

HEALTH & JUSTICE: HOW MISCONDUCT COMMISSIONS REVIVED COVID PROTOCOLS THROUGH JUDICIAL DISCIPLINE

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I. NATURE OF THE PROBLEM

The Model Code of Judicial Conduct is a set of standards for the ethical conduct of judges.¹ These rules are promulgated, not as an exhaustive guide, but as guidance to assist judges in maintaining the highest standard of judicial and personal conduct.² When there are violations of these ethical norms, these rules also provide a basis for regulating judicial conduct through disciplinary agencies.³ This Article seeks to answer the question of whether a judge's impartiality can reasonably be questioned if they decide not to participate in or discourage healthcare directives articulated by the executive branch and other health care organizations during a global pandemic. This Article posits that a judge demonstrates bias and violates their ethical responsibilities under the Code of Judicial Conduct when they take personal actions that contravene lawfully established health protocols.

Part II of this Article introduces the problems courts faced when they had to shutter and reopen courtrooms during the coronavirus ("COVID-19") pandemic. Part III reviews the ways judges attempted to bypass, discourage the use of, or otherwise disparaged COVID protocols and how judicial misconduct commissions disciplined those transgressions. Part IV proposes tailored continued legal education programming that would assist judges in distinguishing between personal autonomy and their responsibilities under the Code of Judicial Conduct.

II. LEGAL STATUS QUO

During the early months of 2020, court systems across the nation were challenged with closing their judicial system to stop the spread of the coronavirus.⁴ This was an arduous and complex task given constitutional

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1. MODEL CODE OF JUD. CONDUCT, PREAMBLE, § 3 (2011).

2. *Id.*

3. *Id.*

4. *See e.g.* Ind. Exec. Order No. 20-8, p. 6 (2020) [<https://perma.cc/GZK7-452H>]; IN RE: COVID-19 PANDEMIC EMERGENCY RESPONSE, ADMINISTRATIVE ORDER SUSPENDING ALL IN-PERSON COURT PROCEEDINGS FOR THE NEXT THIRTY-DAYS (Mar. 13, 2020), https://www.ncsc.org/__data/assets/pdf_file/0014/19103/alabama-3-13-2020-cov-19-order-final.pdf [<https://perma.cc/4A5V-VWXP>]; IN RE RESPONSE TO THE COVID-19 PANDEMIC (Mar. 17, 2020), https://www.ncsc.org/__data/assets/pdf_file/0025/19681/arkansas-3-17-2020-supreme-court-of-arkansas-per-curiam-re-response-to-covid-19-pandemic.pdf [<https://perma.cc/7GVB-X9NG>].

provisions to keep courts open to the public.⁵ Nevertheless, Governors activated their emergency management powers by issuing executive orders and mandated isolation and quarantining.⁶ This had several negative side effects. First, criminal trials were continued, leaving prisoners to experience extended stays in detention facilities.⁷ Second, court proceedings were delayed as judges, attorneys, and litigants attempted to get acclimated to video conferencing platforms.⁸ Nevertheless, some jurisdictions halted foreclosures and evictions.⁹ This action prevented vulnerable populations from losing the one thing that—at the time—had the most notable impact on transmission of the virus, being able to retreat into the privacy of one's home. Additionally, some states participated in early release programs, allowing low-risk offenders to return home pending trial to decrease the likelihood of new arrestees spreading the virus in jail and among prison populations.¹⁰

Similarly challenging was the task of reopening. Staffing was inconsistent as agencies dealt with resignations and illness.¹¹ On top of that, courts now needed to determine effective methodologies for reducing the transmission of a contagious virus. This meant attempting to process more cases with fewer people permitted in the building and even fewer employees to process the paperwork. To address these concerns, Supreme Courts activated emergency administrative rules to ease the burden.¹² Through resuming court operations plans courts advocated for the enforcement of mask mandates, social distancing, room capacity

5. See e.g., IND. CONST. art. 1 § 12.

6. See e.g., IND. CODE § 10-14-3 (2020); see also Ind. Exec. Order 88 (2020), [<https://perma.cc/GZK7-452H>].

7. Melissa Chan, 'I Want This Over.' For Victims and the Accused, Justice is Delayed as COVID-19 Snarls Courts, TIME, <https://time.com/5939482/covid-19-criminal-cases-backlog/> [<https://perma.cc/MR8P-QRKQ>] (last updated Feb. 23, 2021); see also Jenni Bergal, States Halt Jury Trials Again, Leaving Many Defendants in Jail, NAT'L CONF. STATE LEGISLATURES (Dec. 8, 2020), <https://www.ncsl.org/research/civil-and-criminal-justice/states-halt-jury-trials-again-leaving-many-defendants-in-jail-magazine2020.aspx> [<https://perma.cc/2X38-BFB8>].

