District	They are not currently e-filing in California (any of the appellate or Supreme Court), but they are interested in doing so. They are in the beginning stages of accepting electronic documents and, for some, actually electronically file stamping and treating the e-copy as the official Court record (their version of e-filing). Can you please share the answers to your questions when you have them compiled?
6	Idaho Supreme Court and Court of Appeals	No e-filing. Probably 2 years away but very interested in what others are doing.
7	Indiana Supreme, Court of Appeals and Tax Court	They do not have e-filing, but would like to see a summary of the responses to our listserv survey, as they are in a similar boat in Indiana.
8	Iowa Supreme and Court of Appeals	They are not e-filing yet, but it is fast approaching. Using pilots in some District Courts and have 4 counties 100% e-filing. This includes all cases from small claims through Class A felonies (highest felony in Iowa). It is mandatory for all litigants (attorneys and self represented), but have a safety net in place for a party to seek an exemption (few number requesting exemption). They hope to have the appellate side up and running closer to the end of the year. They used a vendor with a lot of in-house input. They have their own tech group watching over everything and a Business Advisory Committee that meets once a week to go over details and issues (make technology fit the business). Their Appellate side is not e-filing yet, but they began 1st pilot county in early 2009. They had bumps in the road, but it is a massive project with incredible security matrix, etc. The lower Courts "grumbled" in the beginning, but once they passed the initial learning curve they liked it. For example one county had roughly 1/2 the staff ill but they still managed to get the work done.

2012 e-filing survey notes

#	Court	Notes
8	Iowa Supreme and Court of Appeals Continued	They are integrating their e-filing product with their CMS. The filer provides a lot of the information and the clerk's staff reviews it for accuracy and can modify if needed. If the data is ok, it is "accepted by the clerk's staff and the data transfers to CMS. When the appellate level goes live, they will be able to walk through their docket, click on docket entries and "package" the appropriate material for the Court and then with a couple of clicks move the case (including District Court record and appellate briefs) to the appropriate appellate court. They use a number of vendors for their product. Their appellate processing system is Zirous, and the e-flex, e-filing piece is Tybera. The e-filing product does have a document storage component that is done by another vendor.
8	Iowa Supreme and Court of Appeals Continued	Patience. Expect bumps in the road--nothing is perfect at the beginning. Expect to hear more complaining on every level at the beginning than you can possibly imagine--the prospect of change apparently is terrifying to most. It's very important to know exactly what you want in before the process begins and then be willing to change your model as you move forward and discover the finer details of reality. The project is massively complex--having a clearly defined business plan prior to beginning the project is important. Also, have in place a decision making body that can answer the tech questions of do we program to do this or this relatively quickly. Their BAC (business advisory committee) performs that function and then seeks large policy answers from the supreme court, and is composed of voting members and non-voting/support/tech/rules/etc members. Voting members include three district court judges, a court of appeals judge, a district court administrator, two district court clerks, the state public defender, a county attorney-prosecutor, a juvenile court officer, and two practicing attorneys. The non-voting members include the head of our IT department, one of his support staff who does the minutes and coordinates the meetings, myself, two senior (retired) district court/associate
8	Iowa Supreme and Court of Appeals Continued	As an additional note, while the appellate courts are not e-filing yet, they are using e-records from their district courts (the four that are e-filers). Currently, the process for "pulling-over" those e-files is labor intensive for the appellate court clerk's office, however, they believe they have a solution to that and they will be meeting with the primary vendors (Tybera) and some other tech people to walk through potential solutions. The judges have not had a lot of complaints about the use of the e-records. The records can be word searched, which is very helpful. Some of their appellate judges and supreme court justices have asked that they scan in the appellate briefs and appendixes so they can practice using only the computer to review them and write opinions. One supreme court justice is very proud of the fact that he went entirely paperless in January and continues to do that (unless they refuse to scan items in for him--which they do for one type of work they do as they don't have the time to scan that many single documents)he even showed how he bookmarks the briefs and takes notes and has questions typed in and that he only took his ipad-type device on the bench for oral arguments and it work great! Tybera seems to be
9	Kansas Supreme + Court of Appeals	They are currently in the process of implementing e-filing. They have let a contract and are in preliminary meetings with the vendor Tybera (same as Iowa). Their projected implementation is November 2012. Their e-filing will be integrated into their CMS, which is an in-house development on Oracle. They used RFP with 3 bidders who made presentations in Topeka. No wisdom to share yet, but very optimistic about the success of the project.
10	Maine Supreme Judicial Court	Have not gotten to the developing part.

2012 e-filing survey notes		
#	Court	Notes
11	Minnesota Supreme Court and Court of Appeals	They have not started with implementation (looking at 2013). They are very satisfied with their CMS and optimistic about e-filing rollout. They used RFP for their CMS many years ago, and sole source for upgrades.
12	Nevada Supreme Court	Their Court does not allow pro se litigants to e-file, and they believe that has saved them a ton of headaches. On the other hand it means that they can't mandate e-filing, so they have to deal with documents filed electronically and the "old-fashioned" way. LT Court did a great job on their CMS, but they already had e-filing in place. Tybera and LT Court worked really well together in getting their two systems integrated. "They are pretty much seamless."
13	New Jersey Supreme Court	They are in the process of implementing e-filing. E-filing is a component of a contract with a vendor who recently provided new CMS for the New Jersey Supreme Court and the Appellate Division of Superior Court. Their vendor is CSI Technology Group in Keasbey, NJ (csico.com). They are satisfied with the vendor's CMS. The e-file product is not yet a part of their CMS, but it will be.
14	Tennessee Supreme Court, Court of Appeals and Court of Criminal Appeals	They are Developing a new CMS with LT CourtTech. The Appellate Court Technology Strategic Plan is to Implement e-filing once the new CMS and a document management system are implemented.
15	Virginia Supreme Court	The only 'e-filing" that they accept is petitions for rehearing, which are filed with them as an attachment to an e-mail. Contact if want more information.
16	Washington Supreme Court	No e-filing, only as an attachment to e-mail. However, they are in the process of in-house development with their AOC of electronic filing. They hopefully will be online by mid 2013.
17	U.S. Court of Appeals for the Armed Forces	Their e-filing system was developed in-house; no software was developed for the current system. They are so far satisfied with their system. The attorneys seem to like it. It took their court staff some time to get used to it. Their document management is simple routing of PDF filings and use of electronic folders. They would like to know our impressions of LT CourtTech's product. They are seriously considering issuing an RFP soon. Everyone who has obtained their services seems to be very satisfied.
18	U.S. Court of Appeals for Veterans Claims	The Court uses the Case Management/Electronic Case Filing program fielded by the Administrative Office of the U.S. Courts (AO) to federal appellate Courts. They have been using it since 2008 with very positive results. Defer to responses from the AO regarding the programs' procurement and development.

2012 e-filing survey notes

#	Court	Notes
19	Alabama Court of Civil Appeals	If you could get a unified behind the scenes software for all Courts in the State, it would be easy to transfer records, briefs, etc between Courts. They still require to submit about 5 paper copies of the filing electronically. Create the electronic environment just as it was paper, to not create any new problems in the CMS. They went through several interim versions of the e-filing rules. They do scan documents if the attorneys do not file electronically, but there is not much paper filing. They limited e-filing to lawyers in rules, but if a pro-se wants to e-file, they can. The system generates an electronic receipt (with an attached copy of their brief) for lawyers that e-file, and they can forward that to opposing counsel. Contact Robert Griffith at the AL Supreme Court. He built a system that mimics what the Clerk's office does after observing the Clerk's office for about 2 months.
20	Arizona Court of Appeals Div. 2	They have used their in-house developed system since about 2001 (Probably longer). Mohyeddin Abdulaziz developed the In-House software ODS plus (Online Docketing System Plus). Mo has gone to other Courts to show the system they developed (Not sure if he has presented their system in Louisiana). If there are any questions, please feel free to contact him at IT@appeals 2.az.gov
21	Arkansas Supreme Court and Court of Appeals	Currently on a pilot program, the attorneys can file voluntarily, briefs only. They are using the software Context, but their IT staff is making modifications to the software. Contact Tim Holtouf (sp?) at 501-682-9400. for the more technical questions.
22	California Court of Appeal 4th District	The Court does not accept e-filing, but they request an electronic version on a PDF (no hyperlinks). Lawyers can file in through the website or via e-mail. IT email: james.chavez@jud.ca.gov See website for the requirements of e-file at the Appellate Courts level at www.courts.ca.gov.
23	Connecticut Supreme and Appellate Court	Only accepts motions for extension of time via e-mail at this time. They are at the very beginning stages of investigating. One of the issues is pro-se. Their CMS and e-file system will be connected. They are still at the very beginning. A judge sponsor would be helpful, to get IT on the move. They are looking into SharePoint program that makes packets of the e-filings (puts writs, oppositions, replies, etc).
24	Kentucky Court of Appeals	They have several committees investigating e-filing, but are not accepting e-filing at this time. They have a proposal before the state legislature to get approval to move forward.
25	California Supreme Court	They do not accept e-filing yet, but they are looking into it. They have e-submission in PDF format, but parties still have to submit paper copies.
26	Delaware Supreme Court	Mandatory E-file, except pro- se litigants, as they still have to use paper. Now with e-file they have until midnight to file, so there is after hours filing like that. They are very satisfied with e-filing.
27	Florida Supreme Court	They are working on switching from In-house e-filing to a software provided by a vendor.
28	Florida Court of Appeals 1st District	The Supreme Court is looking into creating one software for all the Courts in Florida.

2012 e-filing survey notes		
#	Court	Notes
29	Florida Court of Appeals 2nd District	The Court only accepts briefs and summaries in .doc format via e-mail. Florida has a team of IT in the Supreme Court to work a state wide system. Contact Denise Overstreet (850) 487-7072 for more information about the state wide project (vendors, etc)
30	Florida Court of Appeals 5th District	Only e-file by the public defender's office and AG's Office. They accept briefs via e-mail. Contact State Court Administrator's office 850-922-5081.
31	California Court of Appeal 3rd District	They are moving to accept certain filings via e-mail, but are in the beginning stages of investigating e-filing software.
32	Florida State Wide E-File Project	Working on a state-wide level e-file portal for all courts. The Trial Court Clerks are accepting e-filing, so all the Trial Court and Appellate Clerks entered in a interagency agreement. The appellate level share one CMS (developed in-house). The District Courts have their own CMS. In developing this, they hired a consultant to assist with the in-house development of the CMS. The consultant trained their in-house staff to assist with system troubleshooting. Once the consultant finishes with the set up, they will be no longer needed. They believe that was one of the best decisions they made with the project.
33	Georgia Supreme Court	Have a dedicated staff to take the steps towards the "new." Their vendor worked with the Clerk's Office staff to create a software that was custom. They are looking to make a few expansions to make it more user friendly. Their e-filing system allows the Clerk's office to bundle documents, circulate them electronically and get the votes electronically as well.
34	Hawaii Supreme and Intermediate Court of Appeals	Their vendor modified their current software to meet their needs. Their previous vendor, ACS, was in Texas, but they stopped using it (they would not recommend them). They are moving into a state wide project. They have a "how to" video on their website http://www.courts.state.hi.us/legal_references/efiling.html The parties do the filing and the inputting of the case. They give free copies to the parties during the life of the case, but one can buy documents electronically as well. The system docket stamps the filing electronically and they can go to the appropriate department. They are working on implementing e-filing for criminal cases. Their system is composed of several parts that are linked.
35	Texas Supreme Court (Civil)	E-filing is mandatory. They are looking into launching a RFP to look for a new vendor in a few weeks, (although they are satisfied with their product). They believe that an allowance for fee exceptions in the case of indigent parties and/or government agencies would be helpful. This is something a bit complicated when using a vendor, since they charge a fee for e-filing. Their vendor is NIC, and their website is www.egov.com . The e-filing program is a state wide service, but not all the Courts are using it. Mr. Hawthorne would like to see the results of the survey when completed.

2012 e-filing survey notes

#	Court	Notes
36	Georgia Court of Appeals	They have limited e-filing at this time. The attorneys get electronic filing notices and orders. They are looking into a new CMS, and the new CMS will allow them to issue electronic opinions as well. They are looking into electronic records (for record lodges) as well. Words of wisdom: The vendor really has to know the processes of the Court to make the software work for the Court. Financing may be an issue (legislative appropriation), so having a plan for consistent funding is a very good idea. Their vendor is a small vendor, but they are very accommodating, and a good value for price. Communication with the vendor is always important. The project will require a lot of time to make the system fit the business. They check the e-filings and can reject if the filings are not compliant with the Court rules.
37	Illinois Supreme Court	They are in a pilot program with the AG, Public Defenders and DA only when they are adverse parties to one another. The software i2file is developed by Consysis. Their e-file is a delivery system, they still have to serve opposing party via hard copy. Each page of a pleading is marked as e-filed. Their software does not allow them to accept one filing and reject another one in documents that have two volumes. They are looking into updating their CMS program. Their server saves the electronic copies for a certain period of time, but they save the documents on their hard drive (they didn't want the vendor to maintain that indefinitely). Words of wisdom: Take one step at the time; look at all the options that are available and see what fits the best as opposed to get a new CMS and e-filing system. Check website http://www.state.il.us/court/EBusiness/Default.asp to see how the Court is implementing their pilot program. The software website is i2file.net
38	Illinois Court of Appeals 1st District	The Illinois Supreme Court would be the one to determine when they get e-filing.
39	Mississippi Supreme Court and Court of Appeals	They are looking at e-filing. They have some pilot counties, but nothing has been done at the Appellate level.
40	Illinois Court of Appeals 2nd District	Limited e-filing: Notice of Appeals and records. They have 2 counties that have e-filing in place (one of them is the 18th JDC), and they get the electronic notices and records from them. They use the same software as the Illinois Supreme Court.
41	Illinois Court of Appeals 3rd District	The Illinois Supreme Court would be the one to determine when they get e-filing.
42	Illinois Court of Appeals 4th District	They are accepting very minimal e-filing. They are at the beginning of a pilot program. Currently they only accept records only from one JDC in their district. The court of original jurisdiction has a contract with their vendor, so the JDC pays for it, the Appellate Court is just a recipient. In the JDC it is part of CMS. In Illinois, 4 out of 5 Appellate districts (Except Chicago) are implementing a pilot program with a few JDC for e-filing. Advice: go slowly. Don't do too much at once because there are too many unforeseen details. Take it gradual in-phases as opposed to all at once. Please forward survey results at cbender@court.state.il.us

2012 e-filing survey notes

#	Court	Notes
43	Louisiana Court of Appeal 1st Circuit	They are doing e-notification. E-filing is in the horizon, but it hasn't been approved by Judges yet.
44	Maryland Court of Appeals	They are in the process of investigating into e-filing software.
45	Louisiana Court of Appeal 3rd Circuit	They are in the beginning stages of investigating e-filing.
46	Louisiana Court of Appeal 5th Circuit	They are in the beginning stages of investigating e-filing.
47	Maryland Court of Special Appeals	They are investigating e-filing, but not in the near future.
48	Michigan Court of Appeals	They have their own CMS developed in-house Their original vendor was Wisnet, but they were bought by Tyler Technologies. They have a parallel system with e-file and paper filing at this time.
49	Missouri Supreme Court	Spoke with Jo Ann at the Office of State Court Administrator. They accept e-filing in certain locations. They are looking to upgrade their software, but not to change it. Their e-filing is built around their CMS. Their e-filing software does not have a document management component, but that is done through their CMS, which is provided by a third party. They looked in to open bid to get their e-filing software, but did not have any bids that qualified. Words of wisdom: It's not only e-filing, but passing all the information through the Court electronically. Also let the personnel know the changes that are coming and how those changes will affect the work flow.
50	New Mexico Supreme Court	The Supreme Court is not currently e-filing, only the lower Courts. They are investigating e-filing.
51	Montana Supreme Court	They are a few weeks away from putting an RFP for a state wide e-filing project. They are in the process of investigating e-filing. They plan to have a limited pilot program first and then let each Court decide on whether they want to make e-filing mandatory. They want the vendor create a portal that serves all levels of courts.
52	Missouri Court of Appeals Eastern District	They are looking at going live with their e-filing program on April 2, 2012. Software developed in-house by the Office of State Court Administrator (OSCA). The Clerk's office staff will review the e-documents, and if it is ok then they will accept. Then the filing gets attached to their CMS. They currently get e-copies of briefs via e-mail. Their CMS is Justice Information System (ACS developed it). There is Document Management within their CMS, but they have not gone live with their e-filing system. Words of Wisdom: They are not entirely clear on how the workflow will take place when the e-copies start flowing. They do not know how they going to move the filing from one person to another. Their training will take place a few weeks before they are going live. Having a good plan on workflow and detailed instructions would be very helpful, to avoid worries about how things will flow. Servers can get backed up and slow down the computer. Their Supreme Court said that if you are an attorney you must use e-file. Only exception of e-file is pro-se. They will get charged for filing fee, not to register to use the e-filing program.
53	Missouri Court of Appeals Southern District	They are looking at going live with their e-filing program in June, 2012. They get directions from the Missouri Supreme Court as far as software development.

2012 e-filing survey notes

#	Court	Notes
54	North Carolina Supreme Court	Spoke with M.C. Hackney and she would highly recommend e-filing. If you develop a system in-house then you can tweak it as you go to make it work better for the Court. They just finished upgrading some components to their software, including an in-house developed CMS. This upgrade allowed them to link their e-filing software with their CMS. Speak with Marcus Desauza (IT Director) to answer the technical questions.
55	Wyoming Supreme Court	Their vendor made the software for the Court, as opposed to getting a pre-made software. They had a pilot program before July 2008 for the AG and Public Defenders office only. Not sure how the DMS works. Their vendor developed their CMS and then they asked them to develop the E-filing aspect. They are looking at changing their District Courts' CMS to the one provided by LT CourtTech. Words of Wisdom: They have been very happy with an integrated system. Their vendor designed a software that fits what the Court wanted. Public access to their documents is easier. The only cases that are blocked from public view are their confidential cases. Their system is free.
56	New York Appellate Division Supreme Court 2nd Dept	They are not e-filing, but they are in the very beginning of investigating e-filing (not looking into implementing e-filing yet).
57	New Jersey Superior Court Appellate Division	They are only receiving by e-mail notice of appeal. They are working on the e-filing software. They are envisioning a pilot program possibly around the fall. Their pilot program will be available for attorneys only. Their e-filing software will be a component of their CMS. They are creating interfaces between their court and their supreme court and their transcription agencies. Their vendor is the same one that did their CMS.
58	Colorado Supreme Court	They are not e-filing yet, but they are looking into it. They have a state wide e-filing system but the Supreme Court is not currently part of it. The State of Colorado has used the state wide e-filing for about 13 years. They are creating a new e-filing software developed in-house. Words of wisdom: try to stay in-house to save cost and not be held to the limitations of a vendor. You can expand a vendor software only so much.
59	Pennsylvania Supreme Court	They are about to implement e-file starting week of 3/19/2012. Contact the Office of Court Administrator at (717) 795-2000. They are initiating a pilot at the Supreme Court level, but it will be a state wide project. They have an state wide CMS. Document management provided by Highland onbase software.
60	Pennsylvania Superior Court	Spoke with Margot (sp?) They are not e-filing yet, but are moving to e-filing. Pennsylvania is moving to a state wide e-filing system, and the Supreme Court will get it first.
61	South Carolina Supreme Court	They are getting a new CMS, but will not go live on e-filing. They plan to go live with their new CMS in April 2012, and after getting used to the new CMS they will gradually go live on e-filing. They had some vendors demonstrate their product. Ctrack is based in Pennsylvania.
62	Vermont Supreme Court	They are only required to accept brief as e-mail attachment. They are in the process of upgrading their CMS, which will have an e-filing component, but they are the last Court in their state that will get it.
63	Texas Court of Criminal Appeals	They are going to get a new CMS that will have an e-filing component.

2012 e-filing survey notes		
#	Court	Notes
64	South Dakota Supreme Court	Spoke with Greg. They are about 2 years away from implementing. They are getting a new CMS, and started a pilot program last november.
65	Texas Court of Appeals 1st District	They are using the state e-filing software. Attorneys must use a certified Electronic Filing Service Provider to e-file in their Court.
66	Texas Court of Appeals 2nd District	They are looking into e-filing, but not the same e-filing portal that other courts use. The state of Texas only has a portal for e-filing that some Courts are part of, but it is not a state wide system yet. They would like to get a copy of the results of survey.
67	Texas Court of Appeals 3rd District	Office of Courts Administration handles in-house development of CMS. They are making e-filing mandatory on April 1 this year. It's easier to handle documents. The downside is that if something goes missing, you cannot recover the document. Verify that a document is saved properly. The transition period may include having to deal with paper and electronic copy. Contact Casey Kennedy at the Office of Courts Administration for more details.
68	Texas Court of Appeals 4th District	Texas Legislature Appropriated money to develop software. The courts make it work with their CMS. Their Court mandate the Court Reporters to e-file record, but the District Court has the option to file the record in paper or electronically. They have optional e-filing for parties in cases, and most of the filings are electronic. They have not activated the circulation component of their e-filing product. Having mandatory e-filing would be easier in order to have consistency. The Texas Supreme Court is looking into having mandatory e-filing. They have intermediate service providers that accept records from the law firms and make sure that are in the right format and then they submit to texas.gov (the consistency may be an issue). When moving into e-filing there may be a learning curve when switching to e-file. Give time to the acclimate to the change.
69	Texas Court of Appeals 9th District	They only accept the Court Reporter Records and the Court Records at this time. The Court Reporters Records are mandatory as of March 12. Contact the Office of Courts Administration for more details.
70	Texas Court of Appeals 7th District	They are getting e-filing. The state portal (texas.gov) will be compatible with their new case management system. They are not accepting e-filing yet.
71	Texas Office of Court Administration	In Texas there are three pieces to the e-filing. The attorneys choose from a list of 7 vendors that submit the e-filing to the portal (provided by a different vendor) that submits the filing to the Court. The Court receives the e-file through their CMS, which is developed in-house. They are looking into a new vendor for texas.gov (the e-filing portal). They are using a Request for Offer Process (similar to an RFP, but you can negotiate a little bit better this way). At this time the Courts can choose whether to use e-filing or not. There are 7 Appellate Courts using e-filing, but only 3 have made it mandatory. Words of wisdom: Make sure you listen to your stakeholders ahead of time. Having something consistent may be an issue.
72	Texas Court of Appeals 8th District	They are not e-filing as of right now. They are allowing the Court Reporters and the District Court to submit filings through the texas.gov portal.

2012 e-filing survey notes

#	Court	Notes
73	U.S. Court of Appeals DC Circuit	They accept e-filing except for filings that require payment. Their e-filing product is constantly undergoing enhancements, but they are not looking into change. Their e-filing interacts with their CMS, but they are not the same program. Their CMS was created by the Administrative Office of U.S. Courts, and each Court develops a interface to interact with the CMS and e-filing software as far as quality control of filing. All the U.S. Appellate Courts are in the same system. Words of wisdom: you should get most of the judges to support the e-filing move. Having their support is a tremendous help into shifting from paper filing to e-filing.
74	U.S. Court of Appeals 1st Circuit	Spoke with Susan. They have been using their software since around 2008, but did not implement the e-filing component until 2010.
75	Utah Court of Appeals	The IT department is investigating e-filing at the appellate level. They are developing a software in-house that will be a part of their CMS.
76	Wisconsin Supreme Court and Court of Appeals	E-filing is very limited at this time.
77	Administrative Office of U.S. Courts	They are in the process of launching the next generation of e-filing software. The Federal Circuit Court is just coming on board with their e-filing software. The U.S. Supreme Court does not use their software. Check website www.uscourts.gov and search for CM/ECF on the website. Also check www.pacer.gov to see the public phase of their CMS. She suggested to contact Jim McMilan with the National Center for State Courts for information on switching to e-file. Mr. McMilan's phone number is (757)259-1839.
78	United States Supreme Court	Once the case is granted, their rules provide that the merit briefs have to be submitted electronically so that they may be posted online. However, the brief is not officially filed until the Court receives the hard copy of the briefs. E-filing is difficult because the jurisdiction of the Court is nation-wide, especially due to their heavy volume of in proper person and pro se filings.
79	Ohio Supreme Court	They use "Document Locator" for document management. The e-filing will be integrated with Document Locator.

