

## Troubling trend: When judges need disciplining

News-December 7, 2014

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DETROIT — They lied, stole, forged bank documents, padded expense accounts, drove drunk, slept with litigants and jailed innocent people.

Michigan judges have been in **big trouble in recent years**. The number of judges disciplined — about 35 per year — has not gone up, but the level of chicanery has soared.

Four judges have been removed from the bench and a fifth was forced to retire in the last three years. National experts who are watching the state's troubled judiciary say the trend is perhaps an aberration, but others say the state's judges need remedial education on judicial ethics.

Judges who have been disciplined in recent years range from a Wayne County Circuit judge who was carrying on an affair with a woman involved in a divorce case he was deciding to a Jackson County judge who dismissed traffic tickets against his wife to a Hudsonville judge who threw a defense attorney in jail for advising his client not to answer potentially incriminating questions.

The problems have even reached up to the state's highest court. Diane Hathaway, a Michigan Supreme Court justice, chose to retire from the bench in January 2013 rather than face removal as she was about to be indicted on a federal mortgage fraud charge. She eventually served nine months in a federal prison and was released in May 2014. On Monday, proceedings will start to remove yet another Michigan judge from the bench.

Officials say Detroit 36th District Judge Brenda Sanders is seriously mentally ill, a danger to herself and others. Sanders, on the bench since 2008, wrote the U.S. Attorney's Office in Detroit in 2013 that her fellow judges were being murdered to stop them from revealing



Former Michigan Supreme Court Justice Diane Hathaway  
(Photo: state of michigan)

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wrongdoing and that she, too, was in imminent danger. People were hacking into her phone and e-mail. Supreme Court justices had evicted her from her home.

A psychiatrist who later examined the letter for court officials said it showed classic symptoms of "psychosis" marked by "insane delusions" and warned that Sanders, who has been known to carry a handgun, could be dangerous.

Her attorney, Cyril Hall, in court filings, said the letter was meant to be private and that a psychiatric examination would show that she was not mentally ill.

Sanders has been suspended from her duties without pay. At Monday's hearing, the Judicial Tenure Commission will gather evidence and decide whether to recommend her dismissal to the Michigan Supreme Court, the only authority to remove judges.



**Brenda Sanders**  
(Photo: Handout photo)

"I think you can make the point that this is a troubled judiciary," said Charles Gardner Geyh, a professor of law at Maurer School of Law at Indiana University and a national expert on judicial ethics. "But there is a counterpoint to be made. Michigan is doing a fairly aggressive job of rooting out misconduct."

### A message to all judges

Paul Fischer, executive director of the Michigan Judicial Tenure Commission, will prosecute the case against Judge Sanders.

Fischer said the number of complaints about misbehaving judges have remained steady, though recent cases have garnered much more attention, likely because they have involved titillating behavior like sex, theft and lying that ended up in headlines.

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"It's been pretty steady the last several years, but it does seem like there's been more," he said. "I think people are paying more attention."

The Center for Judicial Ethics at the National Center for State Courts serves as a clearinghouse for judicial discipline and tracks misdeeds nationwide. Their records show that removing a judge from the bench is rare.

In 2013, only five judges were removed from the bench nationwide, and 17 resigned or retired in lieu of removal. Michigan, in just three years, has removed four judges and forced two to retire.

Cynthia Gray, the director of the center and considered one of nation's experts on judicial ethics, has been watching the Michigan judiciary with interest. "Perhaps in a year or so, it will be back to the typical thing, like drunk driving," Gray said. "When you take a snapshot, you sometimes get an aberration, and I hope, for the sake of Michigan, that's what this is."

The public punishment of judges may prompt those remaining on the bench to behave, she said.

"Part of judicial discipline is to remind them that people are watching, so whatever they might be struggling with, hopefully they resist."

Leslie Abramson, a professor at the Louis Brandeis School of Law at the University of Louisville, said the nature of the transgressions should prompt the state to look hard at how judges are elected and retained.

"Even if the numbers are stable, the nature and severity of what these people are doing would suggest a cultural problem," said Abramson, who lectures extensively on judicial ethics.

Noting Hathaway's forced retirement from the Michigan Supreme Court, Abramson said: "It sounds like a top-down problem and should prompt the question of whether there

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needs to be a cultural change, either through education, or a reminder that these people are held to a very high standard, and not just on what they do on the bench."

Others say that while the trend is troubling, Michigan residents should be encouraged by the prosecution of bad judges. "But for the discipline, some of this behavior might have continued," said Geyh. "I tend to see this as the glass half-full."

### The 'black robe disease'

Judges, by the very nature of their work, are very powerful, and some get into trouble by wielding that power inappropriately.