8. Steven Lerner, Virtual Courtrooms Prove to Be Both Curse and Blessing, LAW360 (Jan. 8, 2021, 12:44 PM), <https://www.law360.com/articles/1339460/virtual-courtrooms-prove-to-be-both-curse-and-blessing> [<https://perma.cc/4XUM-AZMC>].

9. See e.g., JEFF WEISE, UPDATED STATUS OF FORECLOSURE AND EVICTION PROCEEDINGS WITH FEDERAL DIRECTIVES AND STATE EXECUTIVE ORDER (May 20, 2020), <https://www.in.gov/courts/files/covid19-2020-0520-foreclosure-eviction.pdf>.

10. See e.g., Letter from Eric Holcomb, Rodric Bray, Loretta Rush, Todd Huston (Apr. 3, 2020), <https://www.in.gov/courts/files/covid19-2020-0403-release-assessment-local-effort.pdf> [<https://perma.cc/22RM-KEP2>].

11. See e.g., Matt Markovick, King County Courthouse Staff Quitting, Blame Safety Issues at Homeless Camp, KOMONEWS (May 17, 2021), <https://komonews.com/news/local/growing-homeless-camp-outside-courthouse-creating-safety-concerns-for-employees-residents> [<https://perma.cc/RWJ4-2944>].

12. See e.g., IND. SUP. CT. ADMIN. R. 17.

restrictions, remote working schedules, and the liberal use of sick leave policies.¹³

Unfortunately, even with these clearly articulated parameters, trial court judges across the nation failed to adhere to health measures.¹⁴ Some judges required in-person appearances, failed to social distance and attended work while caring for those who had contracted the coronavirus.¹⁵ These actions are particularly puzzling given that the law—state issued executive orders and supreme court opinions—explicitly outlawed such practices. In doing so, they demonstrated a personal bias that they would impose their personal beliefs on others despite legal authority to the contrary. To prove these assertions, the following case studies are provided. The cases are divided into three separate sections. The first section discusses how a judge failed to comply with the law by not implementing proper health edicts and how that endangered the wellbeing of attorneys and defendants. The second section discusses how one trial court judge denied a party the opportunity to be heard, thereby denying the litigants procedural and substantive due process rights. Finally, the third section describes how judges demonstrated improper demeanor when discussing COVID protocols, which contributed to decreasing the public’s confidence in the integrity of the judiciary.

III. INTERSTATE REVIEW

A. Failure to Comply with the Law

In *In re Disqualification of Fleegle*, Judge Mark Fleegle of Ohio’s Muskingum County Court of Common Pleas was disqualified from two criminal jury trials for failing to implement COVID protocols.¹⁶ During December 2020, Judge Fleegle expressed concern that two cases would have to be dismissed for violating the defendant’s right to a speedy trial if they did not proceed to trial.¹⁷ To prevent this, the judge marshalled through the cases without regard to any health guidelines implemented since the start of the COVID-19 pandemic.¹⁸ One defense attorney noticed. Specifically, he observed the judge conducting hearings in person rather than by remote technology and that he did not mandate facial coverings.¹⁹ The attorney objected to the judge’s procedure, arguing Judge Fleegle risked trial participants’ health by violating the Governor’s statewide mask order and ignoring recommendations from the chief justice.²⁰ Judge Fleegle

13. See e.g., *Guidance from the Resuming Court Operations Task Force*, IND. SUP. CT., <https://www.in.gov/courts/files/covid19-resuming-trial-court-operations-fall.pdf> [<https://perma.cc/7R4B-4AM8>] (last visited Mar. 13, 2022).

14. See e.g., *infra* Section II.

15. *Id.*

16. *In re Disqualification of Fleegle*, 161 Ohio St. 3d 1263, 1267 (Ohio 2020).

17. *Id.* at 1266.