ONLY Courts Responding "YES" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Louisiana Supreme Court	Rachel Edelman	504-310-2308	Pilot		In-house		??	Limited	Yes	Yes	N/A	Yes	N/A	N/A	
Alabama Supreme Court	Robert Griffith	334-229-0700	Yes	N/A											
Alabama Court of Civil Appeals	John Wilkerson, Jr.	334-229-0733	Yes	N/A	In-House	N/A	About 5 Years	Yes	No	Yes	In-House	Yes	N/A	In-house	See Note 19
Arizona Supreme Court	Rachelle Resnick	602-452-3396	Yes	N/A	Vendor	Intresys	Pilot 11/1/10, transition to mandatory e-filing	Yes	No	No	N/A	No	OnBase	RFP	See Note 2
Arizona Court of Appeals Div. 1	Ruth Willingham	602-542-4821	Yes	N/A	Vendor	Intresys	Pilot 11/1/10, transition to mandatory e-filing	Yes	No	No	N/A	No	OnBase	RFP	See Note 3
Arizona Court of Appeals Div. 2	Dan Baillargeon	520-628-6954	Yes	N/A	In-House	N/A	About 10 years	Yes	No	Yes	In-House	No	SIRE	In-house	See Note 20
Delaware Supreme Court	Cathy Howard	302-739-4155	Yes	N/A	Vendor	LexisNexis	About 5 Years	Mostly	No	No CMS	N/A	Not sure	N/A	Not Sure	See Note 25

ONLY Courts Responding "YES" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??	
Florida Supreme Court	Brandon McCarthy	850-488-0125	Yes	N/A	In-House	N/A	About 7 Years +	Yes	Yes	It will be	It will be	It will be	N/A	Not Sure	See Note 27
Florida Court of Appeals 1st District	Karen (Chief Deputy)	850-488-6151	Yes	N/A	Vendor	Russ Vaughn	1 1/2 Year	Yes	Yes	Yes	Yes	Yes	N/A	Not Sure	See Note 28
Florida Court of Appeals 5th District	Susan Wright	386-255-8600	Yes	No	Vendor		Pilot	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 30
Georgia Supreme Court	Therese Barnes	404-656-6429	Yes	N/A	Vendor	TriVri	2 Years	Yes	No	Yes	Yes	Yes	N/A	Open Source	See Note 33
Georgia Court of Appeals	Holly Sparrow	404-651-8498	Yes	N/A	Vendor	TriVri	Since Dec 2009	Yes	No	No	It will be	Yes	N/A	Sole Source	See Note 36
Hawaii Supreme and Intermediate Court of Appeals	Naomi Komenaka	808-539-4919	Yes	N/A	Vendor	Wirevibe + In-house	About 18 months	Yes	No	Yes	See Note 34	Yes	FileNet	RFP	See Note 34
Illinois Supreme Court	Melissa Roth	217-557-2021	Yes	N/A	Vendor	i2file	Pilot since 1/12/12	Yes	Not sure	No	It will be	Yes	See Note 37	RFI and Open Bid	See Note 37

ONLY Courts Responding "YES" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Illinois Court of Appeals 2nd District	Robert Mangan	847-695-3750	Yes	N/A	Vendor	i2file	October 2011	Yes	No	Not Sure	Not Sure	Yes	N/A	Not Sure	See Note 40
Michigan Court of Appeals	Kim Houser	517-373-0786	Yes	N/A	Vendor	Tyler Technologies	4 Years	Yes	No	No	No	Not sure	N/A	Not Sure	See Note 48
Missouri Supreme Court	Jo Ann Chojnacki	573-751-4377	Yes	N/A	In-House	N/A	Since Sept. 2011	Yes	See Note	See Note 49	No	No	Their CMS	Open Bid	See Note 49
Nevada Supreme Court	Tracie Linderman	775-684-1600	Yes	N/A	Vendor	Tybera	3 Years	Yes	No	No	No	No	SIRE	RFP	See Note 12
North Carolina Supreme Court	Christie Cameron/Marcus	919-831-5700 919-831-5747	Yes	N/A	In-house	N/A	At least 4 years	Yes	No	Yes	Yes	Yes	N/A	N/A	See Note 54
Texas Supreme Court (Civil)	Blake Hawthorne	512-463-1312	Yes	N/A	Vendor	NIC	About 10 Years	Yes	Yes	No	In-house	No	N/A	RFP	See 35 Note
Texas Court of Appeals 1st District	Karinne McCullough (Hebert)	713-274-2700	Yes	N/A	State	NIC		Yes	N/A	No	In-house	No	N/A	N/A	See Note 65
Texas Court of Appeals 3rd District	Jeffrey Kyle	512-463-1709	Yes	No	State	NIC	About 1 Year	Yes	Yes	Will be	In-house	It will be	N/A	N/A	See Note 67
Texas Court of Appeals 4th District	Keith Hottle	210-335-2510	Yes	No	State	NIC	Since June 2011	Yes	No	Yes	In-house	No	State	N/A	See Note 68

ONLY Courts Responding "YES" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings? If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??	
Texas Court of Appeals 6th District	Debbie Autrey	903-798-3046	Yes	N/A											
Wisconsin Supreme Court and Court of Appeals	John Voelker (Babi)	608-261-4300	Yes	N/A	In-house	N/A	About 5 years	Yes	No	Yes	Yes	N/A	N/A	N/A	See Note 76
Wyoming Supreme Court	Carol Thompson	307-777-7316	Yes	N/A	Vendor	LT CourtTech	Jul-08	Yes	No	Yes	Yes	Not sure	N/A	See Note 54	See Note 55
Guam Supreme Court	Hannah Gutierrez-Arroyo	671-475-3120	Yes												
U.S. Virgin Islands Supreme Court	Veronica Handy	340-774-2237	Yes												
U.S. Court of Appeals DC Circuit	Mark Langer (Sabrina)	202-216-7300	Yes	N/A	Other	Administrative Office of U.S. Courts	5 Years	Yes	N/A	See Note 73			N/A		See Note 73
U.S. Court of Appeals 1st Circuit	Richard Donovan (Susan)	617-748-9057	Yes	N/A	Other	Administrative Office of U.S. Courts	Since 2010	N/A	N/A	Yes	Yes	Yes	N/A		See Note 74
U.S. Court of Appeals for the Armed Forces	William DeCicco	202-761-1448	Yes	N/A	In-house	N/A	About 18 months	Yes	No	No	N/A	No	See Note 132	Other (In-house)	See Note 17

ONLY Courts Responding "YES" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
U.S. Court of Appeals for Veterans Claims	Gregory Block	202-501-5970	Yes	N/A	Other	Administrative Office of U.S. Courts	4 Years	Yes	N/A	Yes	Yes	N/A	See Note 133	Other (In-house)	See Note 18

ONLY Courts Responding "NO" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Alaska Supreme Court and Court of Appeals	Marilyn May	907-264-0606	No	Yes	Vendor	GeoNorth	N/A	Yes	No	Will be	Yes	N/A	N/A	RFP	See Note 1
Arkansas Supreme Court and Court of Appeals	Denisse Parks Tim Holtouff	501-682-6834 501-682-9400	No	Yes	In-House	Context	Pilot	Yes	No	Not Yet	It will be				See Note 21
California Supreme Court	Jorge Navarrefe (sp?)	415-865-7002	No	Yes	In-House	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 25
California Court of Appeal 2nd District	Joseph Lane	213-830-7112	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 4
California Court of Appeal 3rd District	Colette Bermen??	916-654-0209	No	Yes											
California Court of Appeal 4th District	Frances	619-744-0760	No												See Note 22
California Court of Appeal 5th District	Charlene Ynson	559-445-5989	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 5
Colorado Supreme Court	Bryan Medino	303-837-3787	No	Yes	In-House	N/A	N/A	N/A	Yes	It will be	N/A	N/A	N/A	N/A	See Note 58

ONLY Courts Responding "NO" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Connecticut Supreme and Appellate Court	Michele Angers	860-757-2219	No	Yes	In-house	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 23
D.C. Court of Appeals	Julio Castillo	202-879-2725	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Florida Court of Appeals 2nd District	James Birkhold	863-499-2290	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 29
Florida Court of Appeals 3rd District	Mary Blanks	305-229-3252	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Florida Court of Appeals 4th District	Marilyn Beuttenmuller	561-242-2000	No	Yes	In-house	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Florida State Wide E-File Project	Tom Holland	850-487-7072	No	Yes	Vendor	Florida Association of Court Clerks	N/A	N/A	N/A	It will be	No	It will be	N/A	RFP	See Note 32
Idaho Supreme Court and Court of Appeals	Steve Kenyon	208-334-2210	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 6
Illinois Court of Appeals 1st District	Cindy Wile	312-793-5950	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 38
Illinois Court of Appeals 3rd District	Gist Fleshman (spoke with Berb)	815-434-5050	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 41

ONLY Courts Responding "NO" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Illinois Court of Appeals 4th District	Carla Bender	217-782-2586	No	Yes	Vendor	Goodin Assoc. Limited	6 Months	Yes	No	No	Yes	Yes	N/A	Don't know	See Note 42
Indiana Supreme, Court of Appeals and Tax Court	Kevin Smith	317-232-2540	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 7
Iowa Supreme and Court of Appeals	Donna Humpal	515-281-4101	No	Yes	Vendor + In-house	Tybera	N/A County pilot in 2009	Mostly	No	Being Integrated	No	Yes, other vendor	N/A	RFP	See Note 8
Kansas Supreme + Court of Appeals	Carol Green	785-296-3229	No	Yes	Vendor	Tybera	Nov-12	N/A	N/A	Being Integrated	No, in-house	With CMS	N/A	RFP with 3 bidders	See Note 9
Kentucky Supreme Court	Susan Clary	502-564-5444	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Kentucky Court of Appeals	Sam Givens, Jr.	502-573-7920	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 24
Louisiana Court of Appeal 1st Circuit	Christine Crow	225-382-3000	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 43
Louisiana Court of Appeal 2nd Circuit	Debbie Ware	318-227-3701	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

ONLY Courts Responding "NO" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Louisiana Court of Appeal 3rd Circuit	Roberta Barnette	337-433-9403	No	Yes	Probably in-house	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 45
Louisiana Court of Appeal 5th Circuit	Peter Fitzgerald	504-376-1400	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 46
Maine Supreme Judicial Court	Matthew Pollack	207-822-4146	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 10
Maryland Court of Appeals	Bessie Decker	410-260-1508	No	Yes	Vendor	Tyler	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 44
Maryland Court of Special Appeals	Leslie Gradet	410-260-1450	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 46
Commonwealth of Massachusetts Supreme Judicial Court	Joan Kenny	617-557-1020	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Michigan Supreme Court	Corbin Davis	517-373-0120	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Minnesota Supreme Court and Court of Appeals	Bridget Gernander	651-297-5529	No	Yes	Vendor	CourtTech	Looking at 2013	Yes for CMS	No	Yes	Yes	Yes	N/A	RFP and Sole Source	See Note 11
Mississippi Supreme Court and Court of	Betty Sephton	601-359-2175	No	Yes	N/A	N/A	N/	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 39

ONLY Courts Responding "NO" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Missouri Court of Appeals Eastern District	Laura Roy	314-539-4311	No	Yes	In-house	N/A	Going live April 2, 2012	N/A	N/A	It will be	No	N/A	N/A	N/A	See Note 52
Missouri Court of Appeals Western District	Terence Lord	816-889-3683	No	Yes	In-House	N/A	Going Live May 2012	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Missouri Court of Appeals Southern District	Sandra Skinner	417-895-6811	No	Yes	In-house	N/A	Going live June , 2012	N/A	N/A	It will be	Yes	Yes	N/A		See Note 53
Montana Supreme Court	Rex Renk	406-444-3858	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	RFP	See Note 51
New Hampshire Supreme Court	Alison (Deputy Clerk)	603-271-2646	No	Yes	N/A	N/A	Looking at 2015	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
New Jersey Supreme Court	Gail Haney	609-984-7787	No	Yes	Vendor	CSI Technology Group	Getting started soon	N/A	N/A	It will be	Yes	Not sure	Not sure	RFP	See Note 13
New Jersey Superior Court Appellate Division	Karen	609-292-6995	No	Yes	Vendor	CSI Technology Group	Getting started soon	N/A	N/A	Yes	Yes	Yes	N/A	Open bid/sole	See Note 57
New Mexico Supreme Court	Kathleen Jo Gibson	505-827-4860	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 50

ONLY Courts Responding "NO" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
New York Appellate Division Supreme Court 2nd Dept	April Agustino (Linda)	718-722-6307	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note55
Ohio Supreme Court	Amy Reitz	614-387-9540	No	Yes	N/A	N/A	N/A	N/A	N/A	It will be	N/A	See Note 79	See Note 79	N/A	
Pennsylvania Supreme Court	Charles Johns Cindy Schmith	215-560-6374 717-795-2000	No	Yes	In-house	N/A	Pilot begins 3/19/12 at	N/A	N/A	Yes	Yes	Yes	N/A	N/A	See Note 59
Pennsylvania Superior Court	Karen Bramblett	215-560-5801	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 60
South Carolina Supreme Court	Daniel Shearouse	803-734-1080	No	Yes	Vendor	Ctrack	N/A	N/A	N/A	It will be	Yes	N/A	N/A	Open Bid	See note 61
South Dakota Supreme Court	Shirley Jameson-Fergel	605-773-3511	No	Yes	Vendor	Tyler Technologies	Nov-11	N/A	N/A	Will be	Yes	It will be	N/A	RFP	See Note 64
Tennessee Supreme Court, Court of Appeals and Court of Criminal Appeals	Michael Catalano	615-741-2681	No	Yes	Vendor	LT CourtTech	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 14

ONLY Courts Responding "NO" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Texas Court of Criminal Appeals	Louise Pearson	512-463-1551	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 63
Texas Court of Appeals 2nd District	Debra Spisak Megan (CDC)	817-884-1900	No	Yes	Vendor	N/A	N/A	N/A	N/A	Will be	No	N/A	N/A	N/A	See Note 66
Texas Court of Appeals 7th District	Peggy Culp	806-342-2650	No	N/A	Vendor	State of Texas	N/A	N/A	N/A	Will be	No	N/A	N/A	N/A	See Note 70
Texas Court of Appeals 8th District	Denise Pacheco	915-546-2240	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 72
Texas Court of Appeals 9th District	Carol Flores	409-835-8402	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 69
Utah Supreme Court	Pat Bartholomew	801-238-7967	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Utah Court of Appeals	Lisa Collins	801-578-3907	No	Yes	In-house	N/A	N/A	N/A	N/A	It will be	Yes	It will be	N/A	N/A	See Note 75
Vermont Supreme Court	Lee Suskin	802-828-3278	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 62
Washington Supreme Court	Ronald Carpenter	360-357-2077	No	Yes	In-house	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 16
United States Supreme Court	Gary Kemp	202-479-3029	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 78
Virginia Supreme Court	Patricia Harrington	804-786-2251	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	See Note 15

ONLY Courts Responding "NO" to Accepting E-Filings

Name of Court	Contact	Phone Number	1. Does your court accept e-filings?	If no, are you investigating or in the process of implementing e-filing?	2. Was your e-filing software developed in-house or provided by a vendor?	3. If no in-house, who is your vendor?	4. How long have you been e-filing with your current product?	5. Are you satisfied with this product?	6. Are you looking at changing your current e-filing product?	7. Is your e-filing product a part of your case management system?	8. Is it provided by the same vendor as your e-filing vendor, if using vendors?	9. Does your e-filing product have its own document management software?	10. If not, what do you use for document management software?	11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)	12. Would you care to share any pearls of wisdom??
Louisiana Supreme Court	Rachel Edelman	504-310-2308	Pilot		In-house		??	Limited	Yes	Yes	N/A	Yes	N/A	N/A	

Chief Clerk the required docketing statement on a form provided by the Court at the time of the notice of appeal, petition for review or complaint is filed. The appellant, petitioner or plaintiff shall also file a Statement of Issues with the docketing statement. The Statement of Issues shall be no more than two pages in length and shall set forth a brief summary of the issues and a summary of the case necessary for an understanding of the nature of the appeal, petition for review or complaint. Service of the Statement of Issues shall be made on all parties, and an original and five copies shall be filed with the Chief Clerk's Office along with a proof of service.

(d) Cases shall be screened for referral to mediation immediately upon the filing of the docketing statement and any other form prescribed by the Court setting forth the issues and a summary of the case. After a case has been selected for mediation, the Chief Clerk shall notify counsel for all parties by letter of the referral to the Mediation Program and of the name of the mediation judge assigned to conduct mediation. The mediation judge shall promptly contact counsel to establish the location, date and time for mediation.

(e) Within ten days of receiving notice of mediation, counsel shall provide the mediation judge with a mediation statement of no more than five pages, setting forth the positions of counsel as to the key disputed and undisputed facts and legal issues in the case and stating whether prior settlement negotiations have occurred. The mediation statement shall also identify any motions filed and their disposition; the mediation judge may dispose of only those motions related to scheduling or to the mediation process. In actions arising under the Court's appellate jurisdiction, counsel for the appellant or the petitioner shall attach as exhibits to the mediation statement a copy of the judgment or order on appeal and any opinion or adjudication issued by the common pleas court or agency. Copies of the mediation statement need not be served upon opposing counsel unless so directed by the mediation judge. Documents prepared solely for mediation and the notes of the mediation judge shall not be filed with the Chief Clerk.

(f) All cases referred to mediation shall remain subject to the Court's normal scheduling for briefing and/or oral argument. The Court's briefing and/or oral argument schedule shall not be modified by the Chief Clerk unless so directed by the mediation judge to accommodate mediation.

(g) All mediation sessions must be attended by counsel for each party with authority to settle the matter and, if required, such other person with actual authority to negotiate a settlement, whether involving the Commonwealth of Pennsylvania, a local government unit or an individual litigant. The mediation judge may at his or her discretion require the parties (or real parties in interest) to attend mediation. In cases involving the Commonwealth government, upon direction of the mediation judge,

counsel shall have available someone from the appropriate agency with authority to settle who can be reached during mediation to discuss settlement if such person is not already required to be in attendance by the mediation judge. The mediation judge may in the alternative obtain the name and title of the government official or officials authorized to settle on behalf of the state or local government unit.

(h) No future mediation shall be conducted unless the mediation judge determines that further sessions are necessary to effectuate a settlement. The mediation judge assigned to mediate a case shall attend all future mediation sessions scheduled in the case. The mediation judge shall possess authority to impose any necessary sanctions for the failure of counsel to comply with the requirements of this order.

(i) The mediation judge shall not disclose the substance of the mediation settlement discussions and proceedings, and counsel likewise shall not disclose such discussions and proceedings to anyone other than to their clients or to co-counsel. No information obtained during settlement discussions shall be construed as an admission against interest, and counsel shall not use any information obtained during settlement discussions as the basis for any motion or application other than one related to the Court's briefing or argument scheduling. Where settlement is reached, counsel shall prepare a written settlement agreement and obtain all necessary signatures of the parties and counsel. The agreement shall be binding upon the parties to the agreement, and after execution counsel shall file a stipulation of dismissal within ten days thereof. Where necessary or upon the request of counsel the mediation judge may enter an appropriate order approving the settlement and remanding the case to the tribunal below for its enforcement and/or implementation.

(j) Any case not resolved by mediation shall remain on the Court's docket and proceed as if mediation had not occurred. The mediation judge shall not participate in any decision on the merits of the case. Upon the termination of mediation either through settlement and dismissal or through a continuation of the case on the Court's docket, the mediation judge shall dispose of all documents obtained during mediation unless the mediation judge determines to retain any part of non-confidential documents until final disposition of a case. In any event, the mediation statements and any other confidential documents submitted to the mediation judge shall be destroyed immediately upon the termination of mediation.

(k) The Court's order establishing a Mediation Program shall be published in the *Pennsylvania Bulletin* and in legal newspapers throughout the Commonwealth prior to the effective date of the Mediation Program. The order shall be posted in the Chief Clerk's Office and a copy thereof shall be mailed to all counsel whose cases have been selected for mediation. The Court also shall amend its Internal Operating Procedures to incorporate the mediation procedures and shall give notice thereof

simultaneously with notice of the Court's order establishing the Mediation Program. This order may be amended at the discretion of the Court.

Source

The provisions of § 67.71 adopted September 15, 1999, effective January 1, 2000, 30 Pa.B. 11; amended March 25, 2005, effective March 26, 2005, 35 Pa.B. 1880. Immediately preceding text appears at serial pages (297548) and (275345) to (275347).

Mediating in the Appellate Court

by Mark D. DeBofsky

You have just won a huge, and somewhat unexpected, verdict after a hard-fought month-long trial. Your client is thrilled, and you have already taken the trial team out for a festive victory lunch. But within days, the notice of appeal arrives on your desk. And not long after, the appellate court orders, or your adversary requests, that the parties engage in mediation. What do you do next?

Although much has been written about mediation before trial, the benefits of mediation after the court or a jury has issued its verdict have received less attention. The success of a mediation program that was initially piloted in the United States Court of Appeals for the Second Circuit has now been expanded to all of the federal circuits, and over 31 state appellate courts have introduced mediation programs. Several of these programs are mandatory; the rest make mediation services available only on request.

Although many factors suggest it would be difficult to bring a party who has secured a "solid" trial court victory to the negotiating table, or to convince the loser who feels confident of appellate victory to compromise, the success of appellate mediation stems from the fact that no appellate outcome is secure until the appeals are exhausted. Thus, the same consideration that promotes mediation before trial applies to appellate mediation: certainty. Mediation can eliminate the unknown by creating an opportunity for the parties to resolve their disputes with finality and clarity. Just as in mediation before trial, the use of a neutral mediator reduces the reluctance to "lay the cards on the table" that is inherent in a face-to-face negotiation and enables the parties to express their positions and goals confidentially. A neutral mediator also enables litigants to assess the strengths and weaknesses of their cases before an appellate court with knowledge of the trial record. A successful mediation may also make it possible for the adversaries to work out

a resolution at the bargaining table that allows them either to resume a future relationship or to sever their relationship in a manner that will avoid future recrimination or litigation.

But there is so much more that mediation can accomplish. Even if it fails to produce a final resolution, it will enable the parties to better understand their litigation goals and separate from the real issues at stake many of the emotional issues that inevitably arise. Most important, though, it will focus the parties' attention on the alternative to settlement: an appellate ruling on the merits that, unlike trial court decisions or even published rulings issued by federal district courts, has precedential impact and finality.

Mediation also enables parties to fashion a resolution that may not otherwise be judicially available. For example, much of my work is in the area of disability insurance benefits. Disability benefit payments may last for years beyond the date of judgment, but courts lack authority, except in certain exceptional situations, to award benefits that will accrue in the future. A resolution by mediation allows the parties to resolve a disability benefit dispute with a single lump-sum payment encompassing future benefits. This enables benefit claimants to move forward with their lives without fear of a future benefit termination or intrusive examinations or investigation by the insurer. From the insurer's perspective, this kind of resolution eliminates the cost of administering a claim many years into the future, with the continuous threat of future rounds of litigation. Other situations in which mediation can satisfy extrajudicial goals arise in employment disputes where the scope of a consent decree can go beyond what an appellate ruling could accomplish. Mediation can also result in an apology by an employer to assuage an employee's hurt feelings, a remedy that obviously cannot be ordered by a court. Finally, mediation may be a means of resolving other existing or potential disputes between the same parties that may not be specifically involved in the litigation before the court.

Mark D. DeBofsky is with Daley, DeBofsky & Bryant in Chicago, Illinois.

Another beneficial aspect of mediation on appeal that is often overlooked is the ability of mediation to resolve procedural issues in the case, particularly where cross-appeals are filed. Mediation can be used to streamline the appeal and tailor the issues presented to what is really at stake and avoid a focus on extrinsic or collateral issues.

Of course, mediation also helps conserve judicial resources. Because successful mediations lighten appellate court dockets, the appellate court judges or justices have more time to spend on the cases that cannot be resolved, enabling them to draft more contemplative opinions, concurrences, and dissents that provide more thorough consideration of the issues presented.

Once a case is selected for mediation, or if the parties decide to mediate on their own, the likelihood of a successful mediation is substantially enhanced by the parties' preparation. Both sides should come to the mediation well-prepared to make the session meaningful and constructive. That means the attorneys must first familiarize themselves with the standard of appellate review that will be applied to the trial court's decision. Surprisingly, many litigants embark on appeals without giving any thought to this critical factor. For example, appeals from summary judgment rulings are reviewed *de novo*, a standard that gives the appellant a significant advantage on appeal. Appeals from bench trials or jury verdicts, however, are usually reviewed under the clearly erroneous standard of review, which presents an enormous hurdle for appellants.

Counsel should also be familiar with the substantive area of law at issue in the appeal. Because there is often a significant delay between the briefing for a dispositive motion or trial and the entry of a final judgment in the trial court, counsel must update research to date to determine whether any new

developments will affect the issues in the case. It is not enough to merely skim the briefs that have already been filed.

Counsel must also reread and be prepared to discuss any rulings at issue in the appeal. Lack of familiarity with the contents of the final judgment ruling will almost guarantee an unsuccessful mediation. Each side should also be prepared to discuss the issues they intend to focus on in the court of appeals and the supporting authority for each point, although there are limits to candor. If the mediation takes place before the filing of appellate briefs, counsel for the appellee may be reluctant to reveal its arguments for fear that doing so could educate the other side about how to be more persuasive in the court of appeals. Generally, though, for the appellant, coming to the mediation and saying you intend to reargue the same points that failed to persuade the judge below, without presenting a convincing rationale as to why the judge erred, will hardly convince a confident appellee to present a serious offer. Likewise, an overconfident appellee may turn victory into defeat by dismissing without any consideration the appellant's citation of a new significant ruling or a point the trial judge may have overlooked.

Finally, if there are issues relating to damages, both sides need to be able to come to an understanding as to the scope of available damages. It is very hard to resolve a dispute if one side believes the case has a value of "x" while the other side calculates the value as "y," which is either a multiple of or a fraction of the other side's assessment of damages. Admittedly, in personal injury cases, and often in employment disputes, it is difficult to quantify damages in that manner, but if there are statutes or rulings that place limits on damages, such as statutory caps on noneconomic damages, both sides should be aware of and acknowledge those restrictions.



Just as the lawyers need to prepare for mediation, so do the clients, because ultimately the appeal is about them. Appellants have to be prepared to be realistic; statistically, the odds are against their winning on appeal. Thus, they may need to adjust their expectations substantially from those they had before the entry of final judgment. Clients should also be informed of the outcome of recent similar cases. And they have to understand that litigating in the court of appeals is a zero sum-game. Unlike a trial where a jury may not give the plaintiff all of the remedies that she is seeking, but will likely award some amount of damages, appellate litigation is usually a winner-take-all proposition. Moreover, even a win in the court of appeals for the appellant might not result in an outright win; it might do no more than secure a new trial where there is still no guarantee of an ultimate victory. Appellants must also consider the cost and expense of appellate litigation.

Appellees should also acknowledge that a win in the court of appeals is not guaranteed, and that even an appellate victory may yet mean future litigation with the same party. Before the mediation, counsel should discuss with clients the consequences, not to mention the costs, of an adverse ruling. Appellate courts sometimes function as our present-day *deus ex machina*, except that instead of rescuing the hero, an appellate ruling may wreak havoc in a way that needs to be anticipated. The mediation should therefore be viewed as a valuable opportunity to discuss frankly the implications of what the appellate court may do.

In sum, the key is to get everyone—both the litigants and their attorneys—involved to both lower and be realistic in their expectations.

At the mediation, just as in the appellate court, histrionics and theatricality have no place. The parties need to come to the mediation prepared to speak dispassionately. In addition to full settlement authority, the two most important things to bring to the mediation are an open mind and a well-tuned ear. In gauging the effectiveness of the points asserted by opposing counsel and by the mediator in private caucus, it is just as important to hear what is not being said. Respect and courtesy for the other side are also essential tools that help resolve disputes. Interrupting either the mediator or the other side when they are speaking, or responding to them with anger will not advance the process. Even if there is vehement disagreement with the other side's arguments, it is best to remain silent and wait until the private caucus to explain to the mediator why the other side is wrong.

Remember that the mediator is neither a judge nor an arbitrator. The mediator is a facilitator who is there to convey proposals and assist the parties in fashioning an agreement. Therefore, there is little point in trying to persuade the mediator of the righteousness of your position and the poverty of the other side's arguments. Because the mediation is confidential, though, and nothing said in the mediation will be shared with the appellate judges or used against a party in litigation, it offers an opportunity to use the mediator to help assess the strengths and weaknesses of the arguments that will be presented in the appellate briefs and oral arguments. Sometimes all it takes is to hear an argument spoken out loud to know it is unlikely to be persuasive; other times the mediator may point out flaws in arguments or hint that a particular argument may have been successful in other similar litigation. The mediator may also help evaluate settlement proposals and suggest counter-offers even if the session starts as a facilitative mediation.

Thus, at the end of the session, even if an agreement is not reached, the mediation will still be of unquestionable value in helping to understand a range of potential outcomes or to tailor the arguments that will ultimately be presented in the court of appeals.

The parties should be prepared to think differently. They need to come to the settlement conference knowing their goals and understanding the implications and limitations of an appellate ruling. Many cases, particularly from the viewpoint of appellees, could have a substantial effect on other litigation. An adverse outcome in the court of appeals could affect hundreds or even thousands of other cases that may be pending against a large corporation, or may even have an industry-wide impact.

