



**JUDICIAL MISCONDUCT INVOLVING
POLITICAL OR CAMPAIGN ACTIVITY**

(Commission on Judicial Performance & Supreme Court Cases)

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
FAX (415) 557-1266
<https://cjp.ca.gov>

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Improper Support or Opposition – Non-Judicial Candidates of Political Parties

Judge O’Gara participated in a Facebook group called “Recall George Gascón,” referring to the District Attorney of Los Angeles County, in which the judge was an active participant in a group with more than 16,000 members, formed to oppose an elected official, giving the appearance that he endorsed the group’s stated goals and activity. Judge O’Gara posted remarks expressing a partisan viewpoint, and ‘liked’ other users’ comments expressing similarly partisan viewpoints. Because the judge heard cases prosecuted by the district attorney’s office while he participated in the group, the judge’s Facebook activity constituted making public comments about pending or impending proceedings in a court. [*Public Admonishment of Judge Michael J. O’Gara (2021).*]

In addition to other misconduct, Judge Bailey engaged in improper campaign and political activity for an extended period of time before he retired. Judge Bailey solicited and received thousands of dollars in campaign contributions to fund his exploratory and actual campaign for California Attorney General. The judge’s campaign made frequent use of his judicial title and photographs of him in his judicial robe. For example, the campaign featured his judicial title in email addresses and a campaign website, and distributed campaign communications and literature describing him as a “sitting judge” and referring to his judicial experience. Judge Bailey was introduced at political events as both a sitting judge and a candidate or prospective candidate for Attorney General, and the judge referred to his judicial office and experience as a sitting judge in his stump speech. The judge sought advice about ethical prohibitions and standards he would be required to follow during his campaign from a former judge and expert on judicial ethics, who advised him to not distribute flyers that included a picture of him in his judicial robe, remove his judicial title from campaign-related emails,

and avoid using his judicial title in campaign literature until he took a leave of absence from the bench. Judge Bailey dismissed, and did not follow, the advice.

Judge Bailey failed to supervise his Southern California campaign coordinator or take any measures to guard against the impermissible use of his title. The campaign coordinator created a “Judge Steven Bailey” Facebook page for the judge’s Attorney General campaign, and made several posts referring to Judge Bailey by his judicial title and promoting his campaign. Even after the commission notified Judge Bailey of the Facebook page, he did not take any action to cure the improper use of his judicial title. The judge did not instruct his campaign coordinator to delete the page, edit her posts, or avoid using his title in the future. In addition, Judge Bailey failed to address improper use of his judicial title in a post his Southern California campaign coordinator made on the Facebook page she maintained for her law firm. After the judge learned (due to commission correspondence) that his campaign coordinator posted a photo of Judge Bailey and wrote, “My friend Judge Steven Bailey is running for California Attorney General.... Please Help us!” and “Judge Steven Bailey. Candidate for Attorney General 2018. He will be the next Attorney General!!! Please repost. We need to win this!!,” he asked his coordinator only to remove any pictures of him wearing his judicial robes, but did not ask her to make any other changes to her posts.

The commission rejected Judge Bailey’s contention that canons that prohibit a judge from fundraising and campaigning for nonjudicial office, without taking a leave of absence, violate the First Amendment of the United States Constitution. The applicable canons, the commission concluded, further a compelling state interest in preserving public confidence in the integrity and impartiality of the judiciary, and fostering the appearance that judicial decisions are not politically motivated. The commission concluded that Judge Bailey’s conduct in raising funds and campaigning for a partisan, nonjudicial office while working as a judge, explicitly referring to his judicial title, and relying on the prestige of judicial office, is fundamentally inconsistent with the independence, impartiality, and integrity of the judiciary.

During his campaign for Attorney General, Judge Bailey also failed to properly supervise his campaign staff or attend to other administrative requirements of his campaign, resulting in his solicitation and acceptance of campaign contributions before filing a required Candidate Intention Statement. [*Inquiry Concerning Former Judge Steven C. Bailey* (2019) 6 Cal.5th CJP Supp. 24.]

