

ACBA Bench Bar
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Judicial Misconduct:
Navigating Common Issues and Avoiding or Mitigating Missteps Along the Way

I. Judicial Misconduct In General

Judicial misconduct is conduct that, among other things:

- A. Violates either the Pennsylvania Constitution
- B. Violates the Code of Judicial Conduct
- C. Violates Rules Governing Standards of Conduct of Magisterial District Judges
- D. The above includes, a violation of the law or the rules promulgated by the Supreme Court of Pennsylvania

In Court Examples:

- A. Inappropriate courtroom demeanor such as yelling, profanity, gender bias, or racial slurs;
- B. Improper *ex parte* communications with only one of the parties or attorneys in a case;
- C. A public comment regarding a pending case;
- D. Failure to recuse or disqualify in a case where the judge has an interest in the outcome of the case or in which the parties or attorneys are related to the judge.

Outside of Court Examples:

- A. Driving under the influence or other criminal activity
- B. Improper financial or business dealings, sexual harassment or official oppression.

Examples of Misconduct involving the **JCB Process** Itself:

- A. Failure to Cooperate with a JCB Inquiry
- B. Retaliation for Cooperation

II. Sources of Complaints against a Jurist

III. An Brief Overview of the JCB and Court of Judicial Discipline

- A. Screening (Confidential)
- B. The Preliminary Inquiry Stage (Confidential)
- C. NOFI (“Notice of Formal Investigation”)(Confidential)
- D. Formal Charge (Public)
- E. The Sanctions Stage (Public)
 - a. The *Deming* Factors
- F. The scope of appellate review by the Supreme Court (Very Limited)

IV. A Review of the Most Recent Annual Report of the JCB

V. Focusing in on Common Issues:

A. Inappropriate judicial demeanor—When does it cross the line?

- In re Younge, No. 2 JD 19 (Pa. Ct. Jud. Disc. 2021)(Allegations of improper demeanor, coupled with improper use of contempt power)
- In re Hladio, 220 A.3d 1219 (Ct. Judicial Disc. 2019)(rudeness)
- In re Placey, No. 2 JD 2020 (Temper in Court)

B. Personal interests & Politics

- Solicitations, fundraising & accepting gifts
- In re Cabry, 2 JD 2021 (Pending)(politics & campaign related conduct)
- In re LeFever, 7 JD 2020 (mixing politics with a judicial campaign)
- In re Merlo, 24 A.3d 932 (Pa. Ct. Jud. Dis. 2011)(neglect of duty; too many call offs, not enough time doing judicial work).

C. Enjoying the prestige of the office outside of the courtroom

- In re McKnight, 1 JD 2021 (Pending)(Jurist’s son stopped by the police)
- In re Roca, 151 A.3d 739, 740-41. (Pa. Ct. Jud. Dis. 2016)(use of judicial influence to benefit a relative)

D. Missteps involving social media

- Politics solicitation, comments on cases/litigants
- Consider also, your employees and clerks;
https://www.uscourts.gov/sites/default/files/socialmedialayout_0.pdf

E. The special challenges of family court

VI. Words of Wisdom

- A. Strike the right tone
- B. Accept responsibility for missteps
- C. Retain counsel early; work together in response.