Sometimes, one or both party's goals cannot be achieved regardless of the outcome of the appeal. The ability of the parties to meet at the negotiating table may enable them to fashion a resolution they could not otherwise obtain. The parties, the attorneys, and even the mediator need to listen carefully

The two most important things to bring to the mediation are an open mind and a well-tuned ear.

for opportunities that arise during the course of the mediation and to suggest creative and nontraditional ways of resolving the dispute.

Mediation is also a process that requires tremendous patience to create an environment conducive to reaching a settlement. At a certain point in the process, it will become apparent whether the parties both desire to reach an agreement and whether a resolution is feasible. I liken that point to what happens when a car is stuck in the ice and snow. The first thing that occurs is that the wheels spin and the car fails to move at all. With a little patience, though, the driver learns to apply light pressure on the accelerator and the car begins to move forward a little bit. Ultimately, by switching the transmission between the forward and reverse gears, the car takes on a rocking motion; and when that point is reached, the driver is confident of pulling out of the ice and snow. Settlement works the same way; it has to go forward and backward a bit, but once the rocking motion is achieved, the mediator knows it and the caucuses accelerate as the parties endeavor to close the gap between their positions.

Finally, to make the mediation a success, the parties have to be realistic about identifying both their best and worst alternatives to a negotiated agreement. In the example about disability benefits given earlier, the best alternative (i.e., a win in the court of appeals) may be a pyrrhic victory if all it achieves is an opportunity for the insurer to cut off benefits at some future date. Reinstatement, the preferred remedy in employment cases, presents a nightmare scenario to an employee who has undergone workplace harassment. Therefore, an offer of money as a final resolution of all past and future claims is often a much better alternative than a victory in the court of appeals. Conversely, for an insurer or employer that has won a significant legal victory in the trial court, an outright reversal

could have adverse effects on other pending litigation, while a settlement that leaves the lower court decision undisturbed could potentially aid in other cases. All of these considerations must be kept in mind, as the following illustrations show.

I have found that sometimes clients misunderstand or ignore the pre-mediation preparation. In a disability benefit case, the trial court awarded reinstatement of my client's monthly benefits, which had a modest accrued value of approximately \$25,000. The insurer appealed, and shortly after the notice of appeal was filed, the court of appeals notified us that a mediation would take place by telephone. In preparation for the mediation, I explained to my client that even if he received the benefits awarded, along with present value of the future benefits that were not included in the judgment because they were contingent on the client's ongoing disability, the most he could recover would be \$100,000. I cautioned the client that although we had achieved a victory in the district court, winning on appeal was not guaranteed. I also pointed out that even if we won on appeal, there was no certainty the client would remain disabled or even alive for the next ten years and that his expectations needed to be lowered.

Shortly after the mediation commenced, the insurer's counsel made a substantial settlement offer, and the mediator and I called the plaintiff to explain the offer and to elicit a counterdemand. After again explaining the maximum potential recovery could be no more than \$100,000, the client said he was really looking to recover \$1 million, but our explanation

The cost of further litigation is often a sufficient incentive to settle.

convinced him to lower his expectations and ask for \$300,000. The mediator and I again patiently explained that his demand was three times the maximum potential recovery and was unachievable. The client nonetheless refused to budge. After two weeks of continued mediation during which we patiently explained the risks and benefits of continuing the litigation, provided spreadsheets to the client clearly establishing the parameters of the potential benefits that could be payable, and summarized the binding case law precedents that could result in losing all of the benefits altogether, we were finally able to convince the client to make a demand for less than the maximum recovery. Thus, we were ultimately able to resolve the case and avoid the risk that we might lose altogether if the court of appeals overturned the trial court's ruling.

In another case I handled, shortly after the trial court had issued a ruling adverse to my client, my research in preparation for the appellate mediation revealed that a recent appellate ruling had altered the law governing the underlying basis of the court's judgment. If ever there was a case that was an "automatic" reversal, this was it. I arrived at the mediation, presented both the mediator and opposing counsel with a copy of the recent ruling, and suggested that the recent ruling completely undermined the lower court judgment and virtually guaranteed that my client would prevail in the appeal.

After digesting the decision, my opponent agreed with my reading of the case and we were able to speedily negotiate a fair settlement at an amount higher than what had been offered before the entry of judgment in the court below.

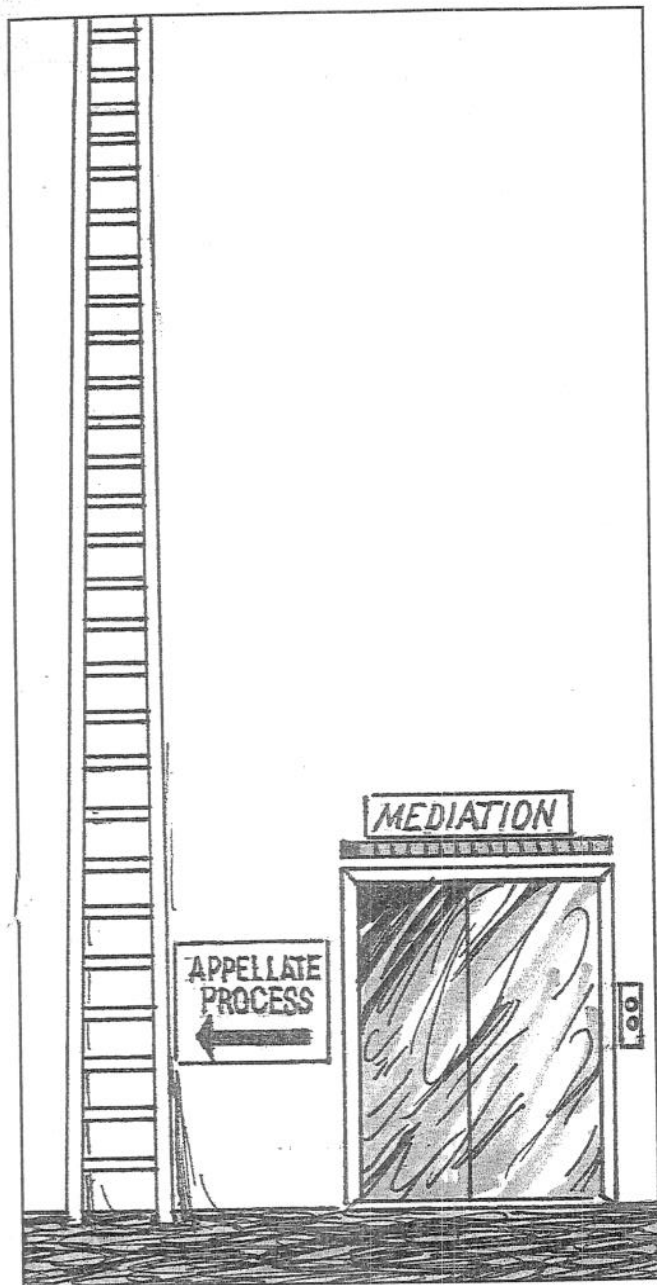
In a similar situation, however, the mediation failed to resolve the case. I had received an unfavorable ruling that I felt was likely to be overturned based on recent precedent that supported two very strong arguments I intended to present. Unfortunately, the mediator did not invest himself in the process and gave up on trying to settle the dispute after a very short caucus with each side. Fortunately for my client, my sense about the case was accurate, and the court of appeals reversed on both of the issues I argued. The case should have been settled, though, because both sides were represented by experienced counsel who could honestly evaluate the likelihood of what the court of appeals was likely to do.

This situation was quite the exception to the usual experience I have had mediating in the court of appeals. I anticipate when going into the mediation that the mediator is well-prepared and will be utterly tenacious in trying to resolve the case. Even if settlement sometimes appears hopeless, most mediators I have worked with will keep the parties talking for as long as it takes to explore every possible means or method to resolve the matter.

An example of an extremely successful mediation occurred in my favorite mediation experience of all. I had lost a case, an occurrence that may appear to the reader to be all too frequent in my practice. Although I felt there were strong grounds for appeal, in my heart I believed we were likely to lose, and I prepared my client by being honest and straightforward about our chances on appeal. Because I assumed that opposing counsel assessed the appeal in the same way, I had low expectations of a successful mediation. The mediator, however, worked on both sides to see if there was a basis for settlement, and we were ultimately able to get within striking distance. In an effort to bridge the gap, I told the mediator that I was going to present two proposals: I offered my client's bottom-line settlement position, and I also offered to take everyone to lunch if we were able to reach a settlement. The mediator then left to caucus with the other side, and after a lengthy interval, he returned wearing a poker face. I expected the worst, but after a dramatic pause, the mediator announced that he had good news: The other side had accepted my second proposal. I then waited for the other shoe to drop, and after an even longer interval, he admitted the first proposal had been accepted as well. The luncheon afterward was very enjoyable, and I made two good friends that day—opposing counsel and her client.

What these stories illustrate is that mediation creates opportunities and gives the parties control over cases that they lose once they place their case in the hands of the court of appeals. Although one side or the other may be inflexible and determined to let the appellate process take its course, if both sides acknowledge and recognize the potential weaknesses in their claims, there is an opportunity to mediate a successful resolution. Likewise, the cost of further litigation is often a sufficient incentive to settle.

On occasion, one party is willing to settle, but only on the condition that the trial court vacate its ruling. Although the U.S. Supreme Court has questioned the legality of vacating final federal court judgments, see *U.S. Bancorp Mortgage*



Co. v. Bonner Mall Partnership, 513 U.S. 18 (1994), as long as the lower court is willing to go along, many mediators use the possibility of *vacatur* as a settlement tool. I have had several judges balk at vacating their rulings, however, taking the position that to do so would violate the constitutional prohibition against issuance of advisory opinions. A federal district judge recently suggested that the possibility of *vacatur* also discourages, rather than encourages, settlements because it emboldens parties to litigate cases they know they are likely to lose and then to seek to vacate unfavorable rulings rather than settle a losing case earlier, tying up valuable judicial resources in the process.

The issue of confidentiality is also often a major factor in settlement. Confidentiality can be a useful tool to encourage a settlement because it enables parties to settle with the knowledge that the terms cannot be disclosed and used by other litigants. A confidential settlement may also be a means of securing a return of documents or deposition testimony that

may have been disclosed or elicited in discovery that could have proprietary or other value or threaten actual or perceived trade secrets. The danger, though, is that the public may not learn of a dangerous harm that could affect others.

In other situations, the need to maintain an ongoing relationship between the parties is often the leverage needed to secure a settlement. One party or the other may choose to be lenient in offering terms so that the parties can continue to co-exist and work with one another on ongoing matters. Other times, parties can use the mediation as a forum to establish terms for the ongoing relationship and establish a mechanism for either avoiding or resolving future disputes.

At the conclusion of the mediation, the parties will have either failed to reach an agreement or, hopefully, resolved the case in whole or in part. If the mediation is unsuccessful, the mediator may still be able to control the briefing schedule to suit the parties' schedules, and there may be enough of a framework for settlement discussions to continue during the briefing or even after oral argument but before the issuance of a ruling. A successful outcome to the mediation will result in the removal of the case from the appellate court's docket and a halt to the appellate process. There is an intermediate possibility as well. The parties may also reach a partial resolution that can significantly narrow the issues ultimately presented on appeal. Of course, there will also be situations where the appellant realizes after the mediation that the appeal is unlikely to succeed and the appeal is voluntarily dismissed. Indeed, many appeals are brought with the intent of using either face-to-face negotiation or mediation as a means of avoiding the taxation of costs in the trial court or to achieve a nominal benefit that falls substantially short of the initial goal of the litigation but still allows for some saving of face.

The mediator will report to the judges or justices of the court of appeals whether the case has settled but will not disclose the substance of the negotiations or provide any other comments about the manner in which the mediation was conducted or about the litigants. Nor will the parties be allowed to use any statements made during the appellate mediation in their briefs or in any other manner. Such confidentiality is mandated either as a matter of court rule or by agreement of the parties as a condition of the mediation.

The value of mediation in the courts of appeal is undeniable. Since the United States Court of Appeals for the Second Circuit implemented its mediation program in 1974, appellate mediation has expanded dramatically. Although the programs differ somewhat as to their structure and as to whether the mediators are judges themselves, are court employees, or are drawn from the private sector, mediation has proven to be an effective means of lightening the dockets of the courts of appeals.

When the parties adequately prepare for and treat mediation with the same seriousness as they would the entire appellate process, and when they approach mediation with candor, the process has many benefits for the parties as well as for the courts. Mediation can be a means of partially mitigating the sting of defeat in a lost cause or it can preserve a victory in danger of being snatched away. Either way, or even when mediation does not produce a settlement but merely serves as a proving ground for the arguments that will be presented to the appellate court, it is an essential tool for every appellate attorney. □

COMMONWEALTH COURT OF PENNSYLVANIA **MEDIATION PROGRAM**

The following synopsis is presented as an informational overview of Mediation in the Commonwealth Court of Pennsylvania.

Background

The Commonwealth Court's Mediation Program was established by Court Order of September 15, 1999. It was designed to provide to attorneys and their clients an avenue to negotiate a settlement of their disputes *while simultaneously pursuing their appellate rights*. The Program gives lawyers and clients an opportunity to negotiate a settlement of the dispute while at the same time, and without any additional delay, pursuing the appeal. Its purpose is to help parties curtail the expense of protracted appeals and to stimulate the development of creative solutions that may not be achieved by Court Order.

Referral of cases began January 1, 2000, and since then over 2400 cases have been referred to the Mediation Program. More than 1100 of those were resolved in mediation. Roughly 1/3 of the cases mediated were workers' compensation matters, and approaching half of these cases were settled without the expense and delay or use of judicial time that are all part of the appellate process. Other areas that have been the subject of mediation conferences included zoning disputes; state and local government tort claims; local tax assessment appeals; tax sale cases; Department of Environmental Protection cases; Department of Public Welfare petitions; eminent domain; various original jurisdiction matters; state licensure board cases; arbitration appeals; and local agency reviews.

Advantages of Mediation in the Commonwealth Court

- Cost Savings Due to Early Intervention
- Availability of Broader and More Creative Remedies
- Neutral Assessment of Client's Position
- Avoidance of Perception of Vulnerability (sometimes associated with "making the first move")
- Opportunity to Narrow and Prioritize Issues
- Helping the Court Focus on Legal Issues Not Subject to Negotiation

Mediation Framework

The Court's Order of September 15, 1999 is incorporated as amended in Commonwealth Court Internal Operating Procedure §501(attached). This sets out the framework for mediation of cases. Mediation is offered at no cost to the parties.

- Case Selection:
 - By Court Referral – Cases are initially selected for mediation by the Program Administrator and the Court's central legal staff. Screening occurs once the required Docketing Statements are returned to the Chief Clerk. *Pro se* matters are exempt from the Mediation Program, as are tax appeals from the Board of Finance and Review, which are subject to a separate settlement program of its own. Cases not referred to mediation by the Court's legal staff may be referred at any time at the direction of any *en banc*, three-judge panel or judge considering the case.
 - By Request of Counsel – Counsel are encouraged to request mediation by indicating so on their Docketing Statement or contacting the Program Administrator. Joint requests of counsel for referral to the Program will be honored in almost every instance. If one party opposes a request for referral, final consideration is left to the Court.
 - Suitability for Mediation – A number of factors are considered in determining whether a case is suitable for mediation, and no one factor or set of factors is controlling. Factors that can be examined include the nature of the underlying dispute; the relationship between the parties; the adequacy of a judicial remedy; the receptivity of the parties to a mediated settlement; the existence of related cases; and the divergence of views about the value or nature of the dispute.

Mediation Process

- Position Statement – When a case has been selected for mediation, the Chief Clerk will issue a notice to the parties. The notice will provide the name of the mediation judge, and will require that each party file a *confidential* position statement setting forth key disputed and undisputed facts and issues. The mediation statement is submitted for purposes of the mediation session only; it is not filed, not made part of the file or record in the case, is not served on opposing counsel, and is destroyed on completion of the mediation, regardless of its outcome.
- Mediation Session – Although there is no fixed formula for conducting mediations, the session generally begins with a joint meeting of counsel, the mediator, and, if the mediator deems it necessary or desirable, the parties themselves. Each party is asked in turn to explain its views on the matter in dispute. After this initial session, the mediating judge usually meets individually with each of the parties. The purpose of these meetings is to allow counsel and the mediator to explore more fully, and in confidence, options that might lead to a resolution of the dispute, including those which might not be accomplished in a court proceeding. Sessions with each counsel alone are kept confidential, and information exchanged is not disclosed to opposing counsel without express permission. The mediation judge and participating counsel do not disclose the substance of their discussions outside of the sessions. No confidential information obtained during settlement discussions or in the mediation statements will be construed as an admission against interest or used in any way if the dispute is not resolved. Counsel should expect to spend two hours at a session, but some may take longer, depending on the nature of the case. The mediating judge will determine whether additional sessions are necessary or fruitful, and he or she has the authority to impose any necessary sanctions for failure to comply with requirements of the Mediation Program.
- Procedure Where Parties Reach Settlement – Where settlement is reached, counsel will prepare a written settlement agreement and obtain all the necessary signatures of the parties and counsel. The agreement is binding upon the parties to the agreement. Within ten (10) days thereafter, counsel will file a praecipe to withdraw the

petition or appeal, or, if the case has been submitted to the Court or listed for argument, a petition to withdraw. On request of counsel, and where necessary and appropriate, the mediation judge may enter an order approving the settlement and remanding the case to the tribunal below for its enforcement and/or implementation.

- Procedure Where Settlement is Not Reached – Any case not resolved by mediation remains on the Court’s docket and proceeds as if mediation had not occurred. The mediating judge will not participate in any decision on the merits of the case. On termination of the mediation, either through settlement and dismissal, or through a continuation of the case on the Court’s docket, the mediating judge and program staff will dispose of all documents obtained during mediation.

Confidentiality

The very fact that a case has been selected for mediation is known only to the program staff and the mediating judge. No mention of referral to mediation is made on the docket, and no mention of the mediation process will be placed on the docket unless the parties agree to do so. The other judges of the Court who might ultimately decide the matter in controversy have no knowledge that mediation has occurred, and, of course, no knowledge of what transpired therein.

Mediation sessions themselves are strictly confidential.

Additional Information and Questions

For more information about the Court’s Mediation Program or about the procedures that apply when a case is referred, or for other information about appellate dispute resolution, please contact:

Richard D. Procida, Esquire
Mediation Program Administrator
Commonwealth Court of Pennsylvania
Suite 980, Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 496-4970

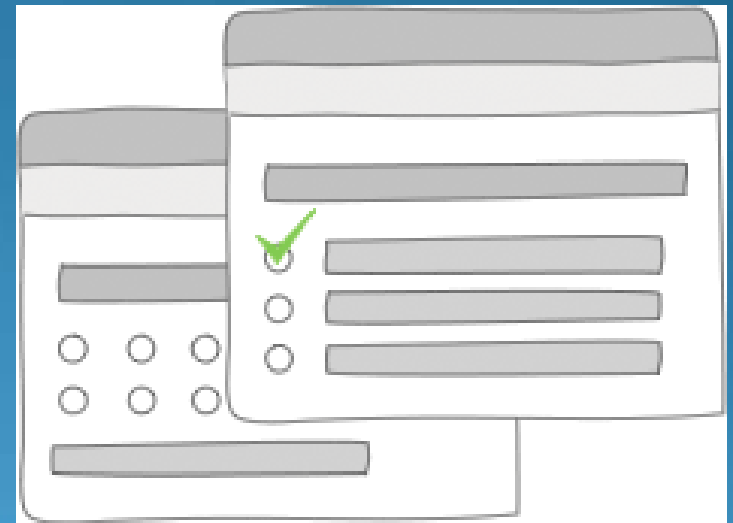
Solve My Problem

E-Filing: A 2012 Survey by the
National Conference of Appellate
Court Clerks

E-Filing Survey

- Contact Information Gathered:

- Name of Court
- Contact
- Phone Number



- 145 Courts Contacted

- 58% response rate (84 of 145)
 - ❖ Yes = 37%, e-filing is used
 - ❖ No = 63%, e-filing is not used

E-Filing Survey



- Information Gathered:

1. Does your court accept e-filings?
 - If no, are you investigating or in the process of implementing e-filing?
2. Was your e-filing software developed in-house or provided by a vendor?
3. If not in-house, who is your vendor?
4. How long have you been e-filing with your current product?
5. Are you satisfied with this product?

E-Filing Survey

- **Information Gathered:** (cont.)

6. Are you looking at changing your current e-filing product?
7. Is your e-filing product part of your case management system?
8. Is it provided by the same vendor as your e-filing vendor, if using vendors?
9. Does your e-filing product have its own document management software?



E-Filing Survey



- **Information Gathered:** (cont.)
 10. If not, what do you use for document management software?
 11. What method did you use to obtain your e-filing product? (RFP, sole source, open bid or other)
 12. Would you care to share any pearls of wisdom?

**COMMONWEALTH COURT MEDIATION PROGRAM
2008 STATISTICAL REPORT**

As of 12/31/08

	<u>Referred</u>	<u>Resolved</u>	pending
Arbitration	2	2	0
Board of Claims	2	0	0
DEP	1	1	0
DPW	17	11	3
Eminent Domain	5	2	1
HRC	2	0	0
Local Agency	5	0	0
Local Tax	7	1	3
Miscellaneous	10	4	2
Original Jurisdiction	6	1	4
PBPP	5	1	0
PUC	2	1	1
State Licensure Boards	6	3	0
State/Local Gov't Tort	3	0	0
Tax Sale	7	2	3
Workers' Compensation	97	35	13
Zoning	17	10	6
TOTAL	194	74	36

COMMONWEALTH COURT MEDIATION PROGRAM 2009 STATISTICAL REPORT

	Year-To-Date	As of 12/31/2009			
	<u>Referred in 2009</u>	Carryover from 2008	<u>Resolved in 2009</u>	<u>Not Resolved</u>	<u>Pending</u>
Arbitration	5		4	0	1
Board of Claims	1		0	0	1
DEP	3		0	1	2
DPW	14	3	13	0	4
Eminent Domain	3	1	0	1	3
HRC	0		0	0	0
Local Agency	12		2	3	7
Local Tax	3	3	1	4	1
Miscellaneous	11	2	6	4	3
Original Jurisdiction	1	4	4	0	1
PBPP	2		0	2	0
PUC	2	1	2	0	1
State License Boards	6		3	1	2
State/Loc Gov Tort	5		4	0	1
Tax Sale	2	3	1	2	2
Workers' Compensation	65	13	34	32	12
Zoning	12	6	5	7	6
TOTAL	147	36	79	57	47
		183		58%	
		Total Cases		Resolution Rate	

COURT MEDIATION PROGRAM TOTALS SINCE INCEPTION 2000 - Present

Referred
2123

Resolved
969

45.6%
Resolution Rate

COMMONWEALTH COURT MEDIATION PROGRAM 2010 STATISTICAL REPORT

As of 12/31/2010

	Referred in 2010	+ Carryover from 2009	Resolved in 2010	- Not Resolved	= Pending
Arbitration/Labor	7	1	4	3	1
Board of Claims	0	1	0	1	0
DEP	5	2	2	3	2
DPW	14	4	11	1	6
Eminent Domain	8	3	3	5	3
LCB	2	0	1	0	1
Local Agency	12	7	6	8	5
Local Tax	3	1	2	2	0
Miscellaneous	19	3	9	8	5
Original Jurisdiction	4	1	2	0	3
PBPP	2	0	1	1	0
PUC	3	1	1	2	1
State License Boards	5	2	4	2	1
State/Loc Gov Tort	2	1	1	1	1
Tax Sale	5	2	3	3	1
Workers' Compensation	50	12	19	26	17
Zoning	17	6	8	11	4
TOTAL	158	47	77	77	51
		205		50%	
		Total Cases		Resolution Rate	

COURT MEDIATION PROGRAM TOTALS SINCE INCEPTION 2000 - Present

Referred 2281	Resolved 1046	
		46% Resolution Rate

COMMONWEALTH COURT MEDIATION PROGRAM 2011 STATISTICAL REPORT

As of 12/30/2011

Year-To-Date

Case Type	Referred	Carryover	Resolved		
	in 2011	+ from 2010 -	in 2011	- Not Resolved	= Pending
Arbitration/Labor	1	1	0	0	2
Board of Claims	1	0	0	0	1
DEP	1	2	1	1	1
DOT	2	0	0	1	1
DPW	11	6	13	1	3
Eminent Domain	15	3	3	7	8
HRC/CSC	1	0	0	0	1
LCB	2	1	2	0	1
Local Agency	9	5	5	1	8
Local Tax	5	0	3	1	1
Miscellaneous	7	5	5	5	2
Original Jurisdiction	3	3	3	1	2
PBPP	0	0	0	0	0
PUC	2	1	3	0	0
RTKL	5	0	1	1	3
State License Boards	7	1	4	3	1
State/Loc Gov Tort	3	1	3	0	1
Summary/Criminal	2	0	0	1	1
Tax Sale	3	1	2	0	2
UC	0	0	0	0	0
Workers' Compensation	58	17	15	29	31
Zoning	27	4	8	3	20
TOTALS	165	51	71	55	90

216
Total Cases

56%
Resolution Rate

COURT MEDIATION PROGRAM TOTALS SINCE INCEPTION 2000 - Present

Referred
2446

Resolved
1117

46%
Resolution Rate

COMMONWEALTH COURT MEDIATION PROGRAM 2012 STATISTICAL REPORT

As of 8/24/2012

Case Type	Year-To-Date					
	Referred in 2012	+ Carryover from 2011	= Total Cases	Resolved in 2012	- Not Resolved	= Pending
Arbitration/Labor	2	2	4	1	1	2
Board of Claims	1	1	2	0	1	1
DEP	1	1	2	1	0	1
DOT	0	1	1	0	1	0
DPW	19	3	22	17	0	5
Eminent Domain	6	8	14	4	5	5
HRC/CSC	0	1	1	0	0	1
LCB	1	1	2	0	0	2
Local Agency	7	8	15	3	7	5
Local Tax	3	1	4	0	1	3
Miscellaneous	4	2	6	3	1	2
Original Jurisdiction	2	2	4	1	1	2
PBPP	0	0	0	0	0	0
PUC	2	0	2	0	0	2
RTKL	1	3	4	0	3	1
State License Boards	11	1	12	8	0	4
State/Loc Gov Tort	2	1	3	1	0	2
Summary/Criminal	5	1	6	1	1	4
Tax Sale	1	2	3	0	0	3
UC	0	0	0	0	0	0
Workers' Compensation	26	31	57	15	17	25
Zoning	11	20	31	7	8	16
TOTALS	105	90	195	62	47	86

