



To: Interested parties
From: Tyler Cooper, Fix the Court senior researcher
Date: April 2019
Re: Recent incidents of sexual harassment in state courts

In this document, we look at recent incidents of misconduct by judges in Arkansas, California, Georgia, Nebraska and New York and policy changes made in those states as a result.

Though we will be adding to this report over time, the overall sense we have now is that it is not only the federal judiciary that has a problem of harassment among its ranks, and states confronting harassment in the judiciary each seem to have their own unique, frankly underwhelming, methods of handling complaints and (attempting to) improve overall anti-harassment training and directives.

In the end, it looks as if judges accused of misconduct – even those who committed several such acts – can simply retire with full benefits, as they can at the federal level, and without further examination, save in the Arkansas example. And in the states we’ve looked at so far, no constructive statutory changes have been made that would both deter bad behavior and punish it when it occurs.

Instead, there’s been a hodgepodge of responses:

- After his predecessor went to jail, an Arkansas judge brought cameras into the courtroom as a means to make the judiciary more transparent and restore public trust;
- California created its own workplace conduct working group, akin to the one created in the federal courts;
- Georgia lawmakers make a 180-degree turn from its previous policy and convinced voters to allow its formerly independent judicial qualifications committee to come under legislative rule;
- Illinois mandated anti-harassment training for some judges; and
- New York revised its policy on sexual harassment, though not to everyone’s satisfaction.

A more detailed look begins below:

Arkansas

Overview

Summary: A state judge was accused of sexual harassment and resigned from office. He was subsequently charged criminally and convicted.

Current Status: No statutory changes have been made in response. The new judge – somewhat ironically, given Fix the Court’s interest in broadcast – brought cameras into the courtroom in response to the incident in order to improve judicial transparency.

Body Handling Harassment Claims Against Judges: Arkansas Judicial Discipline and Disability Commission

Incident

Joseph Boeckmann was sentenced to prison for “dismissing pending cases in exchange for personal and sexual acts from young men.” [[New York Times](#), 2/22/18]

“A former judge in Arkansas was sentenced to five years in prison for dismissing pending cases in exchange for personal and sexual acts from young men, court documents and a Department of Justice statement said.”

“The judge had been under federal investigation for similar behavior in the 1990s when he was a deputy prosecutor in Cross County, Ark., but no charges were filed after he resigned from that position. He later was elected as a judge. In 2014, the State Judicial Discipline and Disability Commission, which investigates judges over possible misconduct or for disabilities that prevent them from doing their jobs, began an inquiry into Judge Boeckmann over a possible conflict of interest in an unrelated case.”

Joseph Boeckmann resigned from his position as district judge after a months-long investigation into a broad series of allegations. [[Arkansas Times](#), 5/9/16]

“Joseph Boeckmann has resigned as a district judge in Cross County and agreed that he will never serve in public office again, the Arkansas Judicial Discipline and Disability Commission announced today.”

“The case began almost by chance, with a charge that Boeckmann had a conflict of interest in handling a case related to a nursing home in which a relative had an interest. Interviews in that case eventually uncovered the staggering trail of sexual liaisons with young men, often paid by checks Boeckmann wrote. Boeckmann's resignation came as the Judicial Commission was moving toward a public hearing on violations of ethics rules.”

Response

Boeckmann's replacement on the bench brought cameras into the courtroom in an effort to restore public trust. [[Arkansas Times](#), 6/16/16]

“Judge Mike Smith, who was elected in March to fill the Cross County seat vacated by Boeckmann, was appointed by the state Supreme Court to take the bench early.”

“While he said it would be improper to speak about any pending investigation in the Boeckmann case, he said that he and the judge who had formerly been assigned to cover the court quickly took steps to provide public accountability, including installing an audio-visual camera system in the courtroom. ‘All proceedings in the courtroom are now taped, so there's no question of what was said by either a judge or a participant,’ Smith said. ‘We have an absolute record of it that's archived. We can go back. It opens up transparency to the system. All of our actions are subject to review, which they should be. We're public servants.’ Any person who is a party to a case will have access to the recordings, Smith said, and they will also likely be available via the state Freedom of Information Act, except in cases involving juveniles.