18. *Id.*

19. *Id.*

20. *Id.*

“dismissed the objection by stating that the recommendations were not mandatory and that his large courtroom allowed for social distancing.”²¹ The attorney insisted that the increasing number of COVID cases in their county necessitated a strict compliance approach.²² Furthermore, the attorney stated that due to his age he was at greater risk of having a severe reaction to contracting the virus.²³ Moreover, the attorney noted that his clients wanted to the trial continued because they feared their attorney would be preoccupied with the lack of COVID protocols instead of focusing on the specifics of their case.²⁴ Judge Fleegle insisted that the recommendations from the Supreme Court were not binding since they were not rules or orders.²⁵ Nevertheless, he decided that based on the increase in COVID cases to require face masks.²⁶ The defense attorney rebuked the judge’s efforts and filed for the judge to be disqualified.²⁷ The attorney noted that the judge’s policy was not reduced to writing so no one knew that he had changed his stance, for example, on masks in the courtroom.²⁸ When the Supreme Court reviewed the attorney’s request, they asked Judge Fleegle to provide a copy of his COVID protocols.²⁹

The judge responded that he had no written policy but that he had recently made the following changes: all persons in his courtroom will wear masks, except he will remove his mask when seated on the bench, witnesses will remove their masks when they testify, and attorneys may lower their masks to speak and be understood; social distancing will be followed; the courthouse staff will continue to screen and check the temperature of individuals entering the courthouse; and anyone uncomfortable with the requirements will be permitted to leave, including potential jurors.³⁰

In finding that Judge Fleegle’s courtroom policies were wanting, the Court removed him from the cases.³¹ The Court supported their decision by emphasizing the increase in COVID cases, the number of deaths, and the county’s decision to declare a public emergency, which ordered residents to limited activities and follow health orders.³² In their opinion, the Court reasoned that “[w]ithout written procedures, no one [would] know what [was] expected of them

21. *Id.*

22. *Id.*

23. *Id.* at 1263.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 1264.

30. *Id.*

31. *Id.* at 1267.

32. *Id.* at 1265-67.

upon entering Judge Fleegle’s courtroom.”³³ Further, they noted that “unwritten (and unknown) policies cannot be effectively enforced.”³⁴ Additionally, they scolded Judge Fleegle and stated that “he should have recognized that other people take public-health recommendation very seriously and that the health concerns of attorneys and parties should be an important factor in deciding whether to proceed with jury trials”³⁵ Most notably though, the Supreme Court pointed out that Judge Fleegle “failed to sufficiently explain the urgency of going forward with the two jury trials”³⁶ While Judge Fleegle attributed it to the speedy trial requirements, the Court highlighted that the Governor’s executive order tolled the speedy trial statute, and that in one of the cases the litigant even waived the requirement.³⁷

While the disqualification motion did not explicitly result in judicial misconduct, the order from the Supreme Court can be seen as being analogous to a discipline proceeding. A review of the rules suggest Judge Fleegle violated Rules 1.1³⁸ and 1.2,³⁹ and possibly Rule 2.4(B)⁴⁰ of the Model Code of Judicial Conduct. Rule 1.1 requires judges to comply with the law, including constitutional provisions, statutes, case law, executive orders, and supreme court rules and opinions.⁴¹ Rule 1.2 requires judges to act at all times to promote public confidence in the integrity and impartiality of the judiciary.⁴² Rule 2.4(B) requires judges to ensure that political and other outside factors do not influence how they behave in court.⁴³ In examining his decision opposing the law requirements, a violation of Rule 1.1 and 1.2 becomes clear.

Additionally, the concern of whether external influences (e.g., politics) impacted the judge’s ability to comply with the law takes center stage. While a judge’s personal choices and other political views may permissibly differ from the law, their behavior must always conform to the law.⁴⁴ Judge Fleegle’s decision to deviate from mandates from the Department of Health, the Governor, and the Supreme Court and implement his own procedure unnecessarily

33. *Id.* at 1265.

34. *Id.*

35. *Id.* at 1266.

36. *Id.*

37. *Id.*

38. MODEL CODE OF JUD. CONDUCT R. 1.1 (2020) (“A judge shall comply with the law, including the Code of Judicial Conduct.”).