57%
Resolution Rate

COURT MEDIATION PROGRAM TOTALS 2000-Present

Referred
2551

Resolved
1179

46%
Resolution Rate



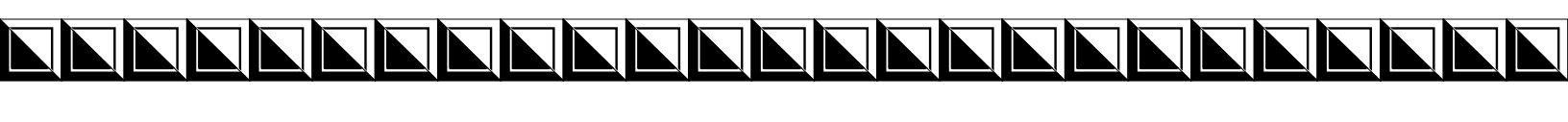
2012 Council of Chief Judges
of the State Courts of Appeal

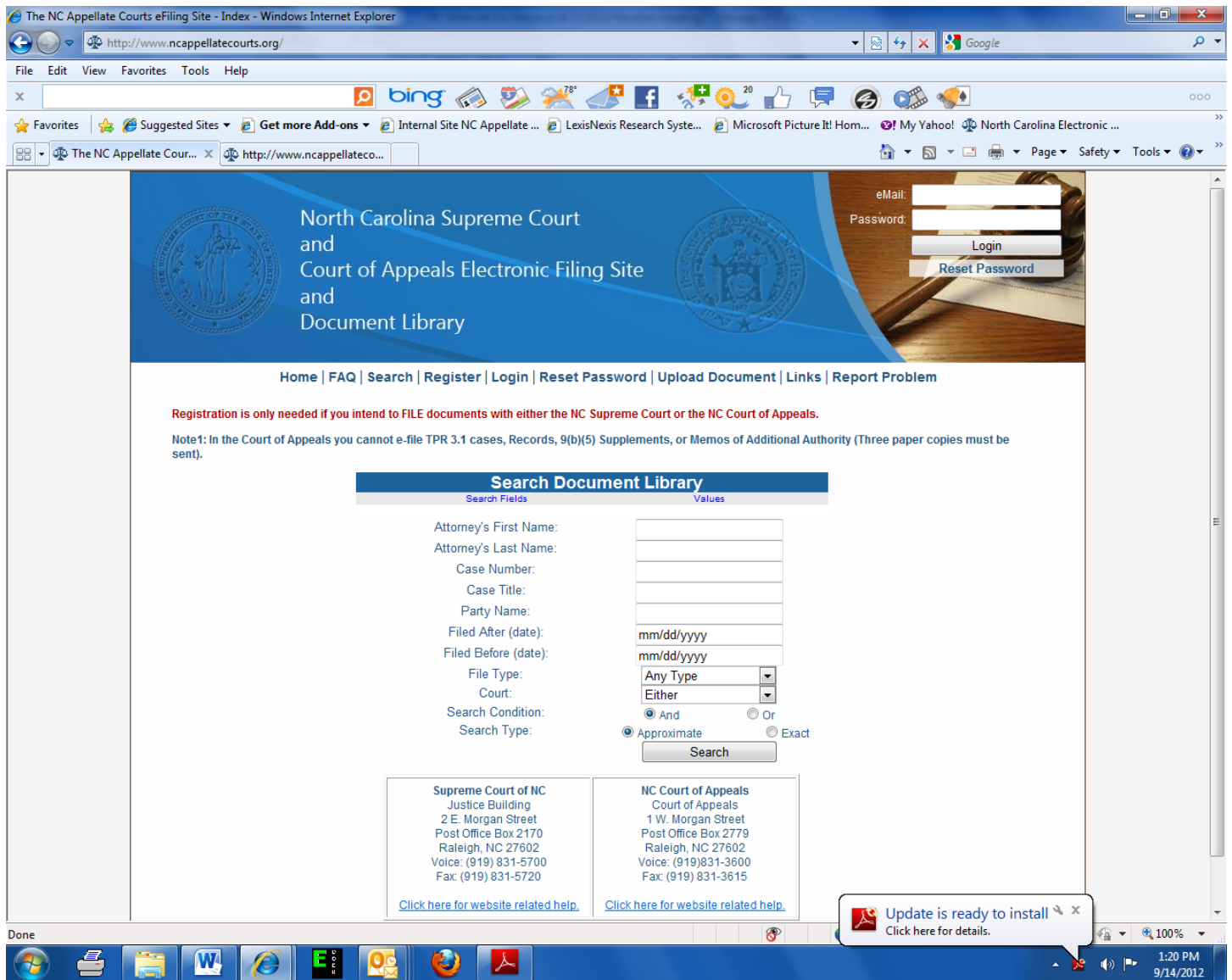
33rd Annual Conference

Solve My Problem

*North Carolina Supreme Court
and
Court of Appeals Electronic Filing Site
and
Document Library*

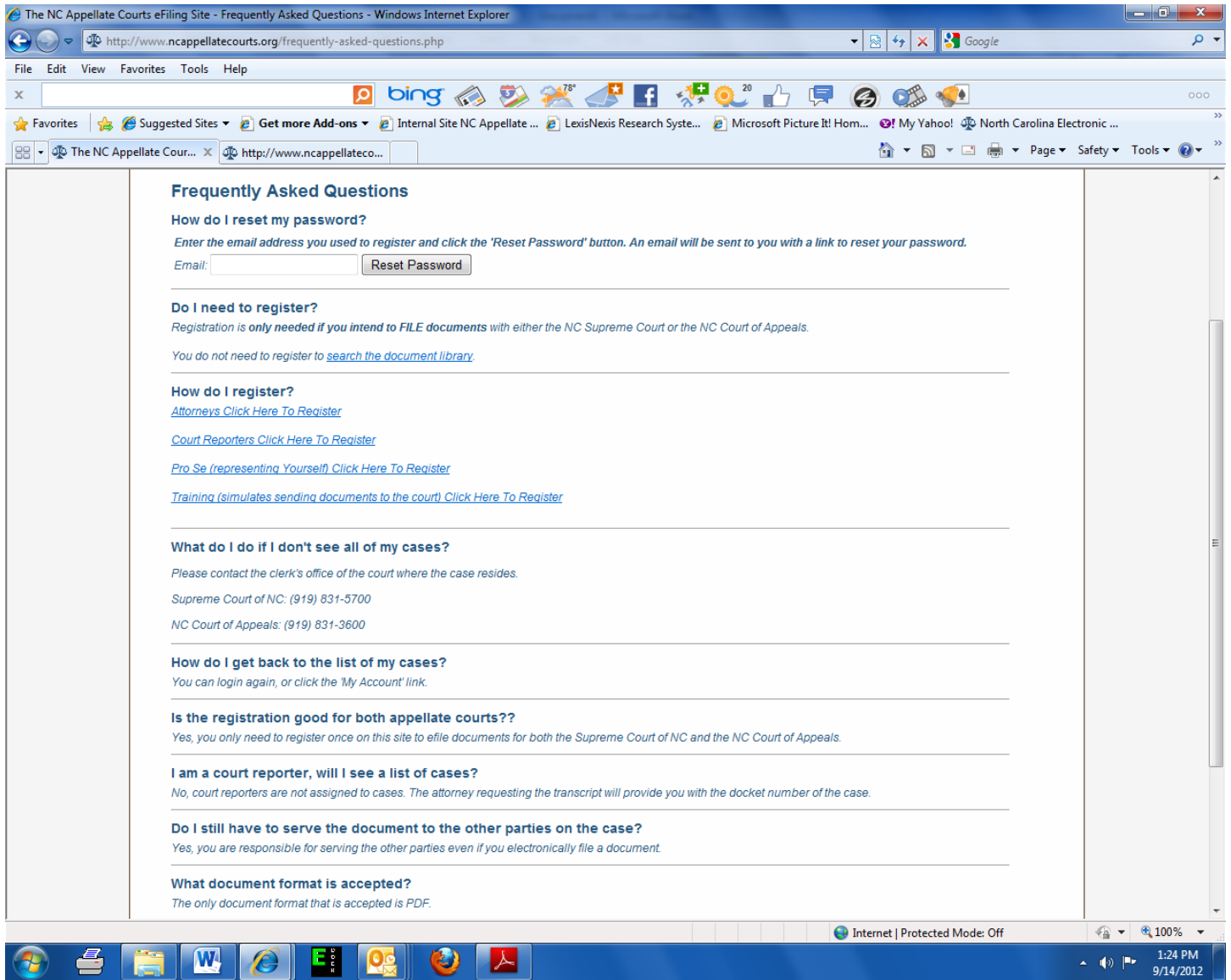
Christie S. Cameron Roeder
Clerk, North Carolina Supreme Court
Friday, November 16, 2012
Houston, Texas



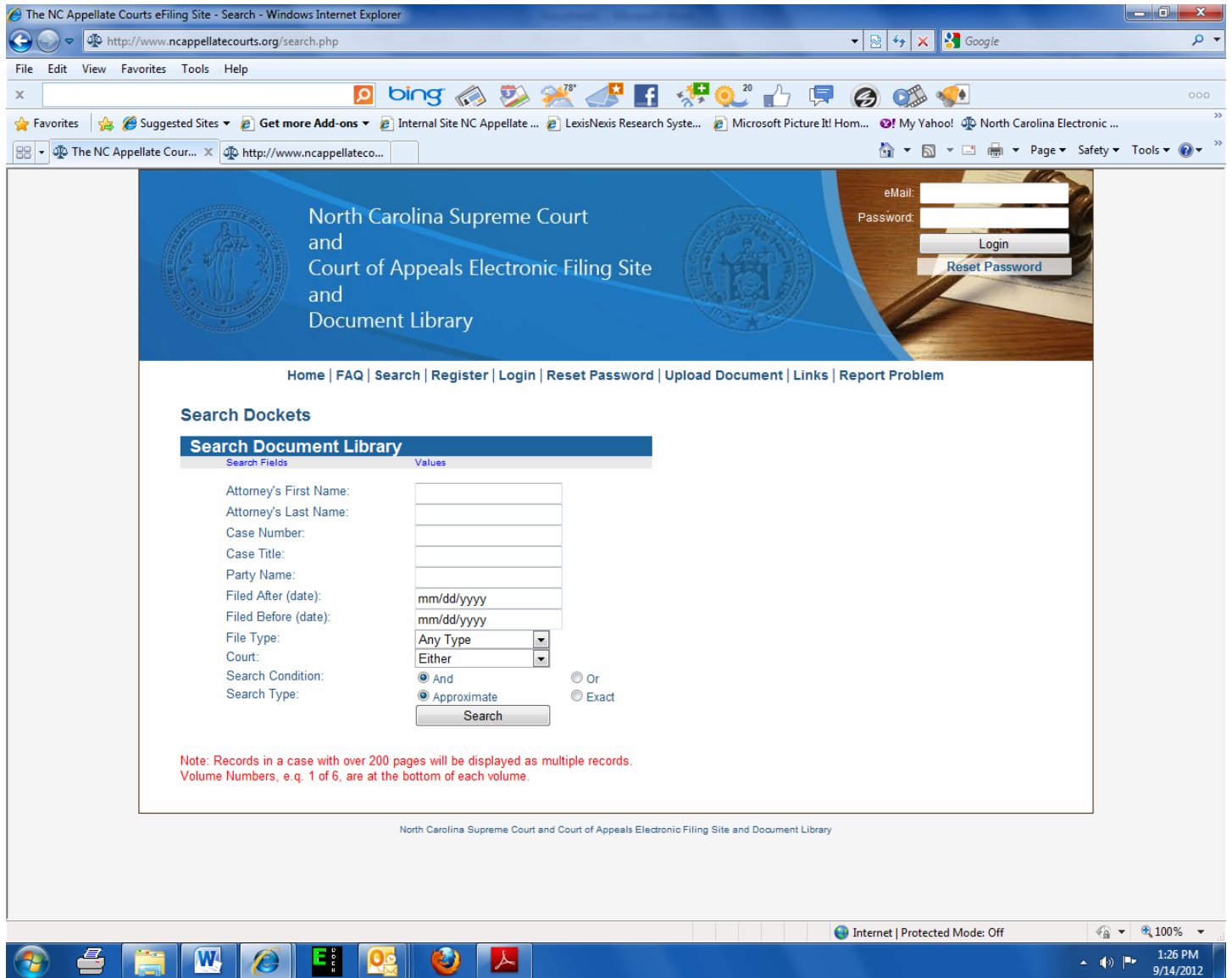


This is the "Home Screen" for the North Carolina Appellate Courts Electronic Filing Site.

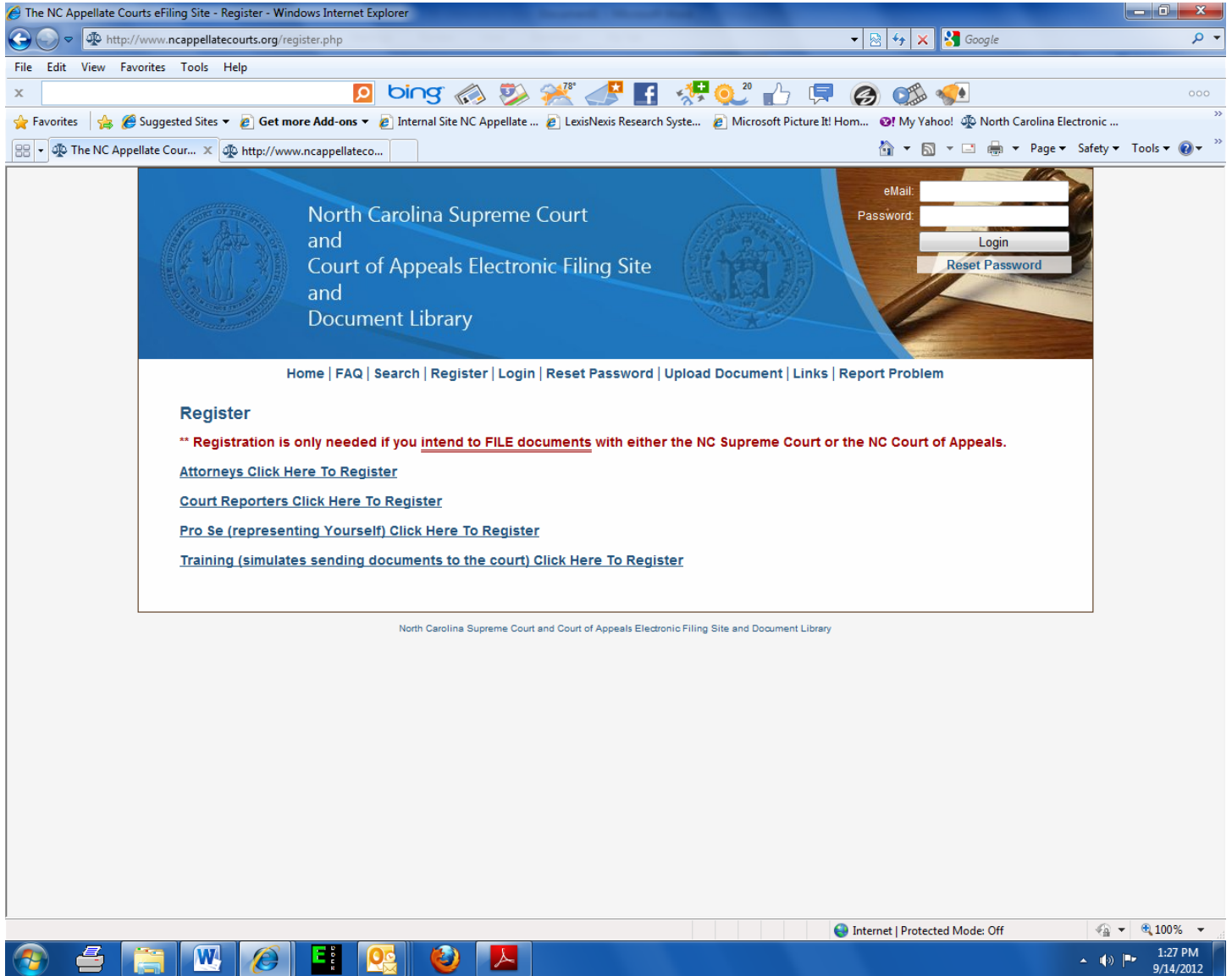
Note that you can search all the briefs and records filed in the NC Court of Appeals or the Supreme Court since 1998, and you do not need to register for the site to be able to search. It is used by Law Schools in North Carolina for a "Brief Bank" and tools to illustrate how to prepare a record in North Carolina.



Under the "FAQ" tab on the Home Page, you can find some of the answers to, well, Frequently Asked Questions. Note that you can register as a Court Reporter, as a Pro Se Litigant or an Attorney on the NC Electronic Filing Site.

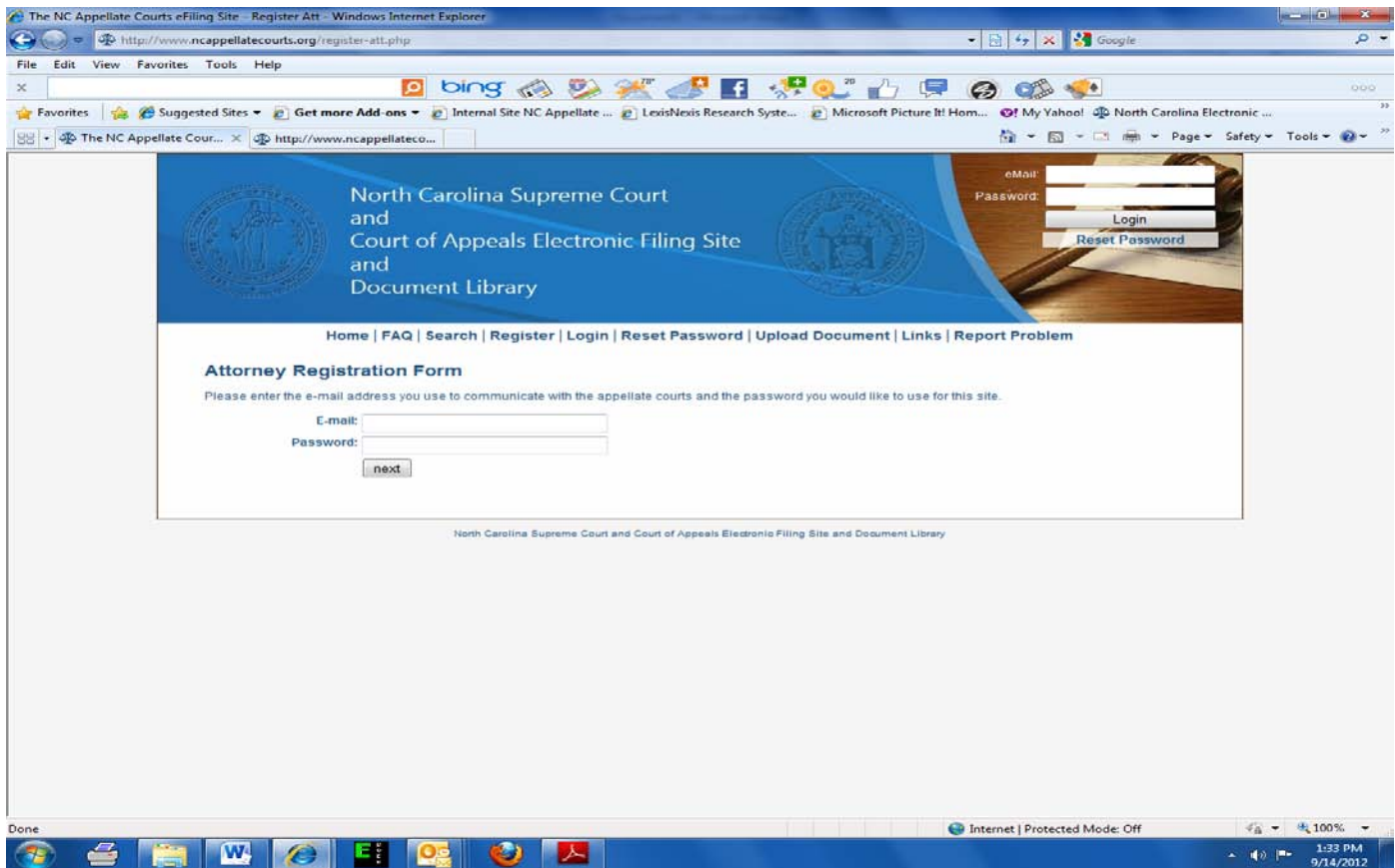


If you simply wanted to search for a case that the COA is hearing or the Supreme Court is hearing, you would simply click the "Search" tab. There are a myriad of ways you can search for a case.

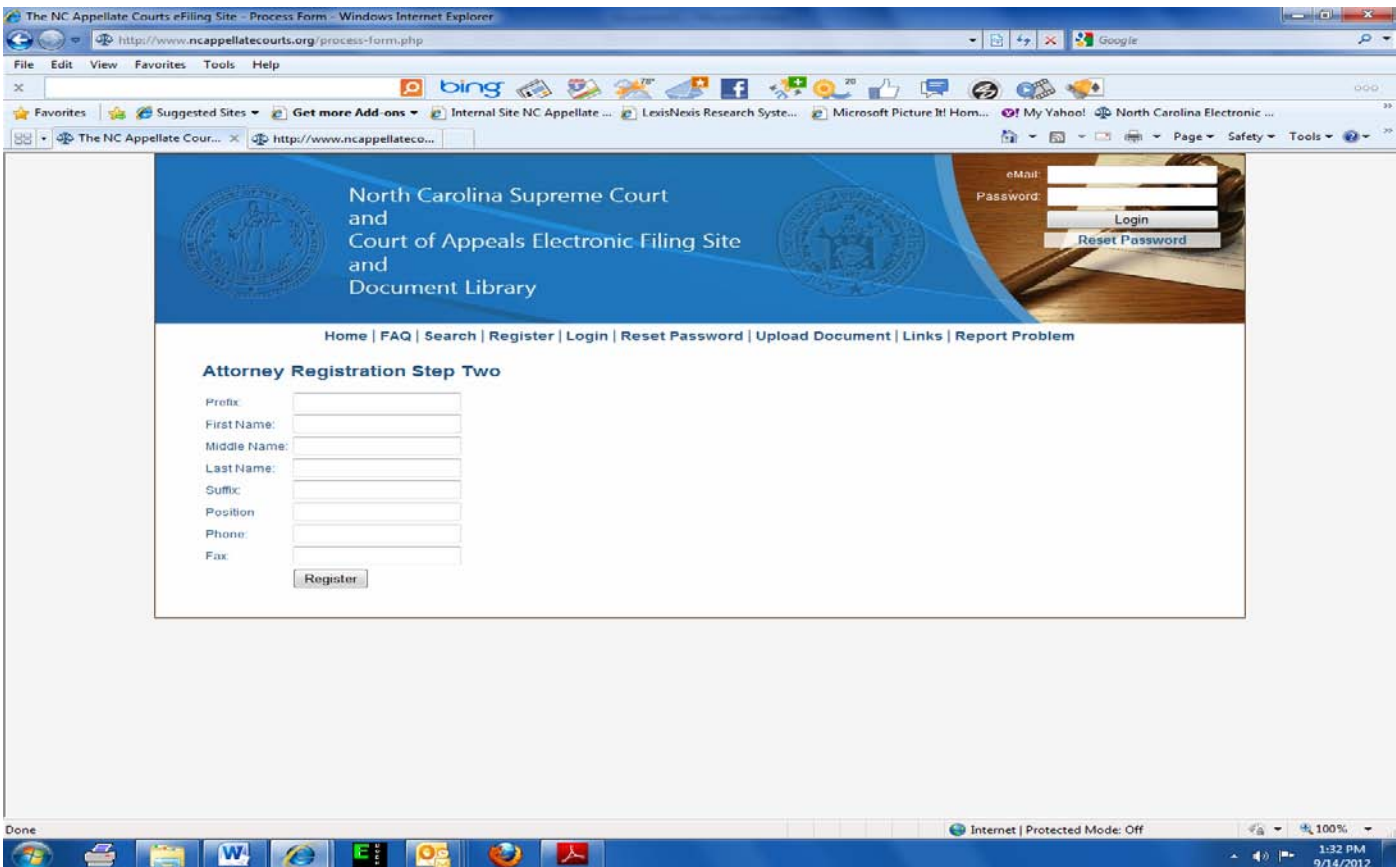


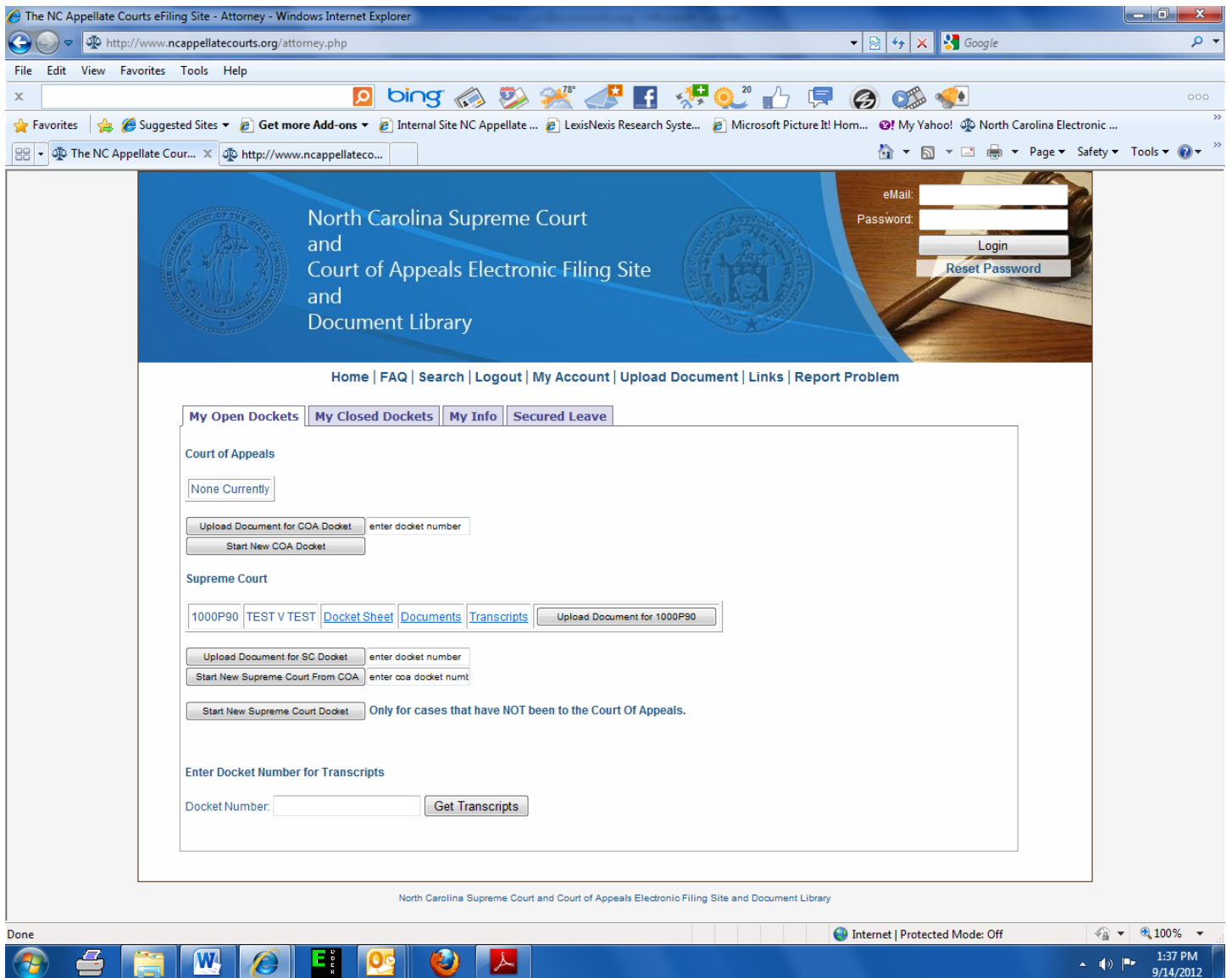
On the "Register" Screen, you are reminded that you only need to register if you intend to file a document.