Commissioner Gianquinto posted and re-posted information on his public Facebook page that reflected, among other things, strong opposition to then-presidential candidate Hillary Clinton, contrasting praise for then-presidential

candidate Donald Trump, and an accusation that President Barack Obama was trying to transform the United States from a Judeo-Christian nation into Islam. [*Public Censure of Former Commissioner Joseph J. Gianquinto* (2018).]

The judge conveyed the impression that candidates for a nonjudicial public office were in a special position to influence the judge, and lent the prestige of the judicial office to advance the pecuniary or personal interests of the candidates. The judge also permitted one candidate to convey the impression that the candidate was in a special position to influence the judge. [Com. on Jud. Performance, Ann. Rept. (2018), Private Admonishment 7, p. 27.]

During his campaign for judicial office, candidate Krep signed fundraising letters for the United States Justice Foundation that the commission found, based on their content, constituted opposition to President Barack Obama's reelection, in violation of canon 5A(2) (judges and judicial candidates shall not publicly endorse or oppose a candidate for nonjudicial office). The commission further found that Judge Krep's argument that his letters did not oppose former President Obama's reelection effort was disingenuous and was belied by the plain language of the letters. For example, one letter stated, "our effort may be all that stands between four more years of Barack Obama in the White House...." (Underlining in original.) [*Inquiry Concerning Judge Gary G. Krep* (2017) 3 Cal.5th CJP Supp. 1.]

In addition to other non-campaign related misconduct, a judge solicited contributions for a candidate for judicial office from attorneys appearing before the judge. [Com. on Jud. Performance, Ann. Rept. (2015), Advisory Letter 21, p. 26.]

In addition to other non-campaign related conduct, the judge engaged in political activity on behalf of a candidate for a non-judicial office that was contrary to canon 5; the activity also involved abuse of the prestige of office. [Com. on Jud. Performance, Ann. Rept. (2013), Private Admonishment 5, p. 20.]

In addition to other misconduct, while former Judge Zellerbach was actively considering running for district attorney, the judge addressed a gathering of the county's District Attorney's Association on the subject of its endorsement of a candidate for district attorney. The judge recommended that the association delay its decision about whom to endorse, referred to public criticism of policies adopted by the incumbent district attorney, and compared the way the office had run when he worked there with the way it was being run at that time. The commission found that by recommending that the association delay its endorsement decision, the judge engaged in political activity that may have

created the appearance of political bias or impropriety, and gave the appearance that he was opposing a candidate for non-judicial office. [*Public Admonishment of Former Judge Paul E. Zellerbach* (2011).]

In addition to other misconduct, both campaign related and otherwise, after becoming a candidate for judicial office, the judge did not promptly remove endorsements of non-judicial candidates which the judge had made prior to becoming a candidate. When contacted by the State Bar about these endorsements, the judge provided a date on which the judge became a candidate, without ensuring that the date was accurate. The date provided was inaccurate, which created the impression that the judge had promptly removed the improper endorsements. [Com. on Jud. Performance, Ann. Rept. (2011), Private Admonishment 4, p. 23.]

A judge publicly endorsed a candidate for non-judicial office. The judge promptly arranged to have the endorsement removed. [Com. on Jud. Performance, Ann. Rept. (2010), Advisory Letter 9, p. 25.]

A judge was listed in an endorsement of a candidate for non-judicial office. Although the endorsement was unauthorized, the judge failed to seek a retraction or otherwise ameliorate the problem. [Com. on Jud. Performance, Ann. Rep. (1997), Advisory Letter 23, p. 22.]

Within a calendar year a judge contributed slightly more than \$500 to a candidate for non-judicial office in violation of campaign contribution limits contained in canon 5A(3). There were mitigating circumstances. [Com. on Jud. Performance, Ann. Rept. (1993), Advisory Letter 16, p. 18.]

A judge gave the appearance of soliciting contributions from attorneys and their clients to the election campaign of a candidate for non-judicial office. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 12, p. 14.]