39. MODEL CODE OF JUD. CONDUCT R. 1.2 (2020) (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”).

40. MODEL CODE OF JUD. CONDUCT R. 2.4(B) (2020) (“A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”).

41. MODEL CODE OF JUD. CONDUCT R. 1.1.

42. MODEL CODE OF JUD. CONDUCT R. 1.2.

43. MODEL CODE OF JUD. CONDUCT R. 2.4(B).

44. MODEL CODE OF JUD. CONDUCT R. 1.1.

endangered the health of those who entered the courthouse and their families.⁴⁵

B. Failure at Ensuring the Right to be Heard

In *In re Burchett*, Judge Debra Burchett of Washington's Cowlitz County District Court was disciplined for, amongst other things, denying a litigant's right to appear virtually at a court hearing.⁴⁶ The misconduct board received complaints "[i]n January and February 2020 concerning Respondent's handling of court proceedings, alleging [she] failed to conduct hearings in accordance with court rules and established case law[,] which protect criminal defendants' fundamental due process and constitutional rights."⁴⁷ During the investigation for the misconduct, commission learned of other transgressions by Judge Burchett.⁴⁸ Specifically, they learned that on February 26, 2021, Judge Burchett was concluding her afternoon docket when her clerk noticed that one person remained in the Zoom waiting room.⁴⁹ The clerk asked whether the person should be granted entry and in an exhausted tone, Judge Burchett said, "[I] just can't."⁵⁰ The clerk looked to see who the person was to notify them that their court date would be continued to the next hearing.⁵¹ In doing so, the person's name caught the clerk's attention. The person had renamed themselves "Help I couldn't log in at 2pm."⁵² The clerk immediately recalled that the judge had issued a bench warrant for a litigant who failed to appear at the 2:00 p.m. docket call.⁵³ She notified the judge that it was likely the defendant who had failed to appear earlier, but the judge insisted on closing the docket for the day.⁵⁴ As a result, the clerk notified the litigant that they would have to appear at the Bench Warrant docket scheduled for another day.⁵⁵

In a public admonishment, the misconduct commission held that Judge Burchett had failed to conform to the ethical standards of her office. The board noted that "[b]y choosing not to hear from a person who seemed to be a litigant attempting to participate in a hearing via Zoom, Respondent abdicated her responsibility to ensure the right to be heard" in violation of Rule 2.6(A)⁵⁶ of the

45. See *State v. Lynam (In re Fleegle)*, 163 N.E.3d 609 (Ohio 2020)

46. *IN RE THE HONORABLE DEBRAN BURCHETT*, WASH. COMM'N ON JUD. CONDUCT, CJC# 9848-F-191 (2021), https://www.cjc.state.wa.us/materials/activity/public_actions/2021/9848FinalStip.pdf [<https://perma.cc/MF6C-L3AK>].

47. *Id.* at 1.

48. *Id.* at 3.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. See e.g., MODEL CODE OF JUD. CONDUCT R. 2.6(A) (2020) ("A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard

Code of Judicial Conduct.⁵⁷ The judge's actions also had the potential to negatively impact the litigant's future desire to use of Zoom to attend court hearings. It would not be unreasonable for a litigant to believe that if their technology should fail them that they risk having a warrant issued for their arrest. This may encourage some to risk an in-person appearance, which could expose them to the coronavirus, all to have their day in court.

C. Failure to Support Pandemic Protocols

In *In re Connolly*, Judge Patrick Connolly of California's Los Angeles County Superior Court was disciplined for improper demeanor toward two criminal defense attorneys during an arraignment.⁵⁸ On March 20, 2020, the day after the Governor announced the statewide stay-at-home order due to COVID-19, two defense attorneys—each representing one of the co-defendants—requested to appear telephonically.⁵⁹ Both stated they were concerned about having been exposed to the COVID-19 virus and the possibility of spreading it at the courthouse.⁶⁰ Defense Attorney #1 called Judge Connolly's clerk to request permission to appear by telephone for the arraignment scheduled that afternoon.⁶¹ Ultimately, the judge agreed and both attorneys appeared by phone.⁶² Their clients were in custody and appeared in person.⁶³

Both attorneys proceeded through arraignment and at the end requested that their clients be release on their own recognizances, citing, among other reasons, health concerns outline in written documents.⁶⁴ In each case, Judge Connolly trotted out his intransigence as if it were a virtue. Each time one of the attorneys attempted to discuss the written evidence the judge would retort, "How am I going to see that letter, if you're not in my courtroom?"⁶⁵ When the attorneys attempted to reply to the judge, he would talk over them.⁶⁶ The attorneys struggled to reassure the judge they were in possession of the necessary evidence.⁶⁷ Every time they discussed a document the judge would say, "Which I cannot see, because you have not come to my courtroom."⁶⁸ When the attorneys

according to law.").