*****If any of your IT staff or if you would like to preview the site more thoroughly, our IT staff can set you up with a temporary registration to be able to do that. Just call us at 919-831-5700 and ask for either Marcos de Souza or Fred Wood.***



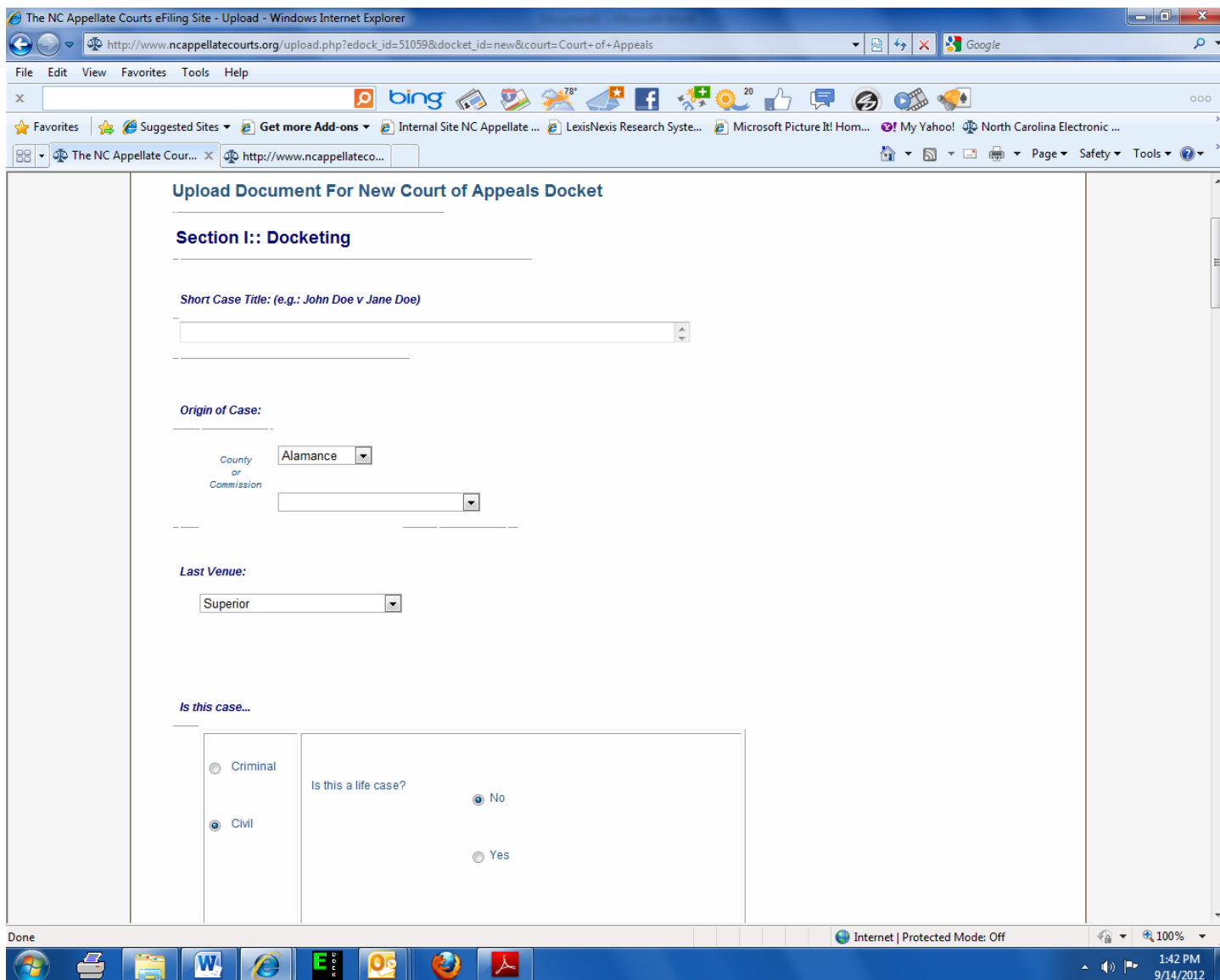
The Registration is very simple.



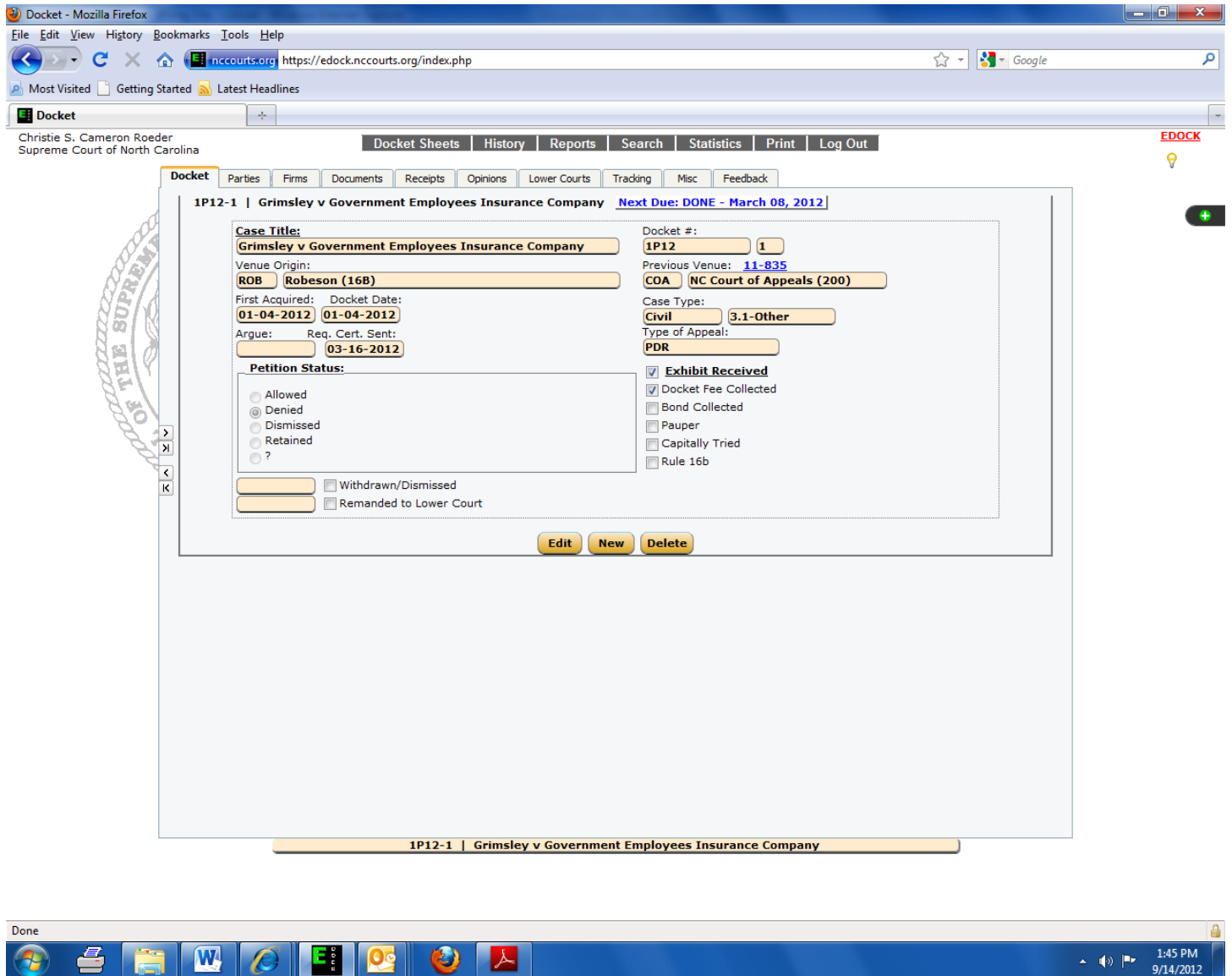


Once an attorney has registered, they are able to go to "their" page. Their page will contain information on all the documents they have filed at the COA and the Supreme Court - either current or closed. If they are filing a new document in a case that has already been opened in the Clerk's Office, then they can simply upload the document. If they are starting a new case, there will be more information which will need to be completed.

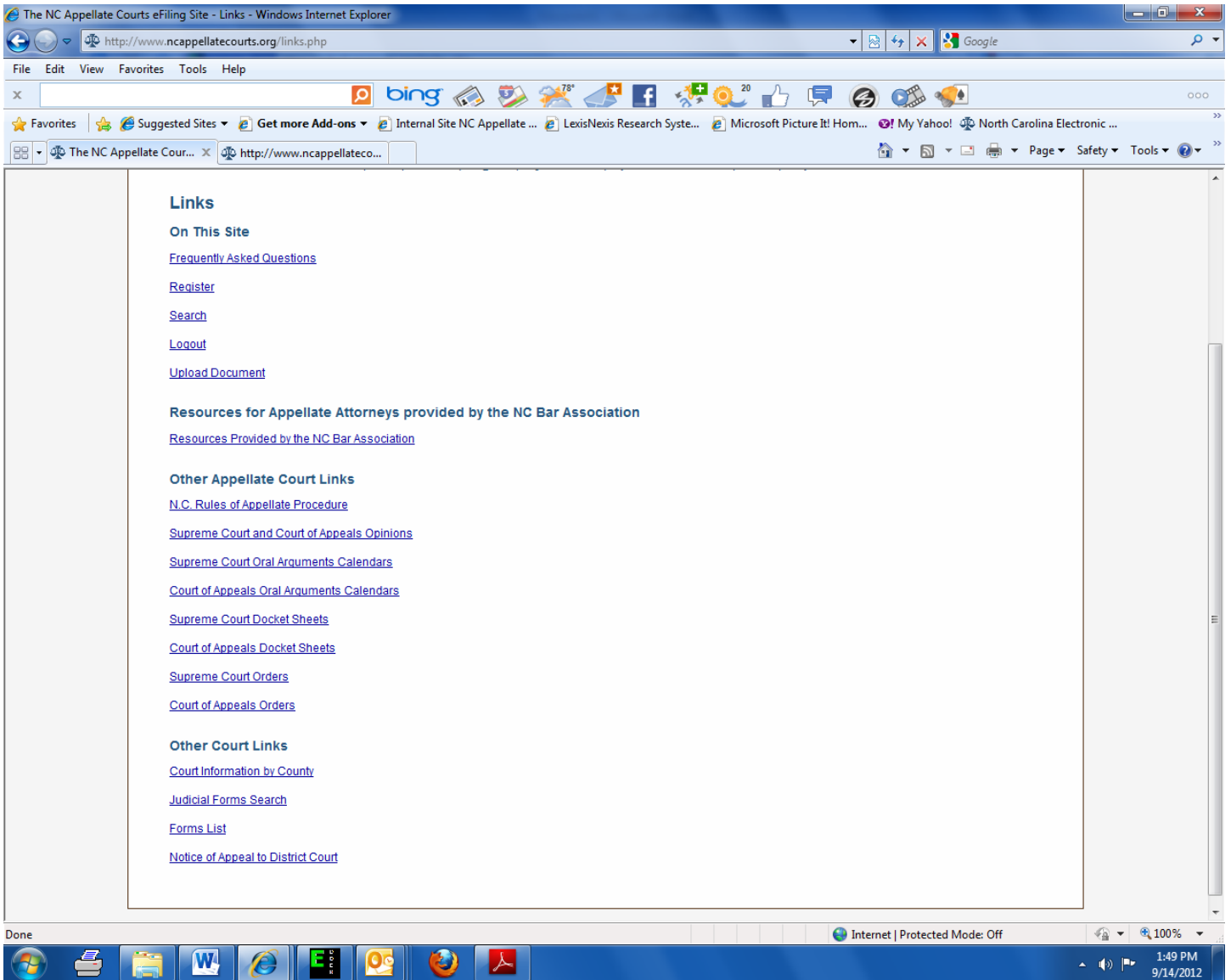
If one were to click on the "Start a New COA Docket" tab, he or she would be sent to the next page's screen.



This page will lead the attorney through a series of questions before they upload their petition or record. The information that is filled in will be transferred directly into the case management system in the Clerk's Office. Since this information is being entered directly by the attorney, the Clerk's Office starts validating the data rather than having to enter it in from a paper document.

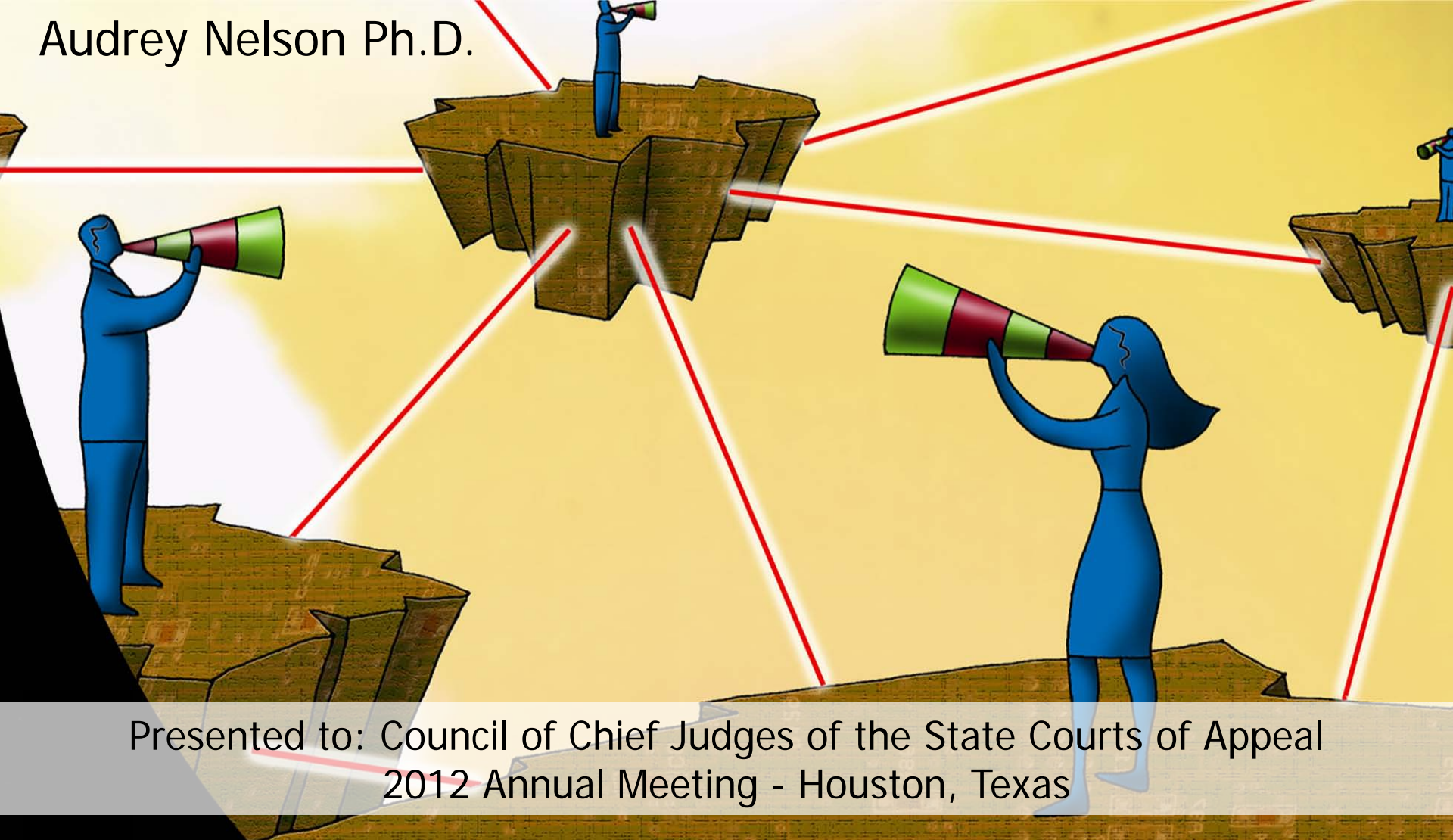


The opening page of our case management system looks something like this. The information from the electronic filing site will transfer into each of the tabs. The parties will go under the "Parties" Tab. The Attorney's name, their address, their telephone number, their email address and the firm for which they work will seamlessly flow into the "Firms" tab, etc.



These are some of the links that we have on our electronic filing site.

Audrey Nelson Ph.D.



Presented to: Council of Chief Judges of the State Courts of Appeal
2012 Annual Meeting - Houston, Texas

HE SPEAKS, SHE SPEAKS

How Gender Can Affect the Role of Chief Judge

The Seven Most Commonly Asked Questions



1. How did men and women **acquire** their communication styles? Did they **learn** them or were they **born** that way?
2. Which **style** is better? Men's style or women's style?
3. Is gender really that **significant** in defining the way people interact with each other?
4. Can men and women **learn to change** and adapt their styles?
5. Are there **individual** differences as well as gender differences in communication style?
6. Who acts as though they are **responsible** for effective gender communication? Women or men?
7. **Haven't things changed** in gender relationships?

The Sex-Role Underpinnings of Gender Communication

Women

Indirect

Process

Other

Interdependent

Feelings

Men

Direct

Goal

Self

Independent

Content

The Mechanics of Communication:

The Gender Component

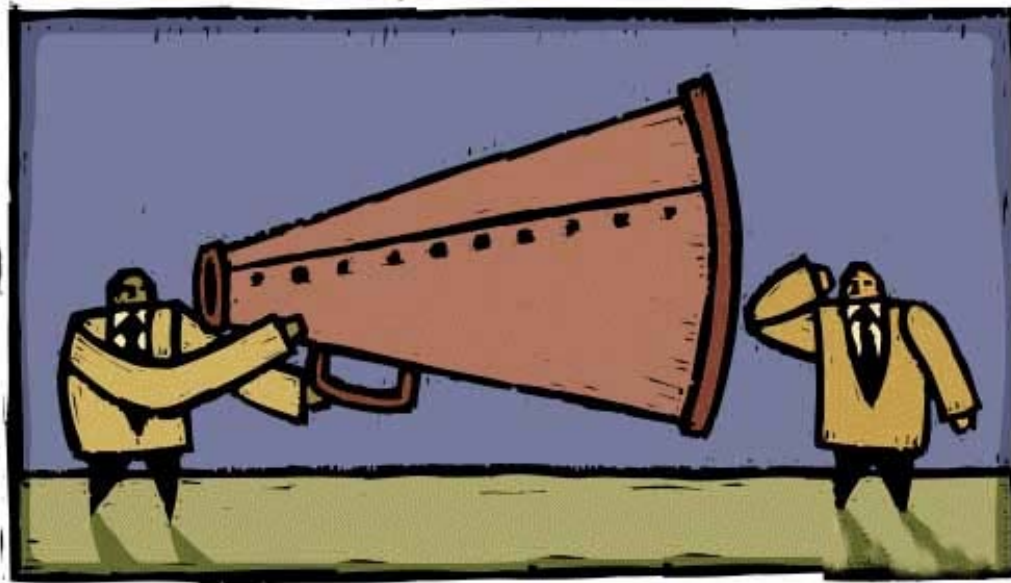


Talk patterns have been examined over the years in terms of

- who talks,
- who interrupts
- who talks the longest

The Politics of Turn Taking

Those being interrupted often feel that the listeners aren't really listening, but instead are planning **how**, **when**, and with **what** they can interrupt the speaker.



Yield: Men and Women Talking



- Men tend to take more turns and speak longer per turn in general conversations
 - Overlapping
 - Turning up the volume
-
- Those with greater power, status, or authority have been shown to interrupt others more frequently than those with less power or status.

Email Versus Face-to-Face:

Make Time for Face Time

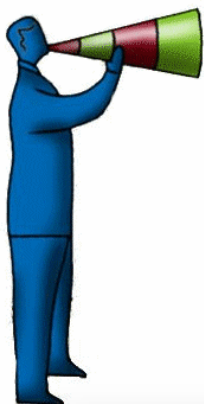


- Using email as a conflict management tool: Pros-Cons
- Can you build relationship through email?
- Is there such a thing as a **neutral** email?
- Do men and women have a different email style?

WRAP UP and Final Thoughts:



- ✓ Different is GOOD
- ✓ Intent versus Impact
- ✓ Self awareness and self management
- ✓ Shut-Up School-Listen more; talk less!
- ✓ R-E-S-P-E-C-T

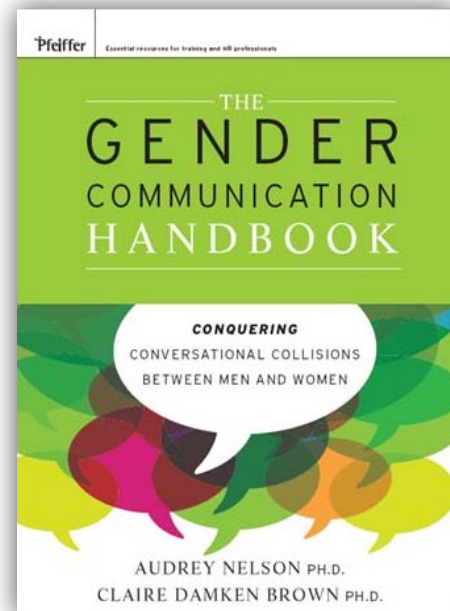


The Gender Communication Handbook: Conquering Conversational Collisions

Between Men and Women

Audrey Nelson, Ph.D. (co-author)

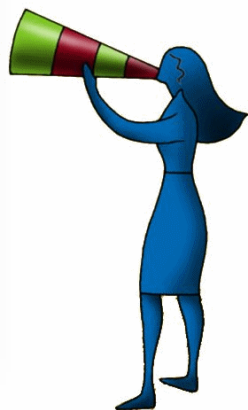
Pfeiffer - An Imprint of Wiley - 2012



Code Switching: How to Talk So Men Will Listen

Audrey Nelson, Ph.D. (co-author)

Alpha Books - 2009

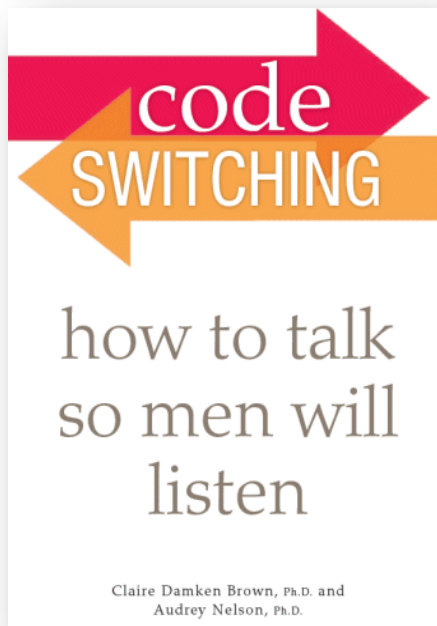
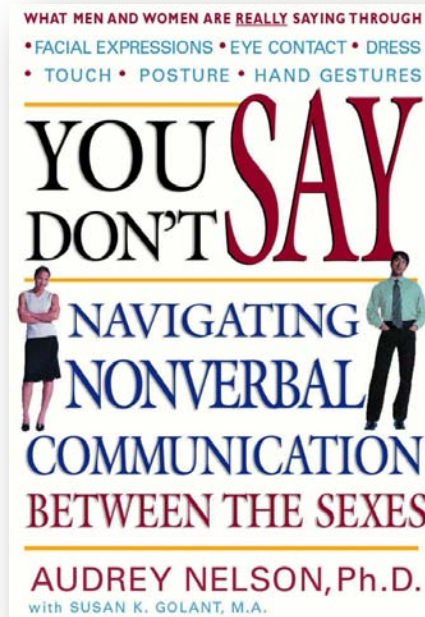


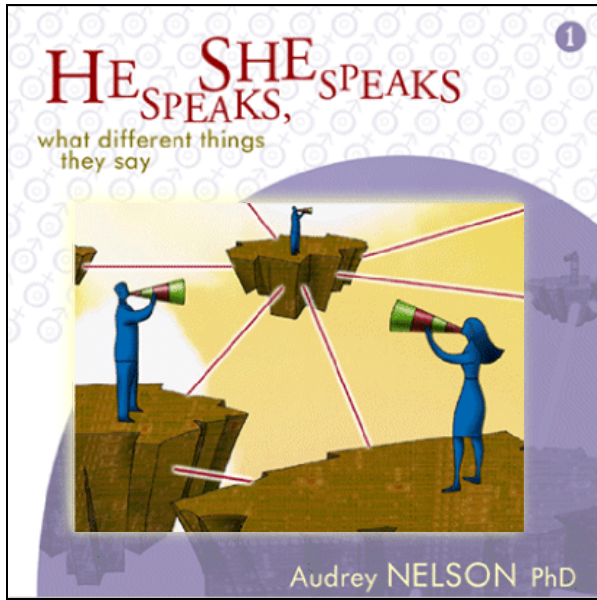
You Don't Say: Navigating Nonverbal Communication

Between the Sexes

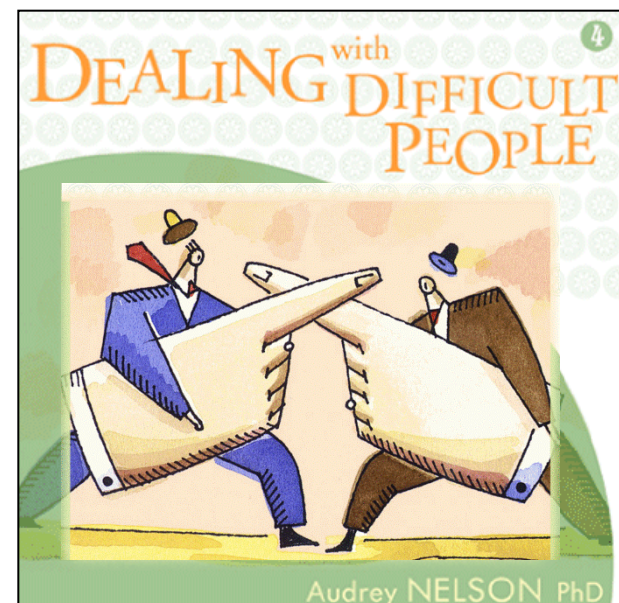
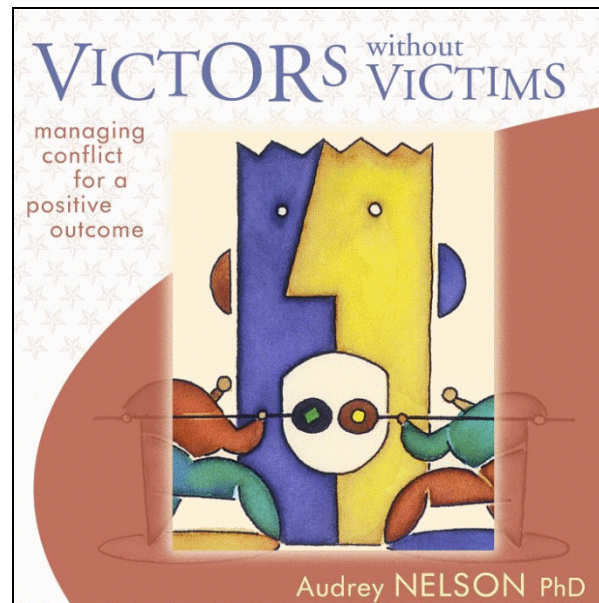
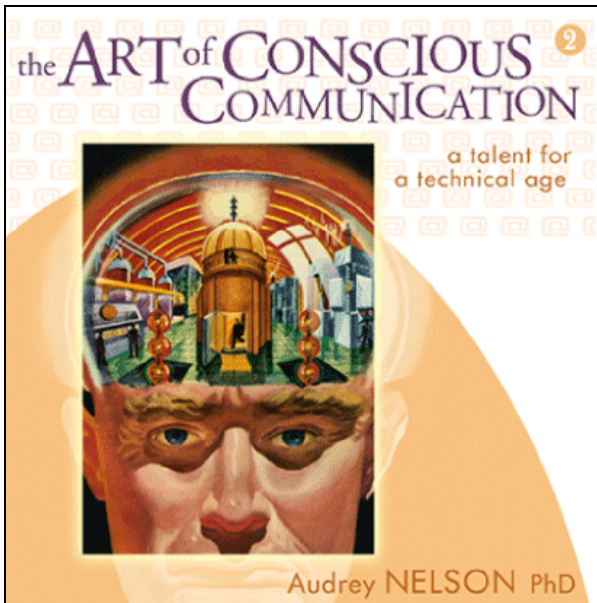
Audrey Nelson, Ph.D.