A political meeting was held at a judge's house. The invitation stated that the meeting would be held "at the home of _____ and _____" and gave the name of the judge and the judge's spouse. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 24, p. 16.]

A judge invited judges and court commissioners to an open house for a candidate for non-judicial office. The invitation was on court memorandum stationery. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 29, p. 16.]

In addition to other misconduct not involving political activity, the judge made political contributions from his own campaign funds to non-judicial candidates in patent violation of canon 7. [*Public Reproval of Judge Calvin P. Schmidt* (1989).]

A judge endorsed a candidate for city council, thereby violating canon 7A(1)(b). [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 24, p. 25.]

A judge violated canon 7 by the nature of the judges' activity in the local club of a political party. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 28, p. 25.]

A judge was a featured speaker at a campaign function for a candidate for non-judicial office. [Com. on Jud. Performance, Ann. Rept. (1987), Advisory Letter, p. 11.]

A judge publicly endorsed candidates for non-judicial office and attempted to influence matters within the ambit of other officials. [Com. on Jud. Performance, Ann. Rept. (1987), Advisory Letter, p. 11.]

A judge's name appeared as a "sponsor" on a political mailing for a candidate for non-judicial office. [Com. on Jud. Performance, Ann. Rept. (1986), Advisory Letter, p. 4.]

A judge arranged for a political mailer which appeared to pair the judge with, and to constitute an endorsement of, a candidate for non-judicial office. [Com. on Jud. Performance, Ann. Rept. (1986), Advisory Letter, p. 5.]

A judge authorized the written use of the judge's name as an endorsement of a candidate for non-judicial office. [Com. on Jud. Performance, Ann. Rept. (1986), Advisory Letter, p. 5.]

A judge made political contributions inconsistent with canon 7. [Com. on Jud. Performance, Ann. Rept. (1986), Advisory Letter, p. 5.]

Violations of the Political Reform Act

During a campaign for judicial office, the judge engaged in violations of the Political Reform Act. The judge did not correct the violations before the election. [Com. on Jud. Performance, Ann. Rept. (2022), Private Admonishment 1, p. 31.]

During a campaign for judicial office, the judge engaged in a violation of the Political Reform Act. The judge did not correct the violation before the election. [Com. on Jud. Performance, Ann. Rept. (2022), Advisory Letter 11, p. 33.]

The judge violated the Political Reform Act, during a period of time when the judge was not running for office. [Com. on Jud. Performance, Ann. Rept. (2022), Advisory Letter 12, p. 33.]

A commissioner violated the Political Reform Act. [Com. on Jud. Performance, Ann. Rept. (2022), SJO Advisory Letter 1, p. 39.]

During a campaign for judicial office, the judge engaged in violations of the Political Reform Act. [Com. on Jud. Performance, Ann. Rept. (2020), Private Admonishment 7, p. 54.]

During a campaign for judicial office, the judge engaged in violations of the Political Reform Act. [Com. on Jud. Performance, Ann. Rept. (2020), Private Admonishment 8, p. 54.]

The judge violated election law reporting requirements. [Com. on Jud. Performance, Ann. Rept. (2018), Advisory Letter 13, p. 29.]

While a candidate for judicial office, candidate Kreep misrepresented on his California Fair Political Practices Commission (FPPC) Form 700 that he served as chairman of a political action committee, when he never held that position. The commission determined that that misrepresentation was prejudicial misconduct, because the form was submitted with reckless disregard for the truth, and an objective observer would find a judge's conduct in signing an official document under penalty of perjury with a reckless disregard for the truth to be prejudicial to public esteem for the judicial office. Similarly, the commission found that candidate Kreep's failure to comply with election laws during his candidacy by failing to report all accrued election campaign expenses on two statements filed with the FPPC and using his personal credit card or personal bank account, rather than his campaign account, to make certain campaign expenditures, totaling more than \$40,000, was also prejudicial misconduct. [*Inquiry Concerning Judge Gary G. Kreep* (2017) 3 Cal.5th CJP Supp 1.]