“Asked whether the recording system is a direct response to the allegations against Boeckmann, Smith said: ‘I will say that it will be a preventive measure to make sure there's no further allegations of anything going on in court.’ ‘A lot of things would not have happened, possibly, if they'd had cameras before.’ Smith says he believes recording public hearings and trials to be a ‘wonderful idea’ and should be expanded to courtrooms far beyond Cross County.

‘I think the courts ought to be held to a high standard,’ he said. ‘We are servants of the public, and I think the public has a right to know what goes on in the courtroom. It's a wonderful protection for both the court personnel and the litigant.’”

California

Overview

Summary: A state judge was accused of sexual harassment, and then the Chief Justice ordered a review of harassment policy. Later, a second judge was accused of sexual misconduct.

Current Status: The review of policy called for by the Chief Justice in Oct. 2018 is ongoing, since no results have yet been publicized. The state judiciary has created its own working group on workplace conduct, much like the federal courts did in light of the Alex Kozinski allegations.

Body Handling Harassment Claims Against Judges: California Commission on Judicial Performance

Incident

Judge John Laettner was accused of sexual harassment or discrimination by the Commission on Judicial Performance. [[ABA Journal](#), 9/21/18]

“The Commission on Judicial Performance [...] filed a notice on Sept. 14 of formal proceedings against Contra Costa County Superior Court Judge John Laettner regarding allegations he engaged conduct ‘that would reasonably be perceived as sexual harassment or sexual discrimination.’”

Response

Amid the backdrop of a six-figure taxpayer payout to settle five complaints of sexual harassment, Chief Justice Tani Cantil-Sakauye ordered a review of the judiciary’s sexual harassment policy. [[Associated Press](#), 10/11/18]

“Cantil-Sakauye tasked a group of judges, administrators and attorneys with considering new rules to increase awareness of bad behavior and reporting requirements. The policymaking body for California’s court system, the Judicial Council, said in March that it had paid more than \$500,000 in taxpayer funds since 2011 to settle five complaints of sexual harassment against judges and other court employees.”

Another Incident

Justice Jeffrey Johnson was accused of a long pattern of sexual misconduct. [[Associated Press](#), 1/14/19]

“The Commission on Judicial Performance charged Justice Jeffrey W. Johnson of the 2nd District Court of Appeal in Los Angeles with nine counts of misconduct for allegations that date back 15 years to his time as a federal magistrate judge.”

“Sixteen women named in the complaint either experienced inappropriate comments or behavior by Johnson or were berated or belittled by him, according to the charges. Some of the women were lawyers who worked for the court, one was a county prosecutor and three were fellow appellate justices.”

Georgia

Overview

Summary: Several Georgia judges were accused of bad behavior by the Judicial Qualifications Committee, and the state legislature responded by revoking the JQC's independence and bringing it under the auspices of the legislature.

Current Status: The Judicial Qualifications Committee has been reestablished by the legislature.

Body Handling Harassment Claims Against Judges: Georgia Judicial Qualifications Committee

Judicial Qualifications Committee Abolished

From 2007-2015, more than 60 judges in Georgia resigned in light of investigations by the state's Judicial Qualifications Commission. [[Atlanta Journal-Constitution](#), 7/29/15]

"More than five dozen Georgia judges have stepped down from the bench in disgrace since the state's judicial watchdog agency began aggressively policing ethical conduct eight years ago. More lately, however, the jurists aren't just leaving the court in disgrace. Some are leaving in handcuffs."