Dennis Wiley, a district court judge in Berrien County in southwest Michigan, was publicly censured in 2012 after he found a woman in contempt and threw her in jail for 10 days because she muttered a profanity in the clerk's office while trying to take care of traffic tickets.



Wade McCree (Photo: Jessica J. Trevino Detroit Free Press)

And Kenneth Post, a district court judge in Hudsonville, was given a 30-day suspension in 2013 after he jailed a defense attorney for advising his client not to answer incriminating questions.

Professor Abramson calls it the "black robe disease." "It seems to be an affliction that overtakes judges perhaps because of the tremendous power they have," he said, noting that judicial canons require judges to be courteous to all litigants.

Michigan is not the only state with judges committing jaw-dropping behavior.

In Wisconsin, Supreme Court Justice Ann Walsh Bradley

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claimed fellow Justice David Prosser put her "in a chokehold" during a heated argument in her chambers regarding the timing of an opinion. A special prosecutor was appointed but brought no charges. The Wisconsin Judicial Tenure Commission recommended sanctions against Prosser, but the matter was dropped when three of the Supreme Court justices who had witnessed the altercation recused themselves.

And in California, two county judges were publicly censured in September in separate cases for having sex in their chambers, one with his clerk, and the other with two of his former law students. The state's Commission on Judicial Performance declared that Orange County Judge Scott Steiner and Kern County Judge Cory Woodward showed "utter disrespect for the dignity and decorum of the court."

### Policing the judiciary

The majority of the state's 1,259 judges, magistrates and referees never face discipline. But once a judge breaks a law or violates one of the strict judicial canons that dictate behavior, they can face sanctions.

The Michigan Judicial Tenure Commission, made up of five judges, two attorneys and two citizens oversees the complaints, investigates and holds hearings. If the commission determines wrongdoing, it makes a recommendation to the Michigan Supreme Court. Sanctions can include a private censure, a public reprimand, paid or unpaid suspension, mandatory retirement or removal from office.

The process is secretive and often lengthy. The commission does not provide information about investigations or allegations unless they take action, and private censures are sealed. The commission is not subject to the Michigan Freedom of Information Act.

Critics of the system say citizens should have more access to complaints about judges. Michigan's secrecy prompted the Center for Public Integrity, a nonprofit investigative

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reporting organization, to give the state a failing grade in "judicial accountability" in a 2012 survey of states. Several other states received failing grades.

Michigan is among 39 states that elect their judges. Voters can be dispassionate if not outright uninformed when it comes to electing judges in Michigan. Once a judge wins election, it can become a job for life.

Judicial elections tend to be about name recognition and the special incumbent designation that sitting judges get on the ballot. And few practicing attorneys want to risk an election challenge against a judge whom they have to face in court regularly.

On occasion, voters will hold judges accountable.

After Inkster District Judge Sylvia James was removed from the bench in 2012 for misusing public funds, including money meant for crime victims, she ran for her old seat in the following November election. But James lost to Sabrina Johnson, who was appointed by the governor to finish James' term and now had the incumbent designation.

Some states have tried to provide more citizen access and greater policing.

Arizona has a "judicial review commission," made up of mostly nonlawyers, that queries jurors, litigants, attorneys, court staff and witnesses about their experiences in front of judges.



Inkster Judge Sylvia James during a hearing before the Michigan Judicial Tenure Commission in 2012. James was removed from the bench for misusing public funds meant for crime victims and then lying about it.

(Photo: File photo by Romain Blanquart Detroit Free Press)

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They then rate the judge as qualified or not and make the information public on the secretary of state website and in paid advertising. There are no studies showing the impact, but the experts say it likely keeps judges behaving.

"I would regard that form of accountability as reliable," said law professor Geyh.

### Judges recently punished by Michigan Supreme Court

The Michigan Judicial Tenure Commission typically receives about 600 complaints a year. Many are complaints about rulings, out of the jurisdiction of the commission. Some legitimate complaints are resolved through private admonishments and warnings. The more serious end up before the Michigan Supreme Court.

Some of the judges most recently punished by the high court:

- **Deborah Ross Adams**, Wayne County Family Court, removed from the bench in 2013 after lying under oath. She repeatedly contacted an Oakland County judge regarding her divorce pending in that court and forged a document, then lied about it.

- **Sheila Ann Gibson**, Wayne County Circuit Court judge, issued a public censure and 30-day suspension without pay after a Detroit television crew followed her and filmed her arriving late to the courthouse and leaving early on several days. Some days she worked as little as four hours.