As a candidate, Flanagan violated the Political Reform Act by failing to disclose her treasurer as the true source of two loans to her campaign in campaign statements, by depositing the checks from her treasurer to her business and personal accounts and thereby commingling campaign and personal funds, by using a cashier's check for one of the loans, and by failing to inform her treasurer

of the treasurer's responsibility for filing campaign reports for making contributions of \$5,000 or more. [*Public Admonishment of Judge Tara M. Flanagan* (2017).]

A judge failed to comply with a Political Reform Act regulation regarding election campaign committees. [Com. on Jud. Performance, Ann. Rept. (2016), Advisory Letter 18, Advisory Letter 19, p. 29.]

Judge Brehmer was disciplined for conduct during his campaign for judicial office, the judge and his treasurer received a number of cash contributions in amounts in excess of the monetary limit set by law, failed to disclose a number of contributions and the true source of a loan to the campaign, deposited a campaign loan into the judge's personal bank account rather than his campaign account in violation of law and failed to timely file a number of campaign reporting statements. The judge entered into a stipulation with the Fair Political Practices Commission (FPPC) admitting three violations of the Political Reform Act (PRA) and paying a \$5,500 fine. Both the FPPC and the commission found no evidence of any intent to conceal information from the public on the part of the judge. In the commission's view, the violations of the PRA were the result of a failure to oversee sufficiently the work of an inexperienced campaign treasurer handling the campaign's reporting requirements. [*Public Admonishment of Judge Charles R. Brehmer* (2012).]

In addition to other misconduct both campaign related and otherwise, the judge failed to file the paperwork required by law to begin soliciting campaign contributions. [Com. on Jud. Performance, Ann. Rept. (2011), Private Admonishment 4, p. 23.]

In addition to other non-campaign related misconduct, the judge's campaign disclosure form failed to provide the street address of a donor, as required by law. [Com. on Jud. Performance, Ann. Rept. (2008), Advisory Letter 17, p. 28.]

In addition to other non-campaign related misconduct, the judge failed to comply with campaign reporting requirements. [Com. on Jud. Performance, Ann. Rept. (2007), Private Admonishment 7, p. 31.]

In addition to other misconduct, Judge Hall was removed from office for, during her campaign for reelection, illegally commingling campaign and personal funds, and filing four sworn false campaign statements, in order to avoid disclosure of her same-sex partner as the source of a \$20,000 contribution or loan. [*Inquiry Concerning Judge Diana R. Hall* (2006) 49 Cal.4th CJP Supp. 146.]

Judge Benson was disciplined for conduct during his campaign for judicial office, the judge failed to disclose a \$71,000 loan from his father, which he had deposited in his personal bank account. He subsequently dispersed the loan in two increments to his campaign account, listing himself on campaign statements as the source of the funds. [*Public Admonishment of Judge Stephen E. Benson* (2006).]

In addition to other non-campaign related misconduct, the judge failed to report receipt of a campaign contribution as required by law. [Com. on Jud. Performance, Ann. Rept. (2004), Private Admonishment 4, p. 22.]

A judge admitted violations of the Political Reform Act in connection with the judge's reelection campaign. There was no evidence of intent to conceal information from the public. [Com. on Jud. Performance, Ann. Rept. (1997), Advisory Letter 21, p. 22.]

A judge failed to comply with campaign reporting requirements. [Com. on Jud. Performance, Ann. Rept. (1997), Advisory Letter 22, p. 22.]

A judge admitted violations of the Political Reform Act. Although the judge was negligent in failing to take any steps to ensure that the judge's inexperienced campaign committee complied with the law, there was no evidence of intent to conceal campaign finance information. [Com. on Jud. Performance, Ann. Rept. (1996), Advisory Letter 25, pp. 25-26.]