57. *IN RE BURCHETT*, *supra* note 46, at 7.

58. *IN RE CONNOLLY*, CAL. COMM'N ON JUD. PERFORMANCE (2021), https://cjp.ca.gov/wp-content/uploads/sites/40/2021/04/Connolly_DO_Pub_Adm_4-2-2021.pdf [<https://perma.cc/2UHN-UKNC>].

59. *Id.* at 2.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 2-3.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 3.

endeavored to reason with the judge one last time, he declined to listen to any future arguments and summarily set bail.⁶⁹

After a complaint was filed with the misconduct board, Judge Connolly was called to answer for his behavior. “In Judge Connolly’s response to the preliminary investigation letter, he acknowledged that he ‘should not have demonstrated irritation or impatience with defense counsel’ and that he ‘spoke too sharply’ to them.”⁷⁰ “The commission acknowledge[d] that the circumstances caused by the public health crisis were unusual and presented challenges,” but held, “that the initial lack of clarity about how to handle court proceedings during the public health crisis did not excuse or explain the judge’s mistreatment of the attorneys.”⁷¹ At his appearance before the commission, Judge Connolly claimed—for the first time—that he spoke with [Defense Attorney #1] on the telephone twice and told [him] to send whatever information he had to present to the court before the hearing, but that he had not received anything from [Defense Attorney #1].⁷² The misconduct commission found that statement disingenuous. They noted that “[i]f Judge Connolly had instructed [Defense Attorney #1] by telephone to provide the court with whatever he had before the hearing, Judge Connolly likely would have brought that up during the arraignment.”⁷³ Additionally, “[i]nstead of asking [Defense Attorney #1] why he had not provided the letter to the court before the hearing, Judge Connolly rebuked him by stating four times that [Defense Attorney #1] had not come to the courtroom.”⁷⁴ The Commission found that Judge Connolly’s behavior demonstrated poor demeanor,⁷⁵ created the appearance of impropriety and failed to promote public confidence in the integrity and impartiality of the judiciary.⁷⁶ When compiled these actions, like those in previous sections, are indicative of someone who did not appreciate the new COVID-19 protocols and attempted to obstruct them by returning to business as normal.

Another instance in which a judge’s behavior attempted to negatively impact a COVID protocol occurred in South Carolina. In *In re Rivers*, Florence County Magistrate Jerry Fletcher Rivers was sanctioned for threatening the Chief Magistrate while she outlined new COVID procedures.⁷⁷ On May 14, 2020, a meeting was held with magistrates and clerks regarding the plan to re-open magistrates’ court to the public.⁷⁸ During the meeting, “[Magistrate Rivers] began asking questions repeatedly, speaking in a loud voice and challenging the Chief

69. *Id.*

70. *Id.* at 4.

71. *Id.*

72. *Id.* at 5.

73. *Id.* at 6.

74. *Id.*

75. *See e.g.*, MODEL CODE OF JUD. CONDUCT R. 2.8(B) (2020).

76. *See e.g.*, MODEL CODE OF JUD. CONDUCT R. 1.2 (2020); *see also* *In re Connolly*, *supra* note 58, at 7.

77. *See In re Rivers*, 862 S.E.2d 449 (S.C. 2021) (per curiam).

78. *Id.*

Magistrate's Covid-19 safety plan for reopening.”⁷⁹ As the meeting continued, the magistrate “became visibly agitated, reading aloud portions of the [Supreme Court’s Order regarding the steps courts needed to take to reopen] and challenging the Chief Magistrate's implementation plan.”⁸⁰ Magistrate Rivers’ behavior became so distracting that “[a]t one point during the meeting another magistrate in attendance told [him] to follow the Chief Magistrate's direction.”⁸¹ Ultimately, the Chief Magistrate ended the meeting due to Magistrate Rivers’ antics.⁸²