Deborah Ross Adams (Photo: Hand-out)

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- **Diane Hathaway**, a Michigan Supreme Court justice, retired from the bench rather than face removal following her 2013 conviction on mortgage fraud. She served nine months in a federal prison and was released in May 2014.
- **Sylvia James**, Inkster district court judge, removed from the bench in 2012 for misusing public funds meant for crime victims, then lying to the Judicial Tenure Commission about it. She was ordered to repay \$16,500.
- **James Justin**, a district court judge in Jackson, removed in 2012 after dismissing traffic tickets for his wife and members of his court staff without notifying prosecutors.
- **Wade McCree**, Wayne County Circuit Court judge, removed from the bench in 2014 after carrying on an affair with a female litigant appearing before him, then lying about it to the Judicial Tenure Commission. He also was ordered to pay \$12,000 in costs. He made headlines in 2010 after he sent a shirtless photo of himself to a county employee, and when questioned by reporters said, "There's no shame in my game."
- **Bruce Morrow**, Wayne County Circuit Court judge, 60 days suspension in 2014 for mismanaging cases, including his refusal to lock up a convicted rapist pending sentencing.
- **Kenneth Post**, Hudsonville district court judge, public censure and 30-day suspension in 2013 after he jailed a defense attorney who was advising his client not to answer the judge's potentially incriminating questions from the bench, a professional obligation all defense attorneys have.
- **Dennis Powers**, Novi district court judge, retired in September to avoid removal from the bench after investigators found thousands of dollars of improper mileage



**Bruce Morrow**

(Photo: Jessica J. Trevino Detroit Free Press)

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reimbursement. Powers also was accused of golfing, and attending real estate seminars when he should have been on the bench.

- **Kirk Tabbey**, Ypsilanti district court, public censure and 90-day suspension without pay in 2014 after being arrested on charges of drunken driving while towing a boat out of a lake. His blood alcohol was 0.17, more than twice the legal limit.

- **Dennis Wiley**, Berrien County district judge, issued a public censure after he found a woman in contempt and jailed her for 10 days over Christmas because court clerks told him she had muttered an obscenity in the clerk's office while attempting to take care of traffic tickets.

<http://www.usatoday.com/story/news/nation/2014/12/07/wen-judges-need-disciplining/20053455/>



Kirk Tabbey (Photo: none)

L.L. Brasier, Detroit Free Press

### More Judges in Trouble links

#### **Shady Probate Judge Kathryn George Jails Mom, Seizes ...**

Jun 16, 2014 - I've seen some wicked **judges**, but she is the **worst**. .... The **Michigan State Supreme Court** removed her as Chief Judge of the Macomb **Court** in ...

#### **Immunity lets bad judges off hook for bad behavior**

July 28, 2014 - The disgraced judge — who once texted a shirtless photo of himself to a female court bailiff — had an affair with a woman while overseeing her child custody case, had sex with her in his chambers and sexted her from the bench.

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### Last on List: Michigan Ranks Worst Among State ...

Nov 9, 2015 - Last on List: **Michigan Ranks Worst** Among State Governments for Integrity .... There are an alarming number of local **Judges**, lawyers, **Court** ...

### Michigan Judicial Tenure Commission files complaint against Ypsilanti district court judge

Nov 13, 2014 - The **Michigan** Judicial Tenure Commission filed formal **complaints** Wednesday **against** 14-A District Court **Judge** J. Cedric Simpson.

### Michigan one of the worst states when it comes to "dark money..."

Jun 25, 2015 - But the **judges** did say we had a right to demand to know who was ... that **Michigan** is absolutely the **worst** of all the states when it comes to ...

### Judicial Tenure Commission files complaint against Judge Gorcyca

Dec 15 2015 - A Michigan judge who ordered some siblings to juvenile detention for refusing to meet with their estranged father is now facing backlash. A formal complaint has been filed by the Michigan Judicial Tenure Commission against Judge Lisa Gorcyca. The commission has also requested that the Supreme Court appoint a master to preside over a formal hearing in the matter.

### Complaint dropped against Wayne Circuit judge

January 27, 2016 - A judicial misconduct complaint has been dismissed against Wayne Circuit Judge Richard B. Halloran Jr., who was accused of not following rules in divorce proceedings.

## Removal of Judges

Michigan judges may be removed in one of three ways:

- Judges may be impeached by a majority vote of the house of representatives and convicted by a two-thirds vote of the senate.
- The governor may remove a judge upon the concurrent resolution of two thirds of the members of both houses of the legislature.

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- On the recommendation of the **judicial tenure commission**, the supreme court may censure, suspend, retire, or remove a judge. However, the Judicial Tenure Commission cannot deal with Supreme Court Justices. There is currently no mechanism to deal with misbehavior by Supreme Court Justices.

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