



STATE OF KANSAS
BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning
A Judge

Docket No. 1030

ORDER

Members of the Commission present include: Hon. Robert J. Fleming, Chair; Hon. David A. King, Vice-Chair; Bruce Buchanan; Mary Davidson Cohen; Jeffery A. Mason; and Mikel L. Stout.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. The Honorable Daniel L. Mitchell, Respondent, is a District Judge in the 3rd Judicial District.
2. It was reported, in a newspaper article, that Respondent testified as a character witness in *State of Kansas vs. Theron Thomas Kent*, a Lyon County criminal proceeding.
3. In response to the Commission's inquiry, Respondent admitted testifying as a character witness in *State of Kansas v. Theron Thomas Kent*, without a subpoena.
4. Respondent acknowledged that it was a mistake to testify voluntarily, and he expressed regret for the impropriety of his action.

CONCLUSIONS OF LAW

1. Canon 2B of the Code of Judicial Conduct, Rule 601A, provides in part relevant to this complaint:

“B. . . . A judge shall not testify voluntarily as a character witness.”

The Commentary further explains the prohibition.

“A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.”

2. The Commission has determined that Respondent violated Canon 2B by voluntarily testifying as a character witness.

IT IS THEREFORE ORDERED that the Honorable Daniel L. Mitchell cease and desist from voluntarily testifying as a character witness, in violation of the above-cited Canon.

This Order, if accepted, shall be made public pursuant to Rule 611(a). See 2007 Kan. Ct. R. Annot. 654.

The Secretary of the Commission on Judicial Qualifications is hereby instructed to mail a copy of this Order with a copy of Rule 611, as adopted by the Supreme Court of Kansas, to Respondent. Respondent is requested, in accordance with Rule 611, to either (a) comply by accepting the Order by written acknowledgment directed to the Secretary of the Commission; or (b) refuse to accept the Order. Any agreement to comply or refusal to accept shall be served upon the Commission within twenty days from this date. In the event the Respondent shall not agree to comply by accepting this Order by written acknowledgment within said period, Respondent shall be deemed to have refused to accept this Order.

BY ORDER OF THE COMMISSION dated this 12th day of November, 2008.

COMMISSION ON JUDICIAL QUALIFICATIONS

By: Carol G. Green
Carol G. Green, Secretary

APPROVED & ACCEPTED

11/19/08
Date

Daniel L. Mitchell
Daniel L. Mitchell, Respondent