Knowing or Reckless Misrepresentations About Self or Opponent

During then-attorney Kreep's campaign for judicial office in 2012, his campaign website falsely represented that candidate Kreep was president of three political action committees, and falsely represented that one of them was a current nonprofit California corporation. Although candidate Kreep did not personally create the website, and there was no evidence he made knowing misstatements, the commission concluded he engaged in a reckless disregard of their truth by failing to confirm the veracity of the statements contained on his campaign website. [*Inquiry Concerning Judge Gary G. Kreep* (2017) 3 Cal.5th CJP Supp 1.]

A judge made a misrepresentation in campaign materials regarding the judge's experience. [Com. on Jud. Performance, Ann. Rept. (2015), Advisory Letter 10, p. 25.]

While a judge was a candidate for judicial office, the judge's campaign materials created a false impression about the judge's prior judicial experience. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 21, p. 26.]

A candidate for judicial office misrepresented the qualifications and present position of an opponent in the campaign. [Com. on Jud. Performance, Ann. Rept. (2010), Advisory Letter 10, p. 25.]

In addition to other campaign-related misconduct, for conduct during Former Judge McGraw's campaign for reelection, in two interviews with a television reporter, the judge denied having used his court computer to access Internet sites containing sexually explicit materials, denied having spoken with his presiding judge about the matter and denied having been disciplined by the commission. These statements were false and misleading. [*Censure and Bar of Former Judge Vincent J. McGraw* (2003).]

A judge's campaign literature misrepresented the judge's professional experience. [Com. on Jud. Performance, Ann. Rept. (2002), Advisory Letter 11, p. 24.]

In addition to other non-campaign related misconduct, Judge Van Voorhis was disciplined for conduct during the judge's campaign for judicial office. The judge misrepresented his marital status. He and his wife had been divorced before the campaign but continued to live together. The judge referred to her as "my wife" in his campaign literature and in public. [*Public Reproval of Judge Bruce Van Voorhis* (1992).]

A judge failed to exercise any control over the judge's campaign committee. With apparent disregard of the truth, the committee published what seemed to be defamatory falsehoods about a law firm with which the judge's opponent had been associated and which still practiced in the county. [Com. on Jud. Performance, Ann. Rept. (1991), Advisory Letter 16, p. 12.]

On a declaration of candidacy, a judge deliberately gave an incorrect and misleading home address. [Com. on Jud. Performance, Ann. Rept. (1988), Advisory Letter 42, p. 15.]

Use of Public or Court Resources for Campaign

The judge misused public resources in connection with a judicial campaign. [Com. on Jud. Performance, Ann. Rept. (2018), Advisory Letter 14, p. 29.]

In addition to other non-campaign misconduct, the judge engaged in improper political activity at the courthouse. [Com. on Jud. Performance, Ann. Rept. (2017), Private Admonishment 3, p. 23.]

A judge engaged in improper political activity at the courthouse. [Com. on Jud. Performance, Ann. Rept. (2017), Advisory Letter 13, p. 25.]

A judge used the court's email system to send an email to court personnel endorsing a judicial candidate. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 19, p. 23.]

A judge engaged in improper political activity during the judge's campaign for judicial office by distributing campaign literature on county property. [Com. on Jud. Performance, Ann. Rept. (2010), Advisory Letter 8, p. 25.]

In addition to other campaign misconduct, the judge used court resources in connection with campaign activities. [Com. on Jud. Performance, Ann. Rept. (2009), Private Admonishment 2, p. 18.]

In addition to other campaign related misconduct, Former Judge McGraw engaged in, or involved court employees in, improper campaign activities in and around the courthouse, including using the court's interoffice mail system to distribute several hundred Petitions in Lieu of Filing Fees with a request to collect signatures in support of the judge's candidacy; engaging court employees and staff in conversations about his campaign during working hours, including asking employees to obtain signatures on the Petitions in Lieu of Filing Fees; and asking for other assistance. Former Judge McGraw also distributed a campaign brochure containing a photograph of himself and members of his judicial staff, without obtaining their permission or consent to include the photo in his brochure. When apprised of issues with his distribution of the petitions and brochures, the judge ceased using them. [*Censure and Bar of Former Judge Vincent J. McGraw* (2003).]