Prentice Hall - 2004





"Audrey's Top 4 CD Communication Hits"



Legal reading and writing in the paperless chambers

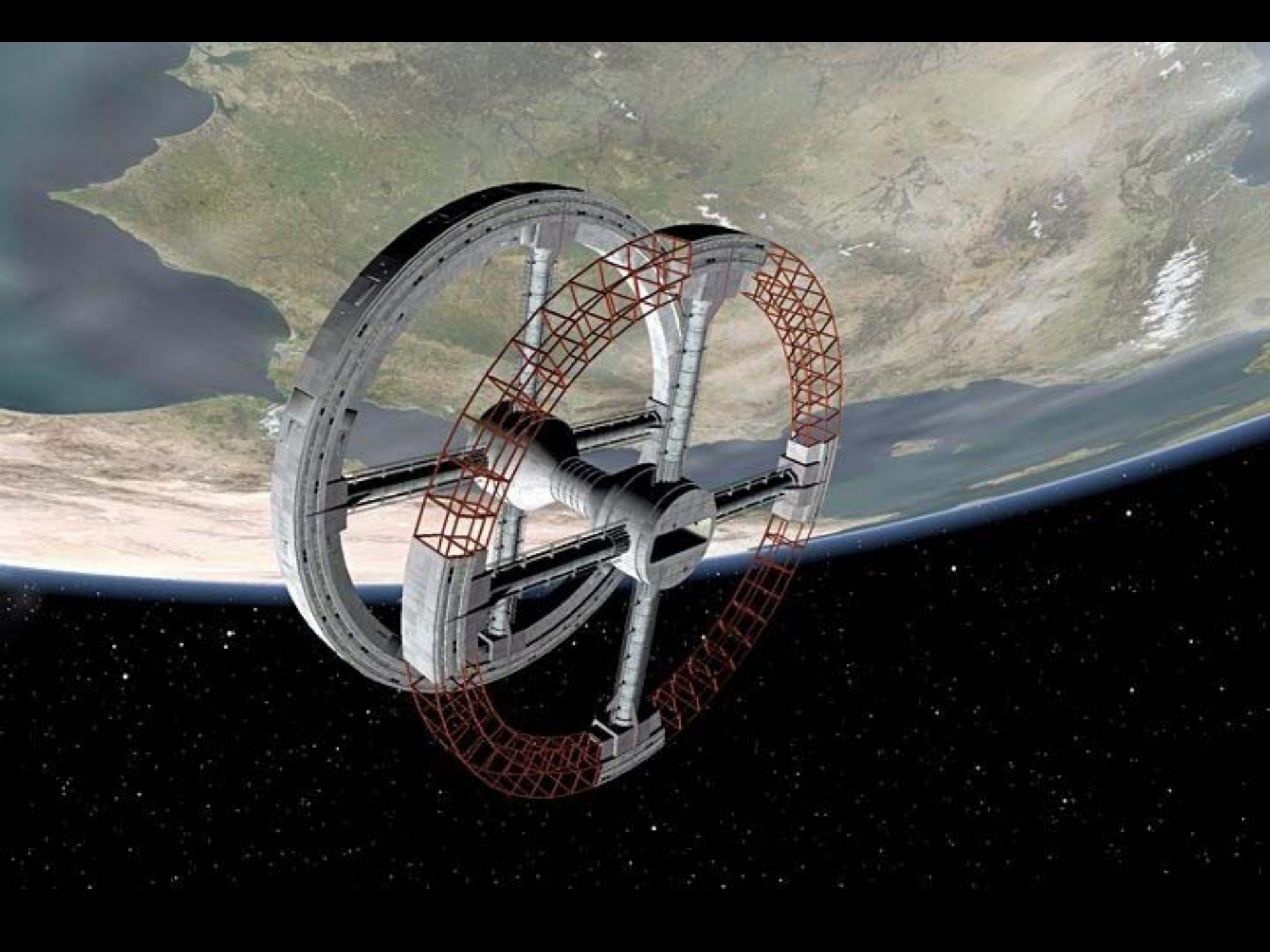
Robert Dubose

Alexander Dubose & Townsend
rdubose@adtappellate.com

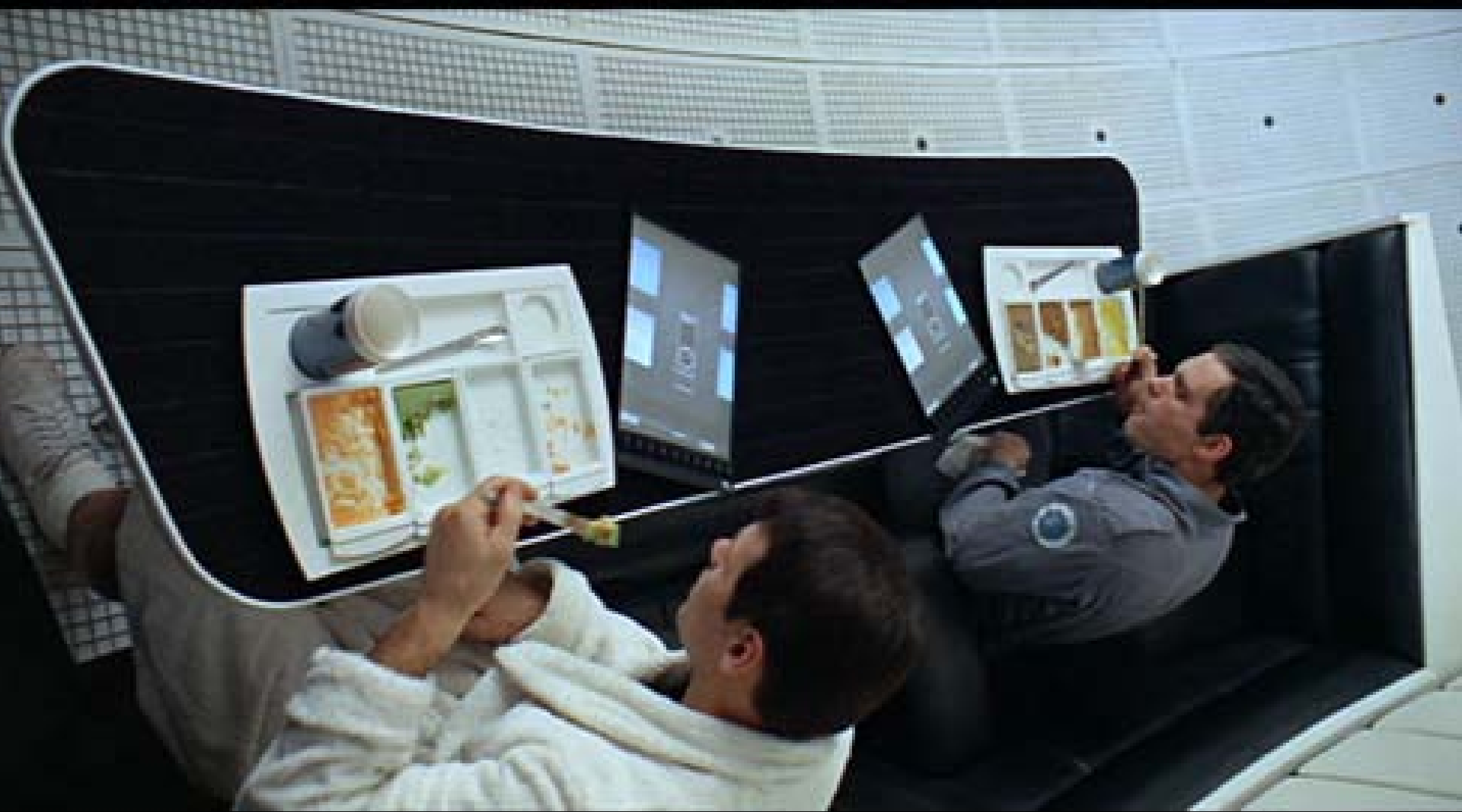
The classic sci-fi theme –

technology

2001 A Space Odyssey (1968)



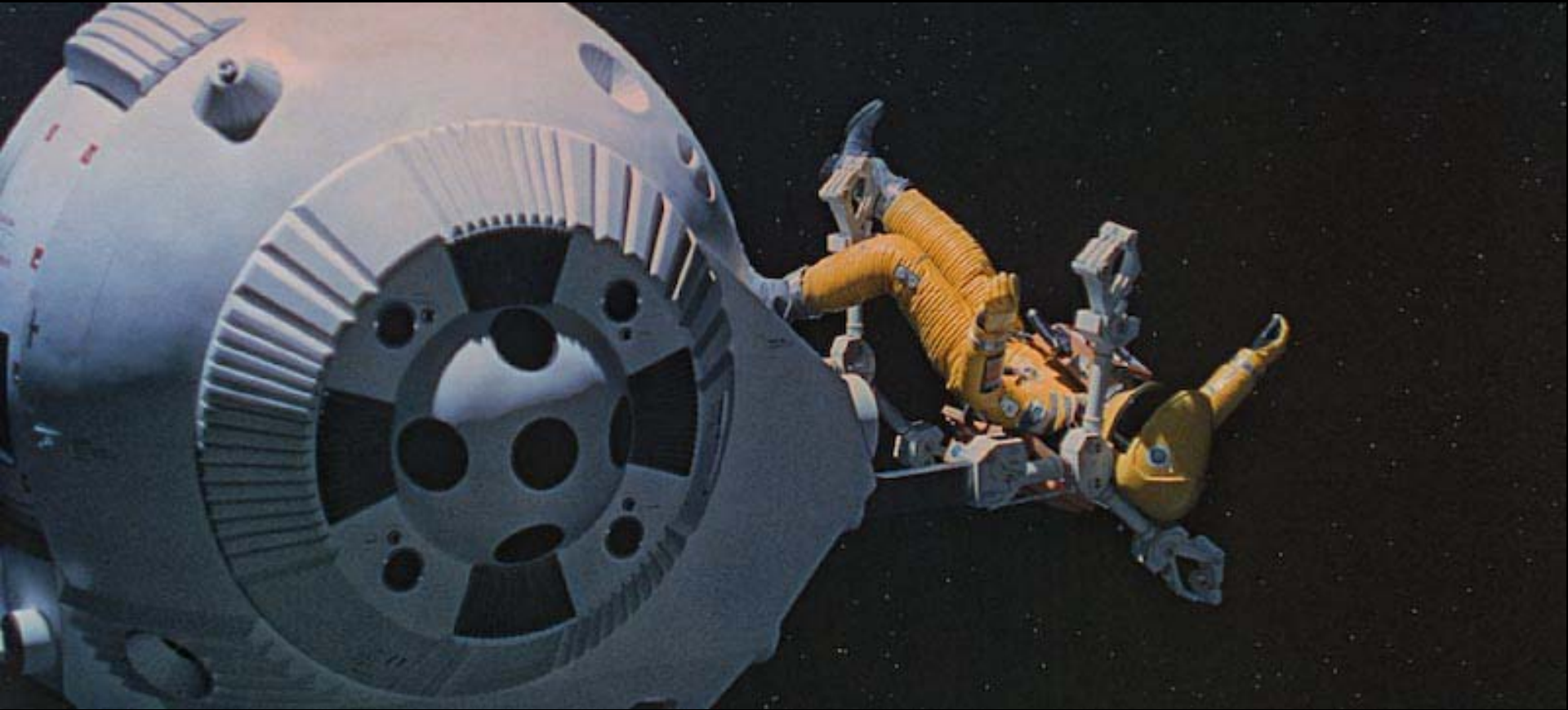


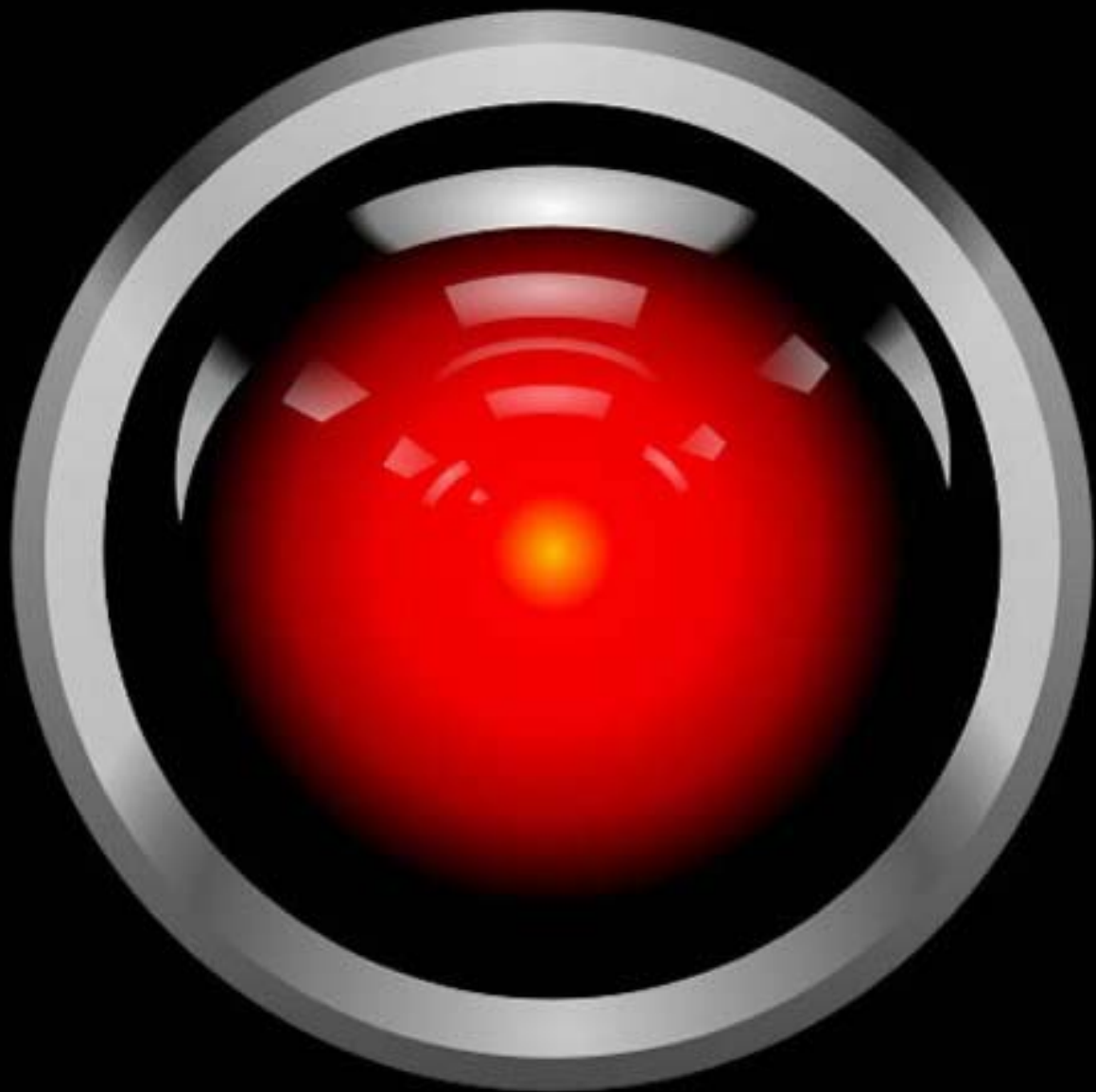


COM

HAL 9000









In our lifetimes,
the biggest change to legal practice

is the switch to reading on screens.

3 Topics

1. How screens are changing reading.

2. Suggestions for reading.

3. Suggestions for the
appellate brief of the future.

Part I: The way we read is changing

“But the words are the same”

“Any technology tends to create a new human environment.”

-Marshall McLuhan,
The Gutenberg Galaxy

The space between words
1,000 – 1,300 A.D.

DICITUR RET-MEDIOCVMSOLS
ADCOMMUNEFRETVMS.ATY
CONSORTESCELEBRARECHOROS
SECRETASHOMINVAIGOETV
UNCINSULTANTESSVAPERFR
SATYROSAMERSAREVADI

Before the word space:
most text read aloud in groups

When there are no spaces between words they become difficult to read silently
you have to sound them out in order to understand them

Spaces enabled solitary reading,
studying

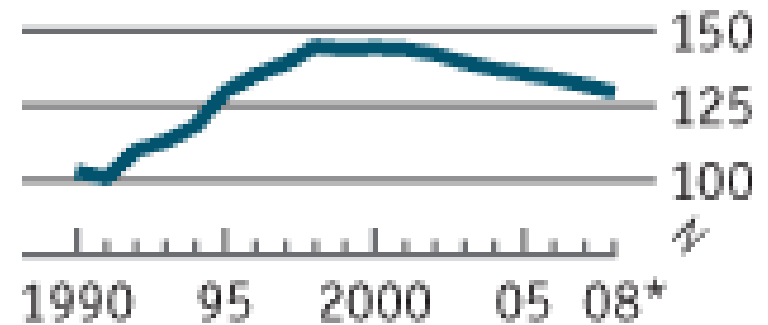
Screen reading is fairly new

Paper usage
1980-2000

Paper usage 2000-now

US paper usage

lb per white-collar worker



*Forecast

Most lawyers now read more on screens than on paper.

Most offices are paperless.

Courts?

Pattern

E-filing = e-record keeping =
e-reading

A paperless reading environment is different.

convincing argument, in that as soon as I appeared to speak before this numerous assembly all their countenances were gilded over with a lively sparkling pleasantness: you soon welcomed me with so encouraging a look, you spurred me on with so cheerful a hum, that truly in all appearance, you seem now flushed with a good dose of reviving nectar, when as just before you sate drowsy and melancholy, as if you were lately come out of some hermit's cell. But as it is usual, that as soon as the sun peeps from her eastern bed, and draws back the curtains of the darksome night; or as when, after a hard winter, the restorative spring breathes a more enlivening air, nature forthwith changes her apparel, and all things seem to renew their age; so at the first sight of me you all unmask, and appear in more lively colours. That therefore which expert orators can scarce effect by all their little artifice of eloquence, to wit, a raising the attentions of their auditors to a composedness of thought, this a bare look from me has commanded. The reason why I appear in this odd kind of garb, you shall soon be informed of, if for so short a while you will have but the patience to lend me an ear; yet not such a one as you are wont to hearken with to your reverend preachers, but as you listen withal to mountebanks, buffoons, and merry-andrews; in short, such as formerly were fastened to Midas, as a punishment for his affront to the god Pan. For I am now in a humour to act awhile the sophist, yet not of that sort who undertake the drudgery of tyrannizing over school boys, and teach a more than womanish



NAVIGATION

[Home](#)

[About](#)

SAY HELLO

[↔](#) [↔](#) [All](#)

Latest on Sun, 04:56 pm

Misha: Brad, thanks for reading. This is going to be long. Better switch to full page mode. There are a ton of must eat places in [...]

Brad Blodgett: I have enjoyed your writing for several months now and thought I'd ask if you currently have any "must eat at" restaurants in Paris.

Misha: Oh brother. Its coming:)

[» Leave a reply](#)

WHAT I'M DOING...

I love Priceline. Westin for \$77, Hyatt for \$60. Shattner and Ben Folds FTW! 8 hrs ago

The mini minibar at Bazaar

by Misha

I don't travel to DC area very often. When I do, I am constantly reminded that I am within driving distance of [minibar](#), the Jose Andres' restaurant within a restaurant, which has been near the top of my list of places to visit for the past year.



Liquid olives

I have seen enough of the dishes created by Jose Andres to know he

To search, type and hit enter

RECENT POSTS

[Pico's Bakery and Taqueria](#)

[Bnisa Cocina Mexicana](#)

[Komi \(Washington, DC\)](#)

[Little Big's man getting his due](#)

[Feast and the local cats](#)

[Best meals of 2008 - Manresa \(Los Gatos, CA\)](#)

[The mini minibar at Bazaar](#)

RECENT COMMENTS

[Misha on Pico's Bakery and Taqueria](#)

[Cougar Food Blog on Pico's Bakery and Taqueria](#)

[andrea on Pico's Bakery and Taqueria](#)



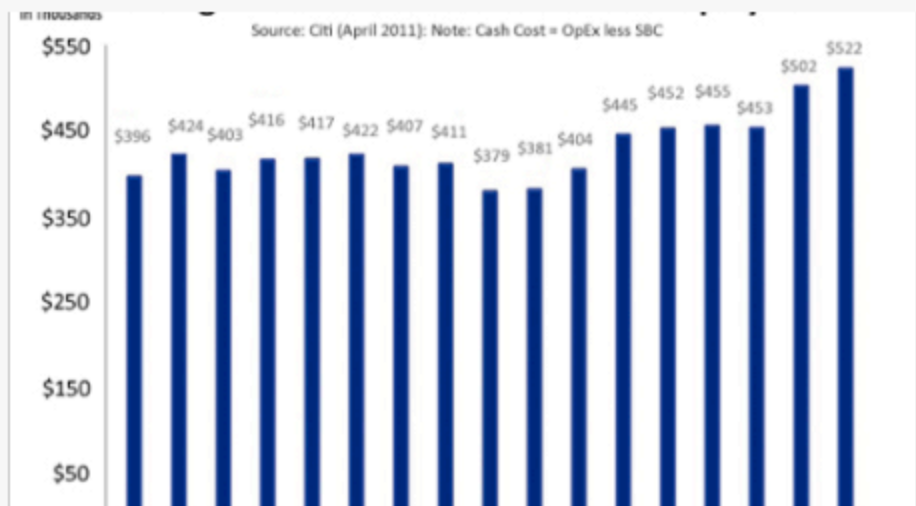


CHART OF THE DAY: Google's Cash Cost Per Employee Hits An All Time High

[businessinsider.com](#) • Investors punished Google for last night's earnings performance by knocking the stock down 8% today.

While the earnings results were generally in line, two things spooked Wall Street.

First, Larry Page wasn't particularly warm and fuzzy on the earnings call, and Wall Street analysts love to be massaged.

Second, Wall Street was put off by Google's rising operating expenses brought on by its hiring binge.

In the chart below from Citi analyst Mark Mahaney, who downgraded the stock, you can see that Google's cash cost per employee is the highest it has ever been.

Mahaney writes that, "Given that the company will pay employees more this year, incur greater compensation-related expenses (401K matching, employee taxes, etc.), and is planning to be aggressive in hiring new employees, we would expect ...

How did the biology of giant-sized dinosaurs actu...

[io9.com](#) • Tomorrow marks the opening of the American Museum of Natural History's long-awaited dinosaur exhibit, called "The World's Largest Dinosaurs." We talked to curator and paleontologist Mark Norell about the show - and how these super-giant animals ...

More to read...

[Poynter.org](#) • > Gannett ramps up Groupon-like offering, expands to five more cities

> A visit to USC Annenberg School for Communication and Journalism

> Evening news remains a broadcasting success story | Why Couric failed

... Read more

LivingSocial Acquires SocialMedia For \$3 Million

[techmeme.com](#) • Michael Arrington / TechCrunch: LivingSocial Acquires SocialMedia For \$3 Million — Fast growing daily deal service LivingSocial, which just raised \$400 million, has acquired long suffering social advertising network SocialMedia, we've confirmed. The ...

This Is Everything You Missed At Techstars Yesterday

[businessinsider.com](#) • Yesterday we watched eleven promising startups demo at New York City's Webster Hall.

We cornered some of them on camera after their presentations and picked our favorites from the bunch.

Check it out:

Usability

Deep reading (study)

vs.

Rapid-information gathering
(screen reading)





“The PC introduced an entirely new way of living and doing business by becoming the portal through which *all of our work is done.*”

-John Freeman, THE TYRANNY OF E-MAIL

Why is reading changing?

5 features of the screen environment

1. Internet –

unlimited information

“Getting information off the Internet is like taking a drink from a fire hydrant.”

-Mitchell Kapor

2. Google/Westlaw –

Expectation of the quick answer

 **In re Slavonic Mut. Fire Ins. Ass'n**
Court of Appeals of Texas, Houston (14th Dist.), April 1, 2010 308 S.W.3d 556

Document Filings (1) Negative Treatment (1) History (0) Citing References (118) Powered by KeyCite

Return to list 1 of 56 results Search term

Go to  

for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with.”

Appraisal Process

Almost all insurance policies contain provisions specifying **appraisal** as a means of resolving disputes regarding the “amount of loss” for a covered claim. See *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 888 (Tex.2009). As in this case, **appraisal** provisions generally provide that either the insured or the insurer may demand an **appraisal** pursuant to the terms of the policy. See *In re Allstate Cty. Mut. Ins. Co.*, 85 S.W.3d 193, 195 (Tex.2002).

