

JUL 21 2016

COMMISSION ON
JUDICIAL QUALIFICATIONS

STATE OF KANSAS

BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS

Inquiry Concerning a Judge)
)
Linda S. Trigg)

Docket No. 1275

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISPOSITION

On December 4, 2015, Panel B of the Commission on Judicial Qualifications issued a Notice of Formal Proceedings, pursuant to Rule 611(b) (2015 Kan. Ct. R. Annot. 796), against Linda S. Trigg, District Magistrate Judge of the 10th Judicial District. The Notice of Formal Proceedings alleged that Respondent engaged in certain conduct which violated Rule 1.2 of Canon 1 (2015 Kan. Ct. R. Annot. 753-754); and Rules 2.2, 2.5, and 2.8 of Canon 2 (2015 Kan. Ct. R. Annot. 755 and 757-759).

On June 22, 2016, a public hearing was held in Topeka, Kansas, before Panel A of the Commission on Judicial Qualifications, at which hearing the Panel accepted stipulations and heard evidence on the record.

Members of the Panel present for this hearing were: Honorable Mary B. Thrower, Chair; Nancy S. Anstaett; James S. Cooper; Honorable Robert W. Fairchild; and Norman R. Kelly. Todd N. Thompson appeared in support of the Notice of Formal Proceedings. Respondent appeared personally.

Having heard the evidence and arguments of counsel, the Panel makes the following findings of fact, conclusions of law, and disposition of complaint.

FINDINGS OF FACT

1. On April 8, 2016, the Honorable Mary B. Thrower, Chair of Hearing Panel A, presided over a prehearing conference. Examiner Thompson appeared on behalf of the Commission on Judicial Qualifications. The Respondent appeared in person and advised she would not retain counsel.
2. On April 26, 2016, the parties entered an order containing the following stipulations:
 - "1. Exhibit 2 is an accurate transcript of the audio recording that is Exhibit 1."
 - "2. Respondent received proper notice of the formal complaint in Docket No. 1275."

3. On July 16, 2015, Respondent presided over traffic court in Johnson County.
4. During a break in the traffic court trials, a juvenile and his mother approached Respondent seeking to obtain a temporary PFA order against a girl who grabbed the juvenile's backpack, grabbed him, and then attempted to tackle him.
5. After Respondent told the mother she needed to report the incident to the police, the mother informed Respondent that the girl had been sending multiple text messages to the mother and "threatening to file rape charges against my son."
6. Respondent asked the juvenile, "Have you had sex with her?" The juvenile answered "yes."
7. Respondent inquired further, "Okay, well, that's why they call 'em jail bait, it's statutory rape if she's under 16 years old. How old is she? [mother and juvenile whisper] Okay, well, he's got to tell me the truth, or we're not going to get anywhere."
8. The mother again referenced her request for a PFA based on text messages she had been receiving from the girl. Respondent then asked to see the text messages between the parties. The mother powered up her phone and gave it to Respondent.
9. As Respondent was scrolling through text messages and commenting to the mother about the content of the messages, the mobile phone rang.
10. Upon determining the call was from the girl/subject of the PFA request, Respondent told the caller: "This is Judge Trigg. Quit calling this number." Respondent repeated the latter statement several times during the conversation.
11. During the phone conversation, Respondent stated, "Hey. Wait a second. This is Judge Trigg. I am... You not... You are talking to a judge. They are in here trying to get paperwork against your daughter. Stop calling this phone number and take it up with a mediator." Respondent hung up on the caller.
12. After Respondent told the mother there would not be any orders issue in the case, Respondent commented, "You people are behaving like teenagers." Respondent told the juvenile and mother to go back to the police station and file battery charges against the girl.
13. The phone conversation was loud, and Respondent was aware that a prosecutor was in the courtroom and could hear the comments between the Respondent and the parties and also the phone conversation.