Enraged by the dressing-down, Magistrate Rivers “exited the meeting room and confronted the magistrate who suggested he follow the Chief Magistrate's directions” and “expressed his displeasure and told the other magistrate not to disrespect him again.”⁸³ Magistrate Rivers then returned to the meeting room and advanced toward the Chief Magistrate while “hitting his hands together and loudly requesting that going forward the Chief Magistrate should show him respect.”⁸⁴ The next day the Chief Magistrate filed a report with the misconduct commission.⁸⁵ A month later, while the investigation was still pending, Magistrate Rivers told a clerk’s office employee that the “Chief Magistrate ‘does not know who she is dealing with, and she will regret doing this.’”⁸⁶ For this threatening behavior the magistrate was placed on an interim suspension.⁸⁷

In the end, Magistrate Rivers was suspended for six months.⁸⁸ The Supreme Court found that the magistrate’s “disruptive behavior reflected poorly on his professional judgement and temperament.”⁸⁹ They found that Magistrate Rivers failed to avoid impropriety and the appearance of impropriety and failed to cooperate with other judges and court officials in the administration of court business.⁹⁰ With this decision the Supreme Court made it clear that allowing your feelings to override your responsibilities as a judge would not be tolerated. The opinion acknowledged the magistrate’s concerns but impressed upon him that the way he conveys those concerns is paramount. Appropriately, the Court removed the magistrate from office for a definite period to relay the message that no amount of intimidation tactics will prevent the court from implementing protocols that safeguard the health and wellbeing of the public.

79. *Id.* at 449-50.

80. *Id.* at 450.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

D. Failed COVID-19 Marketing Strategy

The final example demonstrating how judges have negatively impacted COVID protocols centers around judicial commentary. In *In re Ledsinger*, Tennessee's Coffee County General Sessions Judge Jere Ledsinger was disciplined for making a racially insensitive statement.⁹¹ On July 16, 2020, while before an audience of criminal defendants, some of whom were African American, Judge Ledsinger tried to quell the discontentment surrounding the mask mandate.⁹² He attempted this feat by trying to invoke the common enemy theory, the phenomenon that members of a group work together when they face an opponent, although they otherwise have little in common.⁹³ The "common enemy" in this example being the Tennessee Supreme Court's Chief Justice, who on March 13, 2020, declared a state of emergency for the judicial branch and on July 9, 2020, along with his colleagues, issued an order requiring face masks.⁹⁴ When the audience bemoaned the constraint, Judge Ledsinger responded by saying, "the Grand Wizard of our Supreme Court said we have to wear these masks."⁹⁵ The Grand Wizard he referenced being the leader of the Ku Klux Klan ("KKK"), "a violent post-Civil War secret society founded in Tennessee in 1866 to upend the Black political and social power that was being established during Reconstruction."⁹⁶

Moving swiftly, the misconduct board launched an inquiry and eventually a full investigation.⁹⁷ The board was able to get Judge Ledsinger to admit that he made the comment, that it was improper, and that it created the appearance of impropriety.⁹⁸ In its order disciplining the judge, the board cited his failure to maintain the highest standards of conduct and dignity.⁹⁹ More specifically, they scolded Judge Ledsinger because "a participant in a legal proceeding who hears racially insensitive comments . . . may reasonably perceive that the judge is bias or prejudice, regardless of whether bias or prejudice actually exists."¹⁰⁰ This concern is magnified in Tennessee since it is the birthplace of the KKK.

91. Letter from Dee David Gay, Bd. Chair, State. Ten. Bd. Jud. Conduct, to Judge Jere Ledsinger (Sept. 28, 2020), https://www.tncourts.gov/sites/default/files/docs/jere_ledsinger_reprimand_2020_09_28.pdf [<https://perma.cc/CX5U-589V>].

92. *Id.*

93. See Hans Haller & Britta Hoyer, *The Common Enemy Effect Under Strategic Network Formation and Disruption*, 162 J. ECON. BEHAV. & ORG. 146 (2019).

94. IN RE COVID-19 PANDEMIC, ORDER REGARDING FACE COVERINGS, TENN. SUP. CT., (July 9, 2020), https://www.tncourts.gov/sites/default/files/docs/order_regarding_face_coverings.pdf [<https://perma.cc/7B6L-R3S3>].

95. Letter from Dee David Gay, *supra* note 91.

96. *Ku Klux Klan*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/Ku%20Klux%20Klan> [<https://perma.cc/M33D-66HR>] (last visited Feb. 25, 2022).