1 In 1888, the Texas Supreme Court first enforced an **appraisal** clause similar to the one at issue here. See *Scottish Union & Nat'l Ins. Co. v. Clancy*, 71 Tex. 5, 8 S.W. 630, 631 (1888) (holding that **appraisal** was **condition precedent** to suit); see also *Scottish Union & Nat'l Ins. Co. v. Clancy*, 83 Tex. 113, 18 S.W. 439, 441 (1892) (holding that insurer's attempt to adjust and settle claim did not waive its right to **appraisal**). Where an insurance contract mandates **appraisal** to resolve the parties' dispute regarding the value of a loss, and the **appraisal** provision has not been waived, a trial court abuses its discretion and misapplies the law by refusing to enforce the **appraisal** provision. *Scottish Union*, 18 S.W. at 440. More recently, the supreme court has expressed a strong policy in favor of enforcing **appraisal** clauses in insurance contracts. See *State Farm Lloyds*, 290 S.W.3d at 891–93 (holding that insurer is bound by **appraisal** clause to have amount of loss determined, even when dispute also involves questions of causation); *Allstate*, 85 S.W.3d at 195 (granting mandamus relief to enforce **appraisal** provision).

The Insurance Code

The Texas Insurance Code mandates prompt payment of claims. See *Tex. Ins.Code Ann. §§ 542.051–.061* (Vernon 2009). The act is to be liberally construed to promote its purpose of obtaining prompt payment of insurance claims. *Id.* § 542.054. An insurer is required to acknowledge receipt of a claim, begin an investigation, and request documentation from its insured within fifteen days of notification of the claim. *Tex. Ins.Code Ann. § 542.055(a)* (Vernon 2009). The insurer is to notify the claimant in writing of the acceptance or rejection of the claim within fifteen days after it receives the required documentation for proof of loss. *Id.* § 542.056(a). If the insurer notifies the claimant it requires more time, the acceptance or rejection must be made within forty-five days of the notice. *Id.* § 542.056(d). Section 542.057 provides that a claim must be paid within five business days after notice.

3. Windows (graphical user interface) - multitasking

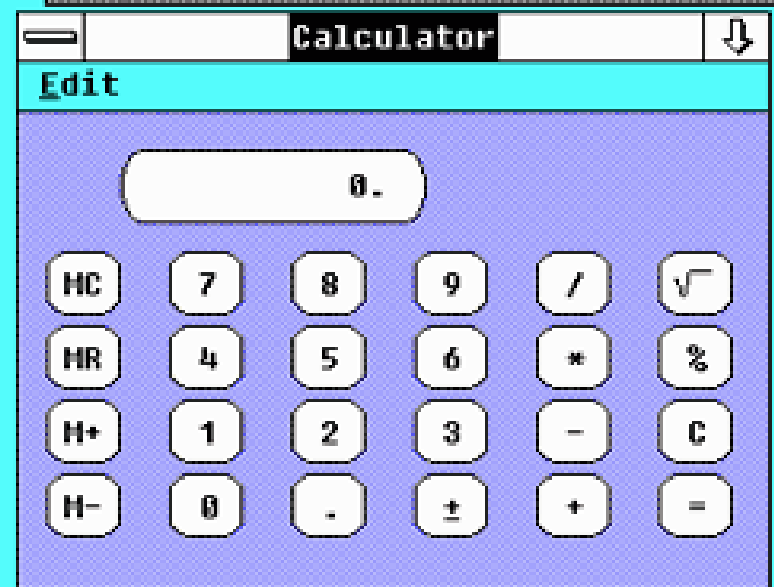
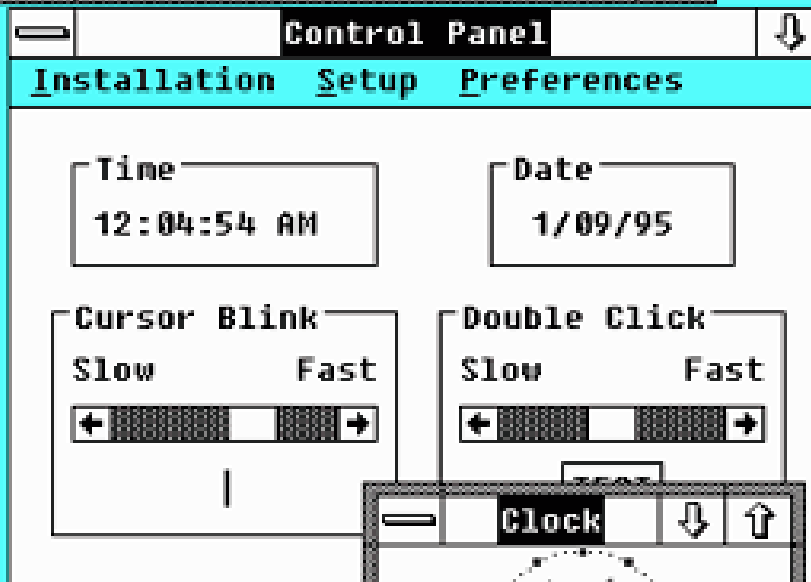
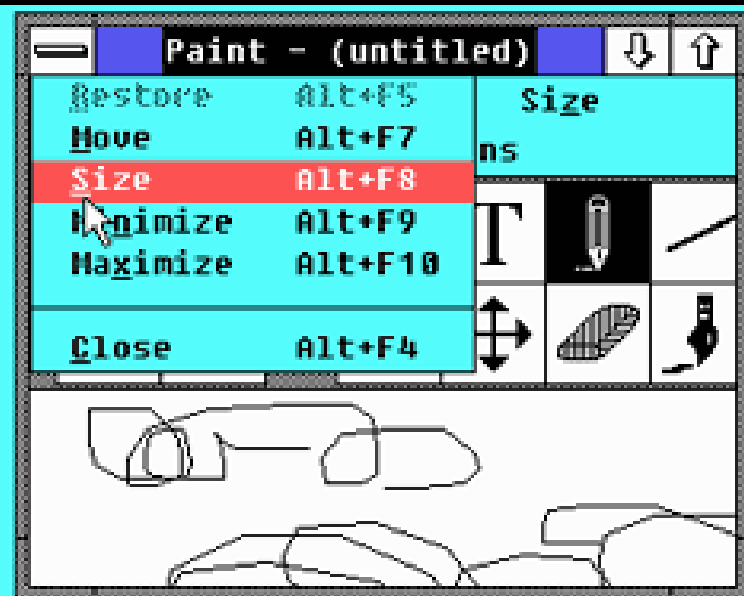
MS-DOS (1981)

The IBM Personal Computer DOS
Version 1.00 (C)Copyright IBM Corp 1981

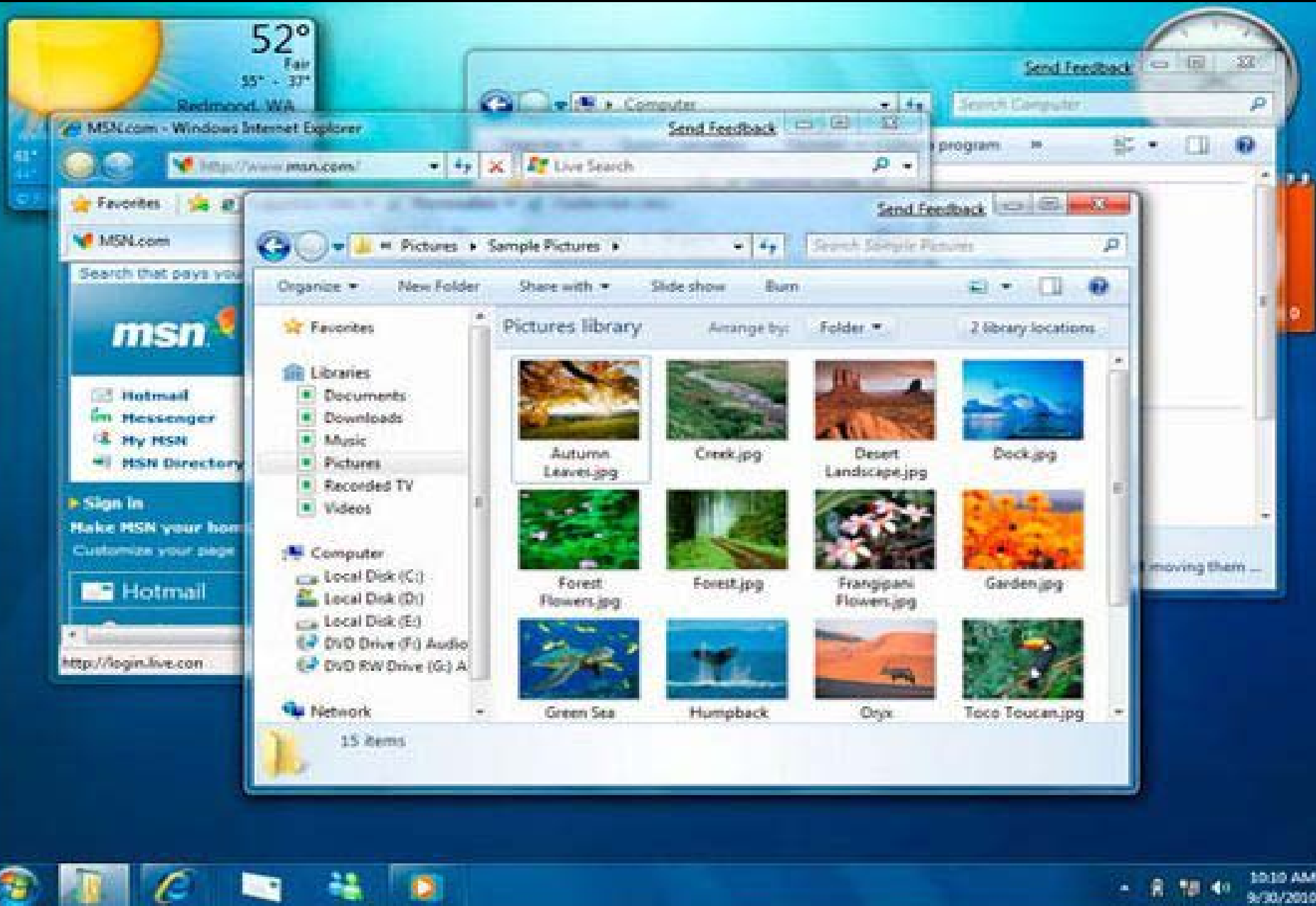
```
A>dir *.com
IBMBIO      COM           1920   07-23-81
IBMDOS      COM           6400   08-13-81
COMMAND     COM           3231   08-04-81
FORMAT      COM           2560   08-04-81
CHKDSK      COM           1395   08-04-81
SYS         COM            896   08-04-81
DISKCOPY    COM           1216   08-04-81
DISKCOMP    COM           1124   08-04-81
COMP        COM           1620   08-04-81
DATE        COM            252   08-04-81
TIME        COM            250   08-04-81
MODE        COM            860   08-04-81
EDLIN       COM           2392   08-04-81
DEBUG       COM           6049   08-04-81
BASIC       COM          10880   08-04-81
BASICA      COM          16256   08-04-81
```