The JQC's aggressive – and successful – record ruffled the feathers of some powerful people in Georgia politics. [[Atlanta Journal-Constitution](#), 9/12/16]

"[T]he agency has come under fire, mostly for the wrong-headed criminal indictment of former DeKalb County Superior Court Judge Cynthia Becker on a charge of making false statements. And another issue came to light Thursday in a legislative hearing: a legislator accused former JQC board member Lester Tate of throwing his weight around in dealing with a court clerk. And because of those two incidents, the Legislature threatens to undo a lot of good work that's been accomplished in the past decade. The worry is that legislators, once they finish with their legislating, will leave a toothless, bureaucratic husk of a government agency that actually got things done."

"It's a truism that judges, who are used to sitting up high and judging, don't so much like getting judged. In fact, it is not uncommon for judges who have been investigated or run out of office to complain to their legislative buddies."

The drive to abolish JQC independence was led in part by one of the individuals the JQC successfully removed from the bench due to credible allegations of sexual harassment. [[11 Alive News](#) (local NBC-affiliate), 3/30/17]

"A former state judge who stepped down after allegations of misconduct is trying to get rid of the watchdog agency that went after him. The ballot in the November election will include a proposed constitutional amendment to get rid of an independent watchdog agency: the judicial qualifications commission that polices the state's judges. If voters approve the November referendum, the independent agency will be removed from the constitution and replaced with one that answers to the state legislature."

Voters overwhelmingly approved constitutional amendment to end JQC independence. [[New York Times](#), 8/1/17]

Judicial Qualifications Committee Reconstituted

The people of Georgia pass a referendum to kill the JQC, and have it rebuilt without independence from the legislative and judicial branches of state government. [[Athens Banner-Herald](#), 5/1/17]

“Georgia’s governor on Monday signed a bill that reconfigures and expands the state’s judicial watchdog agency. The Judicial Qualifications Commission was created by a constitutional amendment in 1972 as an independent agency to investigate ethics complaints against judges and recommend disciplinary action if needed. But Georgia voters in November voted overwhelmingly to approve a constitutional amendment that abolished the agency and instructed state lawmakers to recreate it.”

The new JQC will not be independent from the legislature, which is the point for proponents of the change.
[[Governing](#), 11/16]

“Up until now, commissioners have been selected by the state bar, the Supreme Court and the governor. With the measure’s passage, the legislature will get to pick a majority of the commissioners. Supporters of the current commission say the new system will have the effect of eroding the agency’s independence by making its members answerable to the political class.”

Illinois

Overview

Summary: After a state judge was accused of harassment the chief judge ordered judicial employees undergo harassment training. Another state judge has since been accused of harassment.

Current Status: No statutory changes have been made in response.

Body handling Harassment Claims Against Judges: Illinois Judicial Inquiry Board

Incident

A female prosecutor accused Judge Mauricio Araujo of making inappropriate sexual remarks. [[Chicago Sun Times](#), 9/25/18]

“A Cook County judge has been reassigned after he was accused of calling a female prosecutor a ‘bitch’ and suggesting that he may have had sex with her. Judge Mauricio Araujo, a criminal court judge, allegedly made the comments on Sept. 11 when the female assistant state’s attorney appeared in his courtroom. The complaints were detailed by Cook County State’s Attorney Kim Foxx in a Sept. 18 letter to Chief Criminal Courts Judge LeRoy K. Martin.”

Response

Chief Judge Timothy Evans quickly reassigned Judge Araujo to administrative work and ordered the court system’s nearly 400 judges and 2,400 administrative employees undergo sexual harassment training.
[[Chicago Sun-Times](#), 9/25/18]

“Two days later, Martin ordered Araujo removed from his judicial duties and reassigned to administrative work, according to court records obtained by the Chicago Sun-Times.”

“A spokesman for Chief Judge Timothy Evans said the reassignment came at the direction of the chief judge and was the ‘strongest action’ Evans could take. Any further discipline, the spokesman said, had to come from the

Judicial Inquiry Board, an agency that investigates allegations of misconduct by Illinois judges. The chief judge also ordered all Cook County judges and employees to undergo sexual-harassment training in October.”