97. Letter from Dee David Gay, *supra* note 91.

98. *Id.*

99. *Id.*

100. *Id.*

Moreover, if the Chief Justice is the leader of the KKK, then it would not be unreasonable for a litigant to believe Judge Ledsinger occupied a lower ranking status of the same domestic terrorist organization. Finally, Judge Ledsinger's words failed to take into consideration the colonial overtones his statement had on African American who have, as a people, been laboratory subjects for government sponsored treatments (e.g., Tuskegee Syphilis Study, Henrietta Lacks).¹⁰¹

IV. RECOMMENDATION

Each of the above referenced judges understood that a global pandemic arrived which authorized the Governor and Supreme Court to enact emergency protocols to safeguard the public. However, each one misapprehended that their personal views on the appropriate response to the pandemic would usurp the directives of the leaders of each branch of government. Each judge erroneously believed that because they disagreed with the prescribed course of action that they could deviate without recourse. If they were normal members of the community that might have been true. Unfortunate for them, they are judicial officers held to the highest ethical standards, with the most salient being a requirement to follow and enforce the law. Given the clear proclamation, the only conclusion for a failure to follow the law is that their personal biases or outside political influences infiltrated their decision-making processes.

To remedy this failure, the judiciary's education division should institute greater bias training. For example, the training could go beyond the state's codes of judicial conduct and review international codes of conduct, like the Bangalore Principles on Judicial Conduct. Perhaps a demonstration that a judicial officer should maintain a bias-free, impartial disposition will be best understood when examined from the perspective of international tribunals who, in some instances, deal with issues not only from different parts of the states, but different parts of the world.¹⁰² Similarly, it may be useful guidance to review the Universal Declaration of Human Rights. For example, a review of how Article 10—which principally advocates for fair, impartial tribunals—might prove instructive.¹⁰³

Another component of this training could focus on teaching judicial officers how to properly participate in extrajudicial activities that discuss things like mask mandates and emergency powers of the executive and legislative branches. For example, Rule 3.7 of the Model Code of Judicial Conduct does say “a judge may participate in activities sponsored by organizations or governmental entities

101. See, e.g., Dezimey Kum, *Fueled by a History of Mistreatment, Black Americans Distrust the New COVID-19 Vaccines*, TIME (Dec. 28, 2020), <https://time.com/5925074/black-americans-covid-19-vaccine-distrust/> [<https://perma.cc/EG89-SHEZ>].

102. See *The Bangalore Principles of Judicial Conduct*, UNITED NATIONS OFF. DRUGS & CRIME (2018), <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf> [<https://perma.cc/VQ7L-LQHP>].

103. See G.A. Res. 217 (III) A, Universal Declaration of Human Rights, Art. 10 (Dec. 10, 1948).

concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit.”¹⁰⁴ By exploring the legal avenues available, judges can express their legal curiosity, maintain an outlet for expression, all while understanding their obligations to the populace. More specifically, such an education might illuminate the restrictions being a judge places on your freedoms and aids that person in selecting another profession if they determine the burdens to be onerous. Another outlet could be for a judicial officer to donate time or money to non-discriminatory organizations who share similar opinions regarding COVID-19 protocols.¹⁰⁵

V. CONCLUSION

Whether judges adhere to the Codes of Judicial Conduct will be entirely up to the agencies who supervise their behavior. Nevertheless, when interacting with directives that impact the physical well-being of others, each judge should heed the advice of the Supreme Judicial Court of Massachusetts when they said:

It is not enough that we know ourselves to be fair and impartial or that we believe this of our colleagues. Our power over our fellow citizens requires that we appear to be so as well. How else are ordinary citizens to have the faith in us that we have in ourselves . . . [?] An impartial manner, courtesy, and dignity are the outward sign of that fairness and impartiality we ask our fellow citizens, often in the most trying of circumstances, to believe we in fact possess. Surely it is arrogance for us to say to them that we may not seem impartial, but we know we are, and so they must submit. Precisely because the public cannot witness, but instead must trust, what happens when a judge retires to the privacy of [their] chambers, the judiciary must behave with circumspection when in the public eye.¹⁰⁶

104. See MODEL CODE OF JUD. CONDUCT CANON 3, R. 3.7 (2020).

105. See, e.g., MODEL CODE OF JUD. CONDUCT CANON 3, R. 3.6(A) (2020) (prohibits judges from having memberships in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation).

106. In re Brown, 691 N.E.2d 573, 576 (Mass. 1998).