While running for reelection, at the end of a court session, Judge Fletcher had a group photograph taken of court staff and others who appeared before him. The clerk and the public defender initially declined as they did not want to be involved in the judge's campaign but the judge insisted and told them it was just a personal memento. The photo later appeared as a "Paid Political Advertisement" in the local newspaper. "By insisting (over objections) that everyone participate, securing cooperation by stating that the picture was simply a personal memento, and failing to disclose his intent to use the picture in his campaign, petitioner committed prejudicial misconduct both in taking and using the picture for

campaign purposes. This resulted in the judge being removed from office. (See *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, p. 374 [“exploitation of judicial office for political ends seriously and impermissibly undermines public esteem for the impartiality and integrity of the judiciary”].)” [Fletcher v. Commission on Judicial Performance (1998) 19 Cal.4th 865.]

Failure to Disclose Campaign Contributions

In several matters, the judge failed to disclose information reasonably relevant to the question of disqualification, including campaign contributions. [Com. on Jud. Performance, Ann. Rept. (2022), Advisory Letter 20, p. 34.]

In addition to other non-campaign misconduct, the judge also failed to comply with disclosure requirements for judicial campaign contributions. [Com. on Jud. Performance, Ann. Rept. (2017), Private Admonishment 4, p. 23.]

Judge Walsh received a public admonishment for, after being reelected in June 2012, engaging in a pattern of failing to disclose the campaign contributions of attorneys who appeared before him, in violation of Code of Civil Procedure section 170.1, subdivision (a)(9)(C), which requires judges to disclose on the record campaign contributions of \$100 or more received from a party or lawyer in a matter that is before the court. In one instance, in July 2012, Judge Walsh presided over a hearing on a defendant’s motion for summary judgment without disclosing on the record that he had received a \$1,499 contribution from the defendant’s lead attorney, a \$1,000 contribution from that attorney’s law partner, and a \$250 contribution from the plaintiff’s attorney. The commission found that the judge’s failure to disclose campaign contributions after the election deprived the parties and attorneys appearing before him of information to which they were entitled and could give rise to public distrust in the independence and impartiality of the judiciary. [*Public Admonishment of Henry J. Walsh* (2016).]

Miscellaneous

The judge engaged in an improper political activity. [Com. on Jud. Performance, Ann. Rept. (2019), Advisory Letter 13, p. 36.]

During an election campaign, the judge failed to comply with applicable laws and regulations. [Com. on Jud. Performance, Ann. Rept. (2019), Advisory Letter 8, p. 35.]

Candidate Kleep failed to resign from leadership positions in three political organizations, before he became a candidate for judicial office. [*Inquiry Concerning Judge Gary G. Kleep* (2017) 3 Cal.5th CJP Supp 1.]

A judge engaged in inappropriate fundraising efforts on behalf of a candidate for judicial office that included distribution of written materials that demeaned the judicial office. [Com. on Jud. Performance, Ann. Rept. (2009), Private Admonishment 2, p. 18.]

In addition to other misconduct not involving political activity, in late September 1994, Judge Hiber gave his clerk \$250 in cash and asked her to donate the money in her name to the campaign of a candidate for non-judicial office. The clerk did as the judge requested. The judge's conduct gave the appearance that the judge was attempting to conceal that he was the source of a political contribution. [*Public Admonishment of Judge Harvey H. Hiber* (1998).]

A judge engaged in activities which suggested that the judge had political influence and access to high officials. The commission considered this to be "political activity inappropriate to the judicial office," in violation of canon 7. [Com. on Jud. Performance, Ann. Rept. (1990), Advisory Letter 25, p. 24.]

A judge, who was standing for reelection, made speeches to jurors which could reasonably have been understood as electioneering. The judge also ran campaign advertisements which appeared to promise certain rulings. [Com. on Jud. Performance, Ann. Rept. (1988), Private Admonishment F, p. 10.]

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