A spokesman for the Chief Judge announced that the matter had been referred to the Judicial Inquiry Board. [[Chicago Tribune](#), 9/26/18]

“Milhizer said the matter has been referred to the Judicial Inquiry Board, a state board that investigates and prosecutes allegations of misconduct or incapacity against judges. The board files formal complaints with the Courts Commission, which is made up of five judges and two members of the public. The commission can reprimand, censure, suspend with or without pay, remove from office or retire a judge.”

Another Incident

Judge Patrick O’Shea was credibly accused of sexual harassment. [[Chicago Tribune](#), 10/26/18]

“The complaint lodged by Illinois’ Judicial Inquiry Board revealed that investigators found ‘credible and substantiated complaints’ that Circuit Court Judge Patrick O’Shea acted in a manner that ‘met the definition of sexual harassment’ as defined by Illinois Supreme Court rules.”

O’Shea has multiple accusations against him. [[Chicago Sun Times](#), 10/25/18]

“After his administrative assistant filed a sexual harassment report against him in 2016, DuPage County Court Judge Patrick J. O’Shea complained to her boss about the assistant’s ‘gang-related’ tattoos and threatened to have her locked up, according to a complaint filed Thursday by the Illinois Judicial Inquiry Board.”

“The complaint also accuses O’Shea of trying to retaliate against two female court employees who, on separate occasions, filed sexual harassment claims against him – in 2016 and the following year.”

O’Shea won his retention election in November despite these incidents, and no further action has been taken at this time. [[Chicago Tribune](#), 11/8/18]

Nebraska

Overview

Summary: A state judge was accused of sexual harassment and resigned from office.

Current Status: No statutory changes have been made in response.

Body Handling Harassment Claims Against Judges: Nebraska Judicial Qualifications Commission

Incident

Max Kelch resigned from the State Supreme Court, avoiding an ethics inquiry into allegations of sexual misconduct. [[Omaha World-Herald](#), 2/6/18]

“The officials wouldn’t discuss details, but one said the allegations against Kelch are in line with the national #MeToo movement that has resulted in resignations of actors, politicians, business executives and judges over

questions of sexual misconduct. Attorneys and former colleagues — including two women — told The World-Herald that Kelch’s judicial career has been pocked with sexual comments to women.”

“Two women who spoke to The World-Herald said Kelch had a strange, at-times suggestive manner. Neither woman said she would consider herself a #MeToo victim, but said Kelch’s comments could be a bit mind-boggling. One said he was sometimes too close for comfort in his chambers, leading the woman to joke about wanting a witness with her when she went to his office. The other said she once heard Kelch ask a petite female staffer in a public hallway about her bodybuilder boyfriend.”

Chief Justice Michael Heavican could not go into the details of the allegations, but did say “Judge Kelch did the right thing” by resigning. [[Omaha World-Herald](#), 3/5/18]

“But the state’s top judge said he can’t disclose details of the recent resignation of Max Kelch from the high court. In his first interview since Kelch’s shocking exit, the chief justice did have this to say about the resignation: ‘Judge Kelch did the right thing.’”

Response

Judicial disciplinary procedures in Nebraska are opaque. [[Omaha World-Herald](#), 3/5/18]

“The chief justice also said the Nebraska Constitution and state law prevent him, or anyone connected to the process, from even acknowledging that a complaint has been filed against any judge. The initial stages of judicial discipline are shrouded by confidentiality to protect judges from frivolous accusations. Details are made public only when the Judicial Qualifications Commission determines action is warranted against a judge. Disciplinary options start with reprimands and graduate to progressively more serious actions. The commission’s authority over the conduct of a judge ends upon a resignation.”

“The 10-member qualifications commission consists of judges, lawyers and laypeople. Heavican, who chairs the commission, said it meets every two months and scrutinizes between 20 and 30 judicial complaints at each meeting. The commission employs a lawyer to carry out investigations of possible violations of the judicial code of conduct. Most complaints are ‘completely frivolous,’ Heavican said.”