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A>_
```

Windows 2.0 (1987)



Windows 7 (2008)



Studies on multitasking

Cell phones and driving

Judges were more efficient
when they worked on
1 case at a time

2010 study of Italian judges


“the brain takes time to change goals, remember the rules needed for the new task.”

Maggie Jackson, *Distracted*

4. E-mail – fast communication,
constant interruption



Over 200 per day

40 % of the work day

 **Andersson, Nicklas** ▼ ✕

Look! You've got mail!

The Internet has again transported some bits to you.

  <end>

All folders are up to date.  Connected to Microsoft Exchange ▼

“the most distraction-prone
workplace in the history of
mankind.”

-John Freeman

“state of flow”

-Mihaly Csikszentmihali

5. Screens – a blinding light



Most legal writing is not
designed for screen reading.

Part II: Suggestions for reading (in a paperless chambers)

Is screen reading good or bad?

Uriah Heep

20th

CENTURY masters

THE BEST OF
URIAH HEEP

The Millennium Collection





[Join Wikipedia Takes America photo hunts in 10+ cities in September.](#)

Uriah Heep

From Wikipedia, the free encyclopedia

This article is about the Dickens character. For the musical band of the same name, see [Uriah Heep \(band\)](#).

Uriah Heep is a fictional character created by Charles Dickens in his novel *David Copperfield*.

The character is notable for his cloying humility, obsequiousness, and insincerity, making frequent references to his own "humbleness". His name has become synonymous with being a yes man.^[1] He is the central antagonist of the later part of the book.

Contents [hide]

- 1 In book
- 2 Origins
- 3 Film and television
- 4 Cultural references
- 5 References
- 6 External links

In book

[\[edit\]](#)

David first meets the 15-year-old Heep when he is living with Mr. Wickfield and his daughter Agnes, in chapter 15:

[Uriah's face] was quite as cadaverous as it had looked in the window, though in the grain of it there was that tinge of red which is sometimes to be observed in the skins of red-haired people. It belonged to a red-haired person—a youth of fifteen, as I take it now, but looking much older—whose hair was cropped as close as the closest stubble; who had hardly any eyebrows, and no eyelashes, and eyes of a red-brown, so unsheltered and unshaded, that I remember wondering how he went to sleep. He was high-shouldered and bony; dressed in decent black, with a white wisp of a neckcloth, buttoned up to the throat, and had a long, lank, skeleton hand, which particularly attracted my attention, as he stood at the pony's head, rubbing his chin with it, and looking up at us in the chaise.

Uriah has been employed as clerk to Wickfield for four years, since he was eleven. Uriah's father, who instilled him with the need to be humble, died when Uriah was ten, and for the first part of the novel he lives alone with his mother in their "umble abode". Copperfield takes an immediate and permanent dislike to Uriah, in spite of the latter's persistent, if insincere attempts to win his friendship. Uriah addresses Copperfield as "Master Copperfield" well into their adulthood, an indication of his true patronising view.

Uriah is repeatedly mentioned as ugly and repulsive, even in his youth - tall, lank and pale with red hair and lashless eyes. Dickens negatively emphasizes Uriah's movements as well, described as jerking and writhing; this leads some literary scholars to believe Dickens is describing a form of dystonia, a muscular disorder, to increase Uriah's snakelike character. Uriah explains in another part of the book that his ambition and greed are fueled by resentment from the double-standard of his schooling and from his treatment as a child, and by encouragement from his parents. As Uriah works for Wickfield for the next five or so years, he teaches himself law at night, and by blackmailing Mr. Wickfield, gains control over his

Uriah Heep

David Copperfield character



Drawing by Fred Barnard

Created by Charles Dickens

Information

Gender	Male
Occupation	Moneylender
Nationality	British

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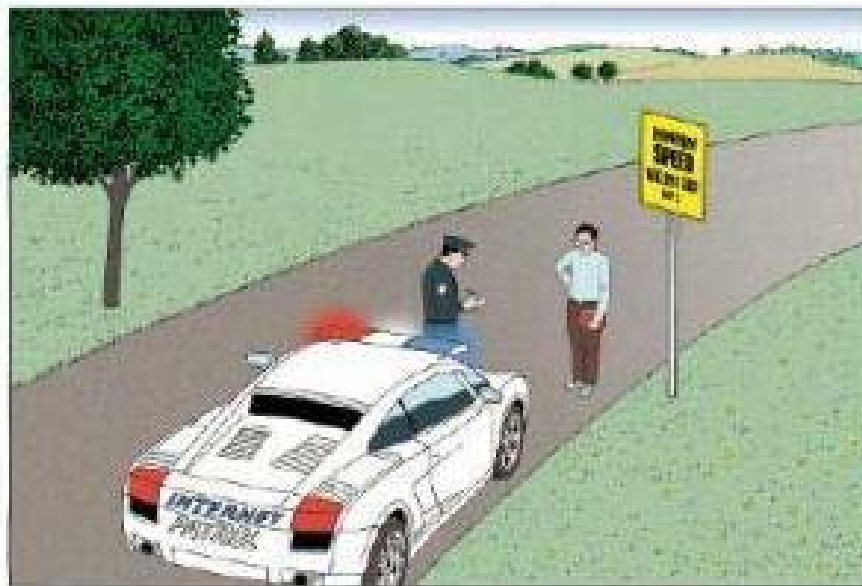


What the Internet is doing to our brains

BY NICHOLAS CARR

Is Google Making Us Stupid?

Illustration by Guy Billout



ARTICLE TOOLS

sponsored by:

Atlantic

 E-MAIL ARTICLE

 PRINTER FORMAT

"Dave, stop. Stop, will you? Stop, Dave. Will you stop, Dave?" So the supercomputer HAL pleads with the implacable astronaut Dave Bowman in a famous and weirdly poignant scene toward the end of Stanley Kubrick's 2001: *A Space Odyssey*. Bowman, having nearly been sent to a deep-space death by the malfunctioning machine, is calmly, coldly disconnecting the memory circuits that control its artificial "brain." "Dave, my mind is going," HAL says, forlornly. "I can

Pew Study: Internet “experts”

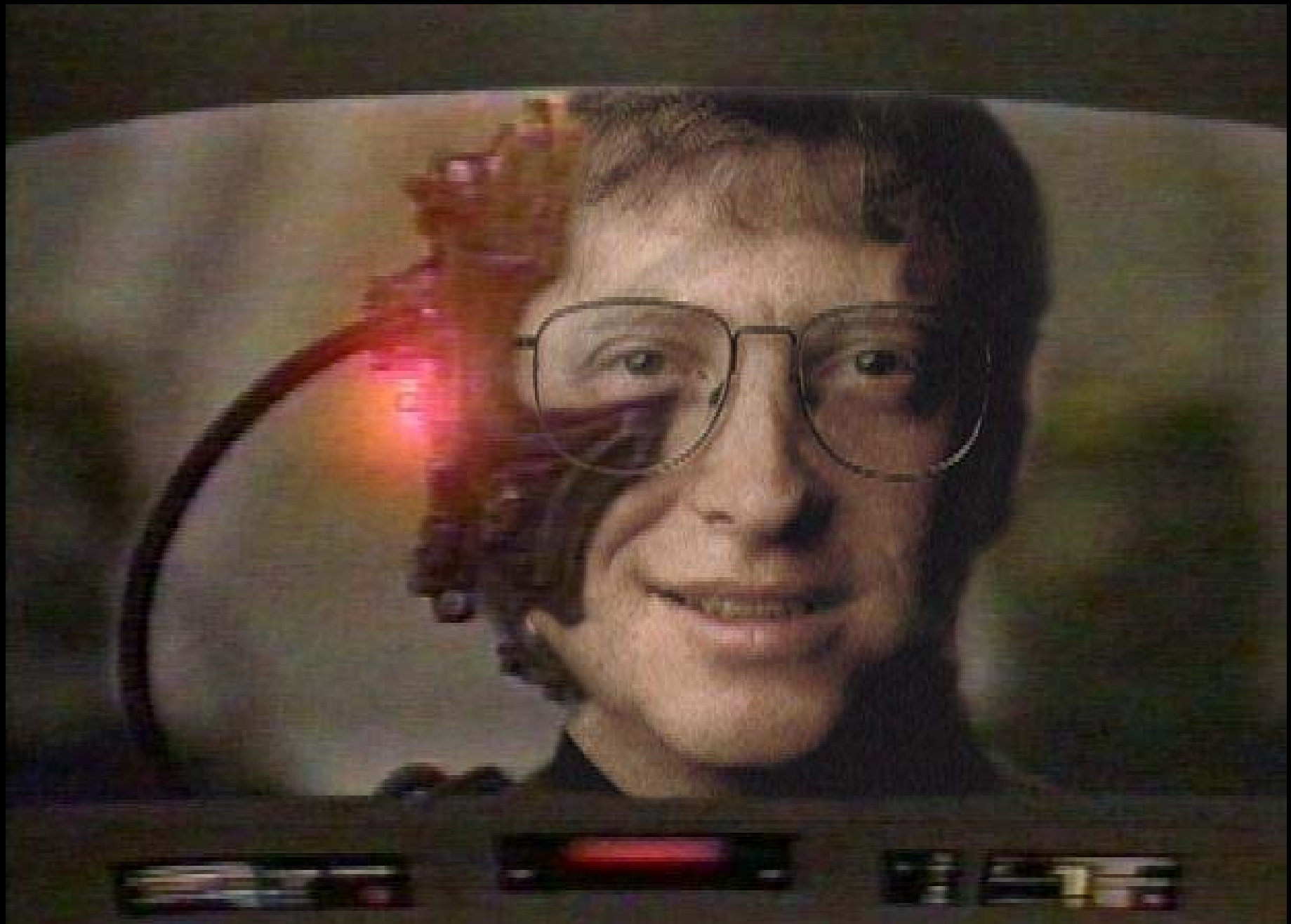
Is Google making us stupid?

81%: Internet will enhance human intelligence

“[C]ertain tasks will be ‘offloaded’ to Google or other Internet services rather than performed in the mind, especially remembering minor details.”

“People are already using Google as an adjunct to their own memory.”

We will become “capable of more advanced integration.”



Screen reading is inevitable.

The reality for most lawyers today:

hybrid reading

Tools I use for reading

Reading Tool 1

Awareness of reading styles

Reading Tool 2

Practice hybrid reading

Practice hybrid reading:

1 – some rapid information gathering;

2 – some deep reading

Reading Tool 3

To study a text,
print it.

briefs

cases

legal memos, articles

Reading Tool 4

Create an email-free zone.

1 – Turn off alerts

2 – Set discrete periods for email

3 – Limit the emails received

Reading Tool 5

Minimize multitasking

Close unnecessary windows

**Part III: Suggestions for writing
(the appellate brief of the future)**

Usability: Online texts have evolved for screen reading.

The brief must adapt.

Tool 1

Briefs will be written for the screen, not the page.

Design legal documents like
web pages, not books.

No. 88-1374

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1988

JIMMY SWAGGART MINISTRIES,
Appellant,

vs.

BOARD OF EQUALIZATION
OF CALIFORNIA,
Appellee.

On Appeal from the California
Court of Appeal, Fourth Appellate District

BRIEF OF *AMICUS CURIAE*
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

Interest of Amicus Curiae

Watchtower Bible and Tract Society of New York, Inc., (Watchtower) a not-for-profit religious corporation, is the parent organization of the more than 800,000 Jehovah's Witnesses in the forty-eight contiguous states, including over 132,000 Witnesses in California. Every one of Jehovah's Witnesses is an active door-to-door minister, preaching the good news of God's Kingdom to willing listeners and offer-





Middle Fork Lands Protected

In the last issue of the Middle Fork Newsletter, Steve Taylor mentioned 13 quarters have been purchased for King Canyon. This is an important acquisition. Forests cover approximately 100,000 acres of the Middle Fork. Most of the forest is old-growth and is being managed and worked to be used for timber production. Working, logging, and timber are the main uses of the forest. The Department of the Interior, Bureau of Land Management, has been working to ensure that the Middle Fork valley is in public ownership and the land is managed for and used for timber. This property is one of the last remaining old-growth forest tracts in western Utah.



The view looking east over Canyon Falls and the Middle Fork of the Snake River from the Middle Fork Mountains. Photo by Steve Taylor.

Middle Fork News:

- The Middle Fork Mountains are being managed to provide timber and recreation. The project will provide a public access to the valley and will help to ensure that the land is managed for timber production.
- The Middle Fork Mountains are being managed to provide timber and recreation. The project will provide a public access to the valley and will help to ensure that the land is managed for timber production.

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Page 2

Give up the book metaphor
for legal writing

has jurisdiction to review the arbitrators' class determination award." Appellants' Brief at 4. In fact, jurisdiction is the heart of this dispute. When Jones failed to invoke a ground for review of the award under the Federal Arbitration Act, he not only failed to establish the merits of his case; he failed to invoke the trial court's jurisdiction. The district court lacks jurisdiction in cases, such as this one, where the statute defines, enlarges, or restricts the class of claims the court may decide or the relief it may afford. *Heart Hospital IV, L.P. v. King*, 116 S.W.3d 831, 834 (Tex. App.—Austin 2003, pet. denied); *Sierra Club v. TNRCC*, 26 S.W.3d 684, 688 (Tex. App.—Austin 2000), *aff'd* 70 S.W.3d 809 (Tex. 2002). This is not a case such as *Dubai Petroleum*, where the jurisdictional argument concerned a plaintiff's failure to meet a "statutory prerequisite." *Dubai Pet. Co. v. Kazi*, 12 S.W.3d 71, 76 (Tex. 2000) (concerning statutory requirement that a foreign plaintiff must be a citizen of a country with "equal treaty rights"). Rather, the jurisdictional defect in this case is plaintiff's failure to bring a claim under the restricted class of claims that may be brought to challenge an arbitration award. The FAA and federal law only permit judicial review of arbitration awards

Bookmarks

- Statement of Facts
- Summary of Argument
- Argument and Authorities
 - I. The evidence was legally insufficient to prove the standard of care or that Yellow Cab breached its standard of care.
 - A. Polito was required to establish the standard of care and a breach of the standard.
 - 1. In similar negligence cases, Texas courts have required some evidence of the standard of care and a breach of that standard.
 - 2. Additionally, because this case involved specialized equipment and industry standards, Polito was required prove the standard of care through expert testimony.
 - B. Polito failed to prove either the standard of care or a breach of the standard of care through expert testimony.
 - C. Even if expert testimony were not required, Polito failed to provide legally sufficient evidence to prove that the standard of care for dispatch equipment or a breach of that
 - 1. Polito failed to prove the standard of care or the breach of the standard for the placement of the radio receiver.
 - 2. Polito failed to prove the standard of care or the breach of the standard for the placement of the computer screen.
 - 3. Polito failed to prove the standard of care or the breach of the standard regarding the sound made by the radio receiver.
 - D. The evidence conclusively established that Yellow Cab did not

Overview

John Carreon owned a taxi cab, which he drove as an independent contractor. The cab had dispatch equipment installed by Greater San Antonio Transportation Company, which operates under the name “Yellow Cab.”

Carreon collided with John Polito’s motorcycle after crossing into the wrong lane of traffic as he approached a blind turn. This appeal concerns whether Yellow Cab’s placement or maintenance of dispatch equipment breached its standard of care, and whether any breach was a foreseeable cause of the accident.

The accident

Carreon conceded the accident was “my fault.” RR 2:284-85. It occurred when he was driving home, approaching a blind curve on Blanco Road. RR 2:274, 291-93; P-X 17-19.



Tool 2

Summaries

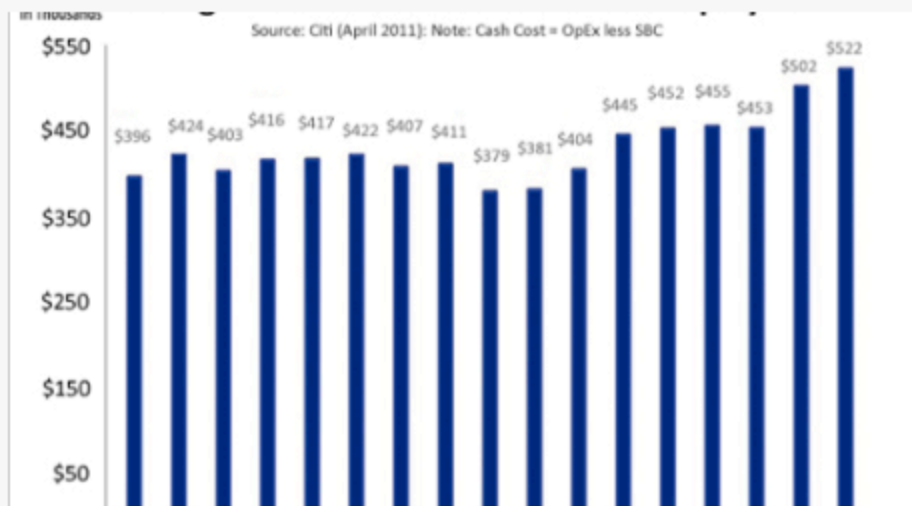


CHART OF THE DAY: Google's Cash Cost Per Employee Hits An All Time High

[businessinsider.com](#) • Investors punished Google for last night's earnings performance by knocking the stock down 8% today.

While the earnings results were generally in line, two things spooked Wall Street.

First, Larry Page wasn't particularly warm and fuzzy on the earnings call, and Wall Street analysts love to be massaged.

Second, Wall Street was put off by Google's rising operating expenses brought on by its hiring binge.

In the chart below from Citi analyst Mark Mahaney, who downgraded the stock, you can see that Google's cash cost per employee is the highest it has ever been.

Mahaney writes that, "Given that the company will pay employees more this year, incur greater compensation-related expenses (401K matching, employee taxes, etc.), and is planning to be aggressive in hiring new employees, we would expect ...

How did the biology of giant-sized dinosaurs actu...

[io9.com](#) • Tomorrow marks the opening of the American Museum of Natural History's long-awaited dinosaur exhibit, called "The World's Largest Dinosaurs." We talked to curator and paleontologist Mark Norell about the show - and how these super-giant animals ...

More to read...

[Poynter.org](#) • > Gannett ramps up Groupon-like offering, expands to five more cities

> A visit to USC Annenberg School for Communication and Journalism

> Evening news remains a broadcasting success story | Why Couric failed

... Read more

LivingSocial Acquires SocialMedia For \$3 Million

[techmeme.com](#) • Michael Arrington / TechCrunch: LivingSocial Acquires SocialMedia For \$3 Million — Fast growing daily deal service LivingSocial, which just raised \$400 million, has acquired long suffering social advertising network SocialMedia, we've confirmed. The ...

This Is Everything You Missed At Techstars Yesterday

[businessinsider.com](#) • Yesterday we watched eleven promising startups demo at New York City's Webster Hall.

We cornered some of them on camera after their presentations and picked our favorites from the bunch.

Check it out:

Keys to an effective summary

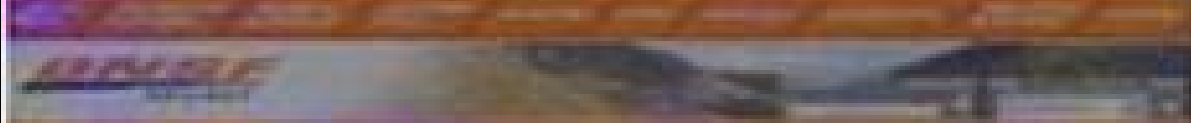
1. Keep it short.

2. Persuade readers with specifics -
- not just conclusions.

Tool 3

Enable skimming

Make structure easy to follow



Plant Growth



1. **Plant Growth**

2. **Plant Growth**

3. **Plant Growth**

4. **Plant Growth**

5. **Plant Growth**

6. **Plant Growth**

7. **Plant Growth**

8. **Plant Growth**

9. **Plant Growth**

has jurisdiction to review the arbitrators' class determination award." Appellants' Brief at 4. In fact, jurisdiction is the heart of this dispute. When Jones failed to invoke a ground for review of the award under the Federal Arbitration Act, he not only failed to establish the merits of his case; he failed to invoke the trial court's jurisdiction. The district court lacks jurisdiction in cases, such as this one, where the statute defines, enlarges, or restricts the class of claims the court may decide or the relief it may afford. *Heart Hospital IV, L.P. v. King*, 116 S.W.3d 831, 834 (Tex. App.—Austin 2003, pet. denied); *Sierra Club v. TNRCC*, 26 S.W.3d 684, 688 (Tex. App.—Austin 2000), *aff'd* 70 S.W.3d 809 (Tex. 2002). This is not a case such as *Dubai Petroleum*, where the jurisdictional argument concerned a plaintiff's failure to meet a "statutory prerequisite." *Dubai Pet. Co. v. Kazi*, 12 S.W.3d 71, 76 (Tex. 2000) (concerning statutory requirement that a foreign plaintiff must be a citizen of a country with "equal treaty rights"). Rather, the jurisdictional defect in this case is plaintiff's failure to bring a claim under the restricted class of claims that may be brought to challenge an arbitration award. The FAA and federal law only permit judicial review of arbitration awards on narrow, specified grounds that were not raised in this case. *See* 9 U.S.C.A. § 10 (2002);

I. The evidence was legally insufficient to prove the sta...

A. In negligence cases involving use of special...

B. Additionally, when a case involves specialized eq...

C. Expert testimony was required because the...

D. Expert testimony was required because the...

E. Polito failed to prove either the standard of care or a brea...

ARGUMENT

- I. **The evidence was legally insufficient to prove the standard of care or that Yellow Cab breached its standard of care.**
- A. **In negligence cases involving use of specialized equipment, Texas courts have required some evidence of the standard of care and a breach of that standard.**

In similar cases involving the use of specialized equipment, Texas courts have consistently held the evidence legally insufficient when a plaintiff has not proved either (1) the standard of care, or (2) a breach of that standard. For instance:

- **A claim of negligent maintenance where rusty bolts on a trailer failed.** Where a plaintiff claimed that a trucking company was negligent because rusty bolts had failed, causing the trailer to separate from a truck's tractor, this Court held that there was no evidence of the standard of care for the inspection and maintenance of trailer assembly. *FFE Transp. Servs., Inc. v. Fulgham*, 154 S.W.3d 84, 91 (Tex. 2004).
- **A claim of negligent elevator maintenance because the door closed too quickly.** Where a plaintiff claimed that an elevator door and gate closed too

Headings

Paragraph topic sentences

Visible outlines

Bookmarks for tablet readers

Tool 4

White space –
visible pauses.

Moderate white space makes a document easier to read

White space gives readers a
break.



C. Ronald Franks
Secretary



MARYLAND



Robert L. Ehrlich, Jr.
Governor



Michael S. Steele
Lt. Governor

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DEPARTMENT OF NATURAL RESOURCES

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Today is Tuesday, June 27, 2006

Outdoor Activities

- Parks & Forests
- Fishing In Maryland
- Hunting
- Boating
- Biking
- Canoeing & Kayaking
- Camping

What's Going On?

- News
- Events Calendar



- DNR Magazine
- 2006 Photo Contest
- Publications
- Volunteering
- FREE Email Newsletter

Resource Management

- Chesapeake Bay Hotline
- Bays, Streams & Watersheds

What's New @ DNR...
Get Involved with Maryland
Chesapeake Bay and
Atlantic Coast Summer
Flounder Management!

Summer 2006 - Habichat Now Online

Habichat is a quarterly electronic newsletter published by DNR's Wildlife & Heritage Service. Chock full of information about how to become a steward of Maryland's backyard wildlife, the Summer issue describes how to create a "wildlife-friendly" backyard that is also "dog-friendly". Featured, too, are the many varieties of wild asters that do well in Maryland, suggestions on utilizing non-plant items to enhance your garden's appearance, and a focus on the Northern Mockingbird, that beautiful but chatty bird that may be getting on your nerves, now that the windows are open. You are also invited to peruse several back issues of Habichat, also available [online](#).

Water Chestnut Eradication

Maryland's effort to control the spread of [water chestnut](#) (*Trapa natans*) in Maryland is underway. Since 1999, the Department has patrolled the Sassafas and Bird Rivers and removed all water chestnut plants that could be located. Total harvest has declined from approximately 400,000 lbs of plants harvested in 1999 to just a few hundred lbs in 2004 and 2005. The reduction in distribution of this species has been gratifying and we hope to see the last of these plants by 2010.



Know your way around



In Focus

- Terrapin Regulation
- 2006 Legislation End of Session Report
- Leave Wildlife in the Wild
- Striped Bass Health
- Chesapeake Bay Restoration
- Oysters

SEARCH

Keyword

Google

dnr.maryland.gov

DNR Online Services

- Park Reservations
- Buy a park pass online
- Online Fishing Licenses
- Online Hunting Licenses
- Harvest Check In
- DNR Auction
- DNR Library
- Fishing Report
- Targeted Watersheds
- Bay Health
- Make A Map

7. Don't be afraid of the white space

Actually it's really hard to overestimate the importance of white space. Not only does it help to **reduce the cognitive load** for the visitors, but it makes it possible to perceive the information presented on the screen. When a new visitor approaches a design layout, the first thing he/she tries to do is to scan the page and divide the content area into digestible pieces of information.

Complex structures are harder to read, scan, analyze and work with. If you have the choice between separating two design segments by a visible line or by some whitespace, it's usually better to use the whitespace solution. **Hierarchical structures reduce complexity** (Simon's Law): the better you manage to provide users with a sense of visual hierarchy, the easier your content will be to perceive.



White space is good. Cameron.io uses white space as a primary design element. The result is a well-scannable layout which gives the content a dominating position it deserves.

8. Communicate effectively with a “visible language”

In his papers on effective visual communication, Aaron Marcus states [three fundamental principles](#) involved in the use of the so-called “*visible language*” — the content users see on a screen.

Create white space with

Shorter sentences

Create white space with

Shorter paragraphs

Create white space with

Frequent headings

Create white space with

Lists, bullets

Tool 5

Chunking

Readers process information in
chunks.

7135232358

VS.

713 - 523 - 2358

Example - no chunking

The elements of negligence are the existence of a legal duty, a breach of that duty, and damages that proximately resulted from that breach.

Example - chunking

The elements of negligence are:

- (1) the existence of a legal duty,
- (2) a breach of that duty, and
- (3) damages,
- (4) that proximately resulted from the breach.

STATEMENT OF THE CASE

Plaintiff Jackson Energy Group, LLC sued Defendants Patricia Smith, individually and d/b/a Smith Oil Interests, LLC, Norenergy Resources Corp. (f/k/a Norenergy Resources, LLC), Northland Corp, Rubicon Development Corp., Nafcon Investments, Inc., and Trust for the Children of Patricia Smith (a/k/a Smith Trust) in the 251st District Court of Harris County, (1 CR 35, 45-56), Honorable Jeremy Smith and subsequently Honorable Janet Carson presiding. Shortly before trial, the case was transferred to and tried in the 343rd District Court, Honorable Wilson Conrad presiding. Jackson, asserting claims for breach of contract, tortious interference, fraud, breach of fiduciary duty, fraudulent concealment, and shareholder oppression sought actual damages, punitive damages, attorney's fees, interest, and costs of court, plus findings of single business enterprise and alter ego. (1 CR 55-59). The court granted summary judgment in favor of two defendants, Northland Corp. and Rubicon Development Corp., and withdrew its claim of single business enterprise. At the close of Jackson's evidence, the court granted directed verdicts in favor of defendants Nafcon Investments, Inc. and the Trust for the Children of Patricia Smith. (5 CR 1224). After the jury made findings in Jackson's favor against the remaining defendants in bifurcated phases of the trial, (2 CR 556-7), the court signed a judgment against the remaining defendants joint and severally, awarding Jackson \$31,160,000 in actual damages, and \$8,500,000 in exemplary damages with pre- and post-judgment interest. (5 CR 1411-14). The court denied Defendants' motions for

STATEMENT OF THE CASE

Nature of the case

Action for tortious interference and breach of contract arising from theft of business opportunity. CR 94-111.

Trial court

343th District Court, Harris County, Texas, Hon. Conrad Wilson presiding.

Trial court's rulings

Final Judgment based in part on jury verdict, but:

- (1) \$66.5 actual damages award against NorEnergy remitted to of \$31.16 million;
- (2) Patricia Smith jointly and severally liable for NorEnergy's actual damages based on jury finding of alter ego, but not jointly and severally liable for exemplary damages;
- (3) two companies found by jury to be alter egos by jury were granted JNOV by court. *See CR 336-60 (jury charge) (Tab A); CR 1376-84 (final judgment) (Tab B).*

Tool 6

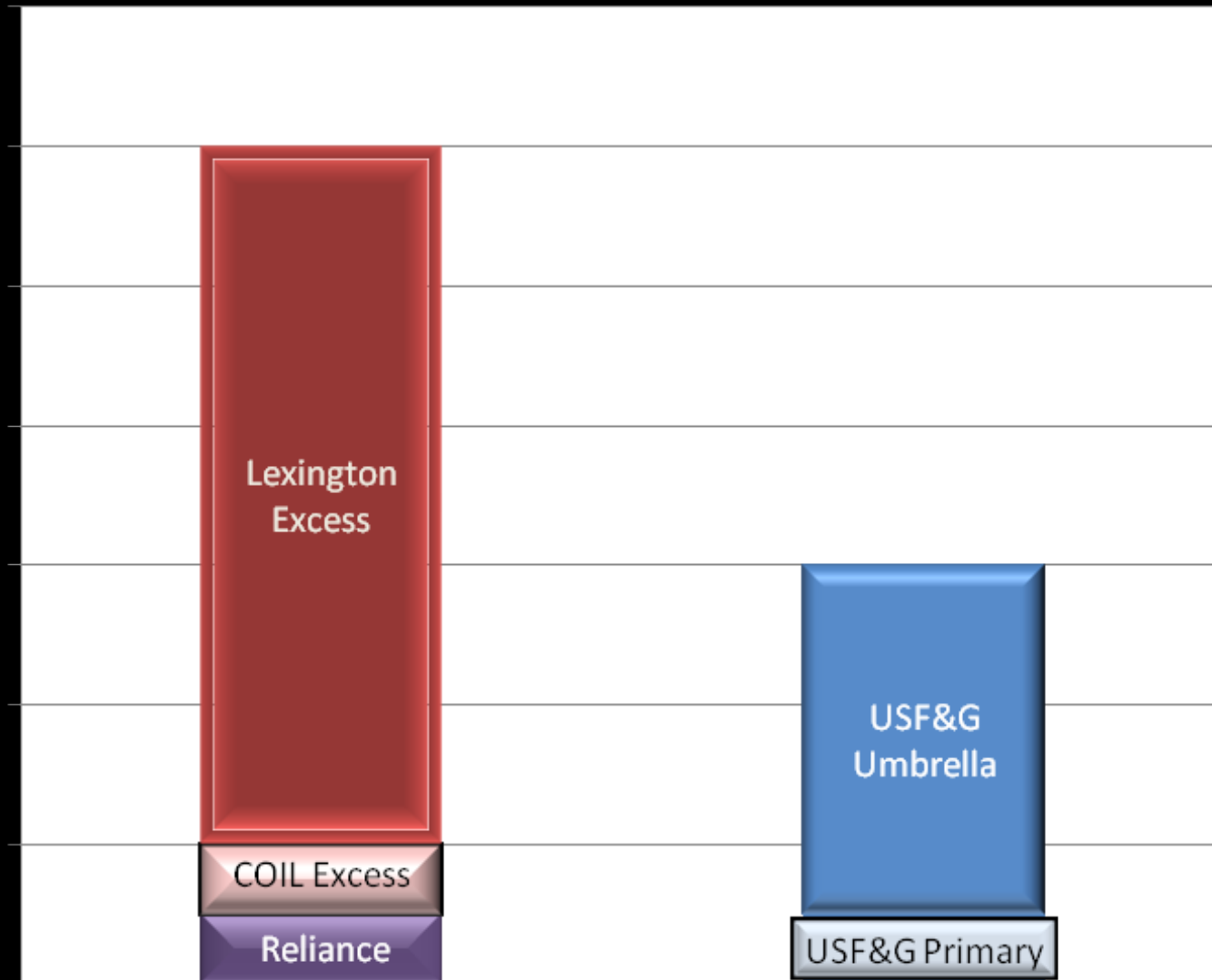
Use visuals

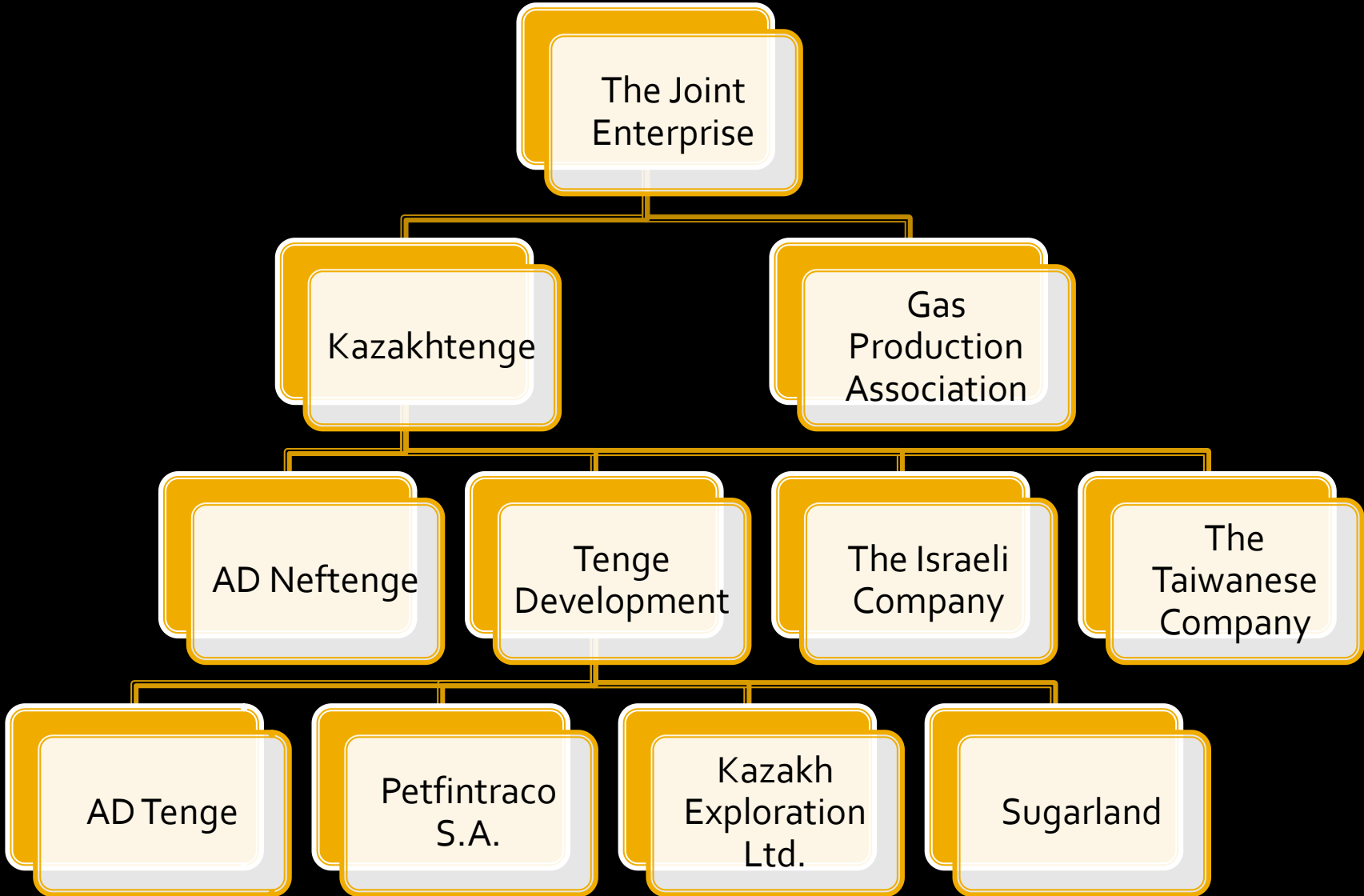
Coastal's tower of insurance included three policies. The first is the Reliance Primary Policy, which required Coastal to pay a self-insured retention for the first \$500,000 in losses. RR 3:199. After the \$500,000 self-insured retention, the Reliance Policy provided \$500,000 in coverage, but it also had a \$500,000 deductible. *Id.* The second was the COIL Excess Policy. The COIL Policy provided \$1 million of excess coverage. PX 5, p. 1. The policy provided that its coverage was for losses in excess of the Reliance Policy, and it followed the terms and conditions of the Reliance Policy. *Id.* The third is the Lexington Excess Policy. The Lexington Policy provided \$10 million of excess coverage. PX 6, p. 1. This coverage was not for losses in excess of any particular underlying policy, but instead was excess of the underlying amount of \$2 million. PX 6, pp. 3, 18.

Weaver's tower of insurance included two policies that also named Coastal as an additional insured. The first is the USF&G Primary Policy. USF&G's Primary Policy, per occurrence, provided \$1 million of primary coverage. PX 2, p. 7. The second is the USF&G Umbrella Policy. USF&G's Umbrella Policy provided \$5 million of excess coverage. PX 3, p. 3. The policy provided that its coverage was for losses in excess of the USF&G Primary Policy. PX 3, p. 4.

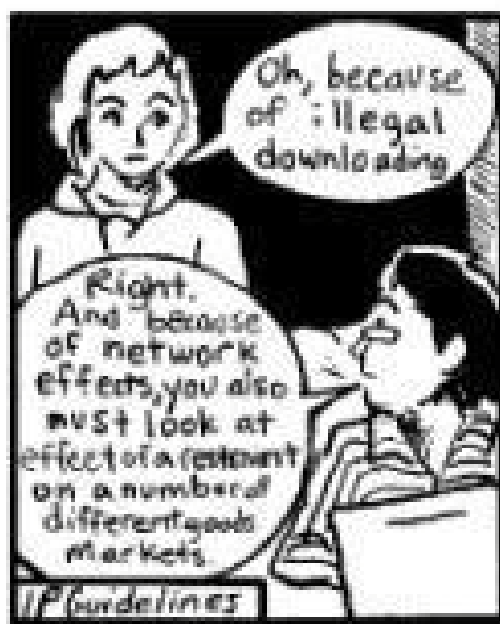
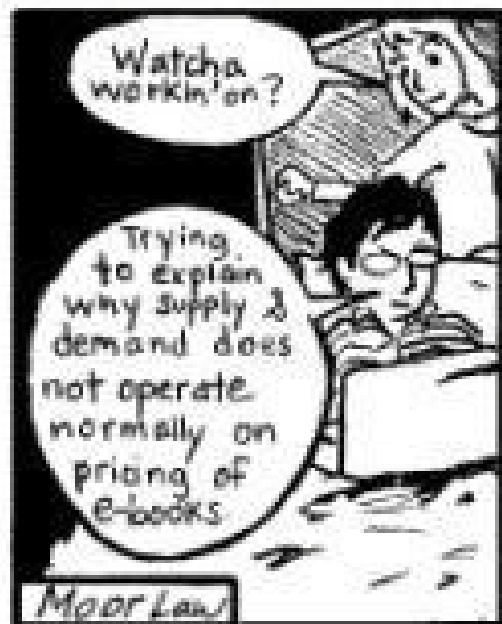
Coastal's Insurance

Weaver's Insurance





	<i>Hampton</i>	<i>Weiker</i>	<i>Allstate</i>	This case
Fact A		✓	✓	✓
Fact B		✓	✓	✓
Fact C			✓	✓
Result	Plt. wins	Def. wins	Def. wins	?



Tool 7

Simplicity
in document design

No strange fonts, fancy formats

Follow conventions

Ordinary capitalization

AVOID ALL CAPS!

And First Word Caps



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Site Map

(includes pull-down menu text)

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Taking the Pulse of the Planet

Today's Weather

Your Local Forecast by City, State



STORM WATCH



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Top Story

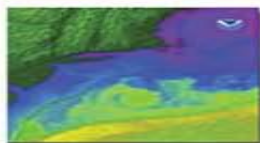
NOAA'S NEW GREAT LAKES WEATHER OBSERVATION PLATFORMS PROVIDE MORE DATA FOR FORECASTERS AND BOATERS

More than a dozen new weather observation platforms deployed in the Great Lakes region by NOAA are providing valuable information directly to recreational and commercial boaters and to NOAA National Weather Service meteorologists issuing marine weather forecasts and life-saving warnings. "Implementation of the Great Lakes weather observation platforms enhances NOAA's ability to improve weather forecasts and is a concrete example of NOAA's continuing efforts to enhance the emerging Global Earth Observation System of Systems," said retired Navy Vice Admiral Conrad C. Lautenbacher, Jr., Ph.D., undersecretary of commerce for oceans and atmosphere and NOAA administrator. NOAA's National Weather Service, National Ocean Service and Great Lakes Environmental Research Laboratory joined forces to deploy 13 new coastal weather observation sites throughout the Great Lakes.

[Full Story Inside](#)



Other News



[NOAA COASTWATCH PROGRAM OPENS EAST COAST NODE; Chesapeake Bay Office Hosts Enhanced Environmental Satellite Data Capabilities](#) — NOAA opened the East Coast Node of NOAA's CoastWatch program, which will broaden the availability of environmental data for the Atlantic Ocean collected by the agency's geostationary and polar-orbiting satellites. The East Coast Node, part of a network of other CoastWatch offices around the country, will be located at the NOAA Chesapeake Bay Office in Annapolis.



[NOAA SATELLITES RESPOND TO DISTRESS CALLS](#) — As summer weather brings out more boaters, campers and hikers, NOAA satellites and search and rescue staff are prepared to handle distress signals from emergency locator beacons. NOAA's polar and geostationary satellites, along with Russia's Cospas spacecraft, are part of the high-tech, international Search and Rescue Satellite-Aided Tracking System, called COSPAS-SARSAT.



[NOAA ISSUES SERVICE ASSESSMENT REPORT ON HURRICANE KATRINA](#) — The NOAA National Weather Service released an internal evaluation of its operations during Hurricane Katrina. Service assessments are done routinely following major weather events and include input from government agencies, emergency managers, media and the public. "The accurate forecasts provided for extended warning times," said Brig. Gen. David L. Johnson, U.S. Air Force (Ret.), director of the NOAA National Weather Service.



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[NOAA Magazine](#) - The stories behind the headlines.

[NOAA's Offshore Aquaculture Activities: the New Frontier](#)



[AccessNOAA](#) - NOAA Employees Make a Difference



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Legal reading and writing in the paperless chambers

Robert Dubose

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