CONCLUSIONS OF LAW

1. The Notice of Formal Proceedings alleges that Respondent's conduct violated the provisions of Canon 1 and Canon 2 of the Rules of Supreme Court to Judicial Conduct.
2. CANON 1 of the Code of Judicial Conduct, Rule 601B, provides:

"A judge shall uphold and promote the *independence, integrity, and impartiality* of the judiciary, and shall avoid *impropriety* and the appearance of impropriety."
3. RULE 1.2, "Promoting Confidence in the Judiciary," provides:

"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."

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

....

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

....

[5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

4. Rule 601B defines "Impropriety" as follows:

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 2.2."

5. CANON 2 of the Code of Judicial Conduct, Rule 601B, provides:

"A judge shall perform the duties of judicial office *impartially*, competently, and diligently."

6. RULE 2.2, "Impartiality and Fairness," provides:

"A judge shall uphold and apply the *law*, and shall perform all duties of judicial office fairly and *impartially*."

COMMENT

....

"[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question."

"[3] When applying and interpreting the law, a judge sometimes may make good faith errors of fact or law. Errors of this kind do not violate the Rule."

7. RULE 2.5, "Competence, Diligence, and Cooperation," provides:

"(A) A judge shall perform judicial and administrative duties, competently and diligently."

....

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office."

....

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs."

8. RULE 2.8, "Decorum, Demeanor, and Communication," provides:

"(A) A judge shall require order and decorum in proceedings before the court.

"(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

COMMENT

"[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate."

9. The Panel considered the evidence presented at the hearing, the testimony of the witnesses, and the actual recording of the incident in Johnson County Court on July 16, 2015. The Panel unanimously finds that while Respondent's tone of voice could be heard throughout the courtroom, there was no evidence she used a "yelling voice."
10. The Panel unanimously finds Respondent failed to acknowledge the juvenile's 5th Amendment right against incrimination and insisted the juvenile provide in open court facts regarding an apparent crime. At the disciplinary hearing, Respondent attempted to negate the seriousness of this violation by claiming evidence of the confession elicited by her would be inadmissible in any criminal trial.
11. The Panel unanimously finds that Respondent was legitimately trying to figure out the critical facts necessary for the determination of whether to issue the PFA. However, it was unnecessary to inquire whether the juvenile had sex with the girl. Respondent should have recognized the serious nature of this question and immediately retracted the question before the juvenile could answer.
12. The Panel also considered the Respondent's "jail bait" comment and unanimously found that while it was careless, unprofessional, and condescending, it was not derogatory toward any party.
13. The Panel unanimously finds that Respondent's conduct, established by clear and convincing evidence, violated Canon 1, Rule 1.2 (comments 1, 3 and 5); and Canon 2, Rule 2.2 and 2.5(A) (comment 1). The Panel also unanimously finds no violation pursuant to Rule 2.8 concerning the Respondent's demeanor in the courtroom.

DISPOSITION

Pursuant to Supreme Court Rule 620 (2015 Kan. Ct. R. Annot. 800-801), based on the foregoing Findings of Fact and Conclusions of Law, and based on a unanimous vote of the members, the Panel orders the Respondent cease and desist from future activity in violation of the above-cited Canons.

DATED this 21st day of July, 2016.

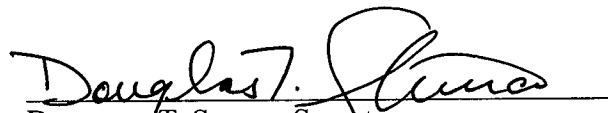
FOR THE COMMISSION ON
JUDICIAL QUALIFICATIONS



MARY B. THROWER, Chair

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Findings of Fact, Conclusions of Law and Recommendation was mailed to the Honorable Linda S. Trigg, Respondent, Johnson County District Court, 100 N. Kansas Ave., Olathe, Kansas 66061 and Todd N. Thompson, P. O. Box 1264, Lawrence, Kansas 66044-8264, by depositing same in the United States mail, postage prepaid, on the 21st day of July, 2016.



DOUGLAS T. SHIMA, Secretary
Commission on Judicial Qualifications