Ethics complaints are rare, and even more rarely are they made public. [[Lincoln Journal Star](#), 2/6/18]

“While anyone can bring a complaint to the Commission on Judicial Qualifications about the conduct or qualifications of any state judge, rarely do the allegations ever see the light of day. By law, they are confidential until the commission completes an investigation and finds probable cause to warrant discipline, which seldom happens. Last year, while 82 new complaints were filed, only 11 led to informal inquiries and five to preliminary investigations. On average, 98 percent of them get dismissed, according to a report released last month by the Judicial Branch.”

The state’s Counsel for Discipline has not investigated Kelch’s behavior because he has resigned from his position on the court. [[Omaha World-Herald](#), 5/4/18]

“Weber said a reading of the Supreme Court’s rules and legal precedent established by previous rulings convinced him that a disciplinary proceeding can’t be brought against an attorney when the conduct in question took place while the attorney was a judge ‘and the judge was either removed or resigned on the basis of the alleged conduct.’”

“The details of the complaint against Kelch have not been made public or even acknowledged by the Judicial Qualifications Commission.”

Unsatisfied with judiciary’s response to Kelch’s behavior, a state senator has sought to bring transparency and more accountability to judicial disciplinary procedures. [[Omaha World-Herald](#), 8/3/18]

“[State Sen. Ernie] Chambers said his fight isn’t over. Chambers called on anyone who feels they were subjected to inappropriate behavior by Kelch to meet in confidence with the senator. Chambers said he will review any accounts and then file a challenge with the Nebraska Supreme Court’s counsel for discipline. The counsel for discipline rejected Chambers’ previous request to investigate Kelch. One of the reasons given: Chambers had cited a World-Herald story detailing Kelch’s behavior but had not identified any ‘complainants who have officially made factual reports.’ Chambers said he will work to introduce legislation to lift the veil on judicial complaints. Such complaints aren’t made public until a Judicial Qualifications Committee determines whether they have merit. The secrecy surrounding complaints, he said, is the product of a bygone era. Chambers said the public can decide which complaints are frivolous and which are legitimate. As another judge once said, ‘Sunshine is the best disinfectant,’ Chambers said.”

New York

Overview

Summary: There have been multiple allegations of harassment made against multiple state judges.

Current Status: No statutory changes have been made in response, but the judiciary has recently revised its policy on sexual harassment, though not to everyone’s satisfaction.

Body Handling Harassment Claims Against Judges: New York Office of Court Administration

Incidents

In a lawsuit a former law clerk has alleged that Justice Douglas Hoffman sexually harassed her, and that in retaliation for her having raised the misbehavior with the Office of Court Administration she was subsequently fired. [[Albany Times Union](#), 8/20/18]

“A female attorney who was demoted and later fired from her job as a law clerk after accusing an acting state Supreme Court justice of sexual harassment filed a federal lawsuit this week accusing New York’s top judicial officials of ignoring her complaints and condoning ‘a widespread culture of silence and retaliation.’ The 118-page complaint alleging civil rights violations, including retaliation and harassment, was filed in U.S. District Court against the Manhattan judge she accused of harassment, acting state Supreme Court Justice Douglas Hoffman, and 16 other officials, including the state’s chief administrative judge, Lawrence K. Marks, and the state’s chief judge, Janet DiFiore. The female attorney, Alexis Marquez, alleges that multiple officials within the Office of Court Administration, including Marks, failed to address her 11-page complaint that she filed against Hoffman last fall. The lawsuit also claims the state court system has no process for investigating sexual harassment by judges. The

complaint further accuses Marks of deleting ‘approximately half of the court system’s statewide sexual harassment policy’ last December, about nine days after Marquez filed her complaint alleging harassment, discrimination and retaliation by Hoffman.”

Judge Robert Bruno has been accused by his former law clerk of sexual harassment culminating in her firing while on maternity leave. [[New York Post](#), 8/4/17]

“Nassau County Judge Robert A. Bruno acted in ‘an outrageous and systematic pattern of oppression, bad faith and cover-up’ from late 2011 to September 2016, according to a federal suit filed this week by former clerk Tricia Moriates. The Long Island mother claims Bruno fired her while she was on maternity leave in the attempt to avoid the sexual-harassment and gender-discrimination allegations.”

Judge Richard Miller stands accused of sexual harassment by his secretary and court attorney. [[Binghamton Press & Sun-Bulletin](#), 12/21/18]

“Broome County Family Court Judge Richard Miller has been accused of sexual harassment behaviors involving members of his staff, according to a lawsuit filed Friday in federal court. The lawsuit alleges a ‘toxic environment’ from the judge, who was elected in 2014, that spanned from 2015 to the summer of 2017. It was filed by Rachelle Gallagher and Mark Kachadourian, who were respectively listed as Miller’s secretary and court attorney. The New York State Unified Court System was also named as a defendant in the civil action.”

Responses

The Office of Court Administration contends that there is no veracity to Marquez’s allegations. [[New York Post](#), 8/17/18]

“Responded Office of Court Administration spokesman Lucian Chalfen, ‘It remains the Court System’s policy not to comment on pending lawsuits no matter how frivolous, poorly crafted or nonsensical.’ ‘Also,’ he added, ‘Our updating of the court systems sexual harassment policy had nothing to do with these allegations.’”

The Office of Court Administration has recently revised its policy on sexual harassment, although many view the changes as unsatisfactory. [[New York Law Journal](#), 11/6/18]

“As New York state lawmakers were preparing to develop a new sexual harassment policy for employers last year, the Office of Court Administration revised its own policy for dealing with such claims, without public notice and in a way that critics say was done too quietly. Most of the changes were minimal, but some were important. The revised policy deleted any reference to sexual harassment being illegal and significantly shortened sections intended to reassure victims that retaliation for complaints would not be acceptable.”

“Chalfen said Chief Judge Janet DiFiore inquired about the court system’s sexual harassment policy after allegations against former movie producer Harvey Weinstein became public, supercharging the #MeToo movement. She started to ask questions about the role of OCA in sexual harassment claims: Does the court system have a sexual harassment policy? When was the last time it was updated? Is it readily available to court system employees? From there, the court system’s human resources staff took on the task of updating and doing ‘stylistic editing’ to the policy to affirm a ‘commitment to and awareness of our employees.’”

“Aside from DiFiore, there is no oversight of the office, which is the only avenue for court employees, attorneys and litigants to address cases of sexual misconduct within the court system. The Legislature has not provided oversight of the office, which was created unilaterally by former Chief Judge Judith Kaye. The inspector general is also the last step the OCA advises victims to take when addressing claims of sexual misconduct, according to the revised sexual harassment policy. The document suggests working out the situation either with the harasser or a supervisor before making a formal complaint. Victims are also told to contact the Work-Safe Office, which is an intermediary body that helps victims address workplace issues within the court system. The office may try to resolve the situation without referring the matter to the inspector general, but it may also suggest submitting a formal complaint.”

“But the inspector general does not have jurisdiction over judges and OCA does not have the power to admonish, censure or remove judges.”

The Office of Court Administration has administered a survey to better understand how attorneys feel sexual harassment, among other women’s issues, are being handled. [[New York Law Journal](#), 11/15/18]

“Starting this month, the New York State Judicial Committee on Women in the Courts will administer an online survey to a random sample of attorneys to see what progress has been made in eliminating gender bias in the courts and if there is more work to be done, according to a release from the OCA. When conducting its survey on bias in the courts more than three decades ago, the task force that eventually gave rise to the women’s committee focused its energies on assessing the treatment of women litigants, attorneys and court employees. This time, the committee will focus on facility issues that affect female attorneys, such as making accommodations for lactation, and sexual harassment, said committee chairwoman Betty Weinberg Ellerin, a retired state Supreme Court justice who served on the Appellate Division, First Department and who is now senior counsel at Alston & Bird.”