

STATE OF KANSAS

BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS

FILED

Inquiry Concerning a Judge)
)
Marty K. Clark)

No. 2265

MAY 04 2021

COMMISSION ON
JUDICIAL CONDUCT

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDED DISPOSITION**

On October 22, 2020, Panel A of the Commission on Judicial Conduct issued a Notice of Formal Proceedings, pursuant to Rule 614(b)(2)(C) (2021 Kan. S. Ct. R. 530), in Complaint No. 2265, against Marty K. Clark, a District Magistrate Judge in the 20th Judicial District. The information in the Notice alleged that Respondent engaged in certain conduct which violated Rules 1.2 of Canon 1 (2021 Kan. S. Ct. R. 485) and Rule 3.1(C) of Canon 3 (2021 Kan. S. Ct. R. 498).

The Rules and Canons provide in pertinent part:

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE *INDEPENDENCE, INTEGRITY, AND IMPARTIALITY* OF THE JUDICIARY, AND SHALL AVOID *IMPROPRIETY* AND THE APPEARANCE OF *IMPROPRIETY*.

RULE 1.2

Promoting Confidence in the Judiciary

"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*."

Comments [1], [2], [3], and [5] of Rule 1.2 provide:

[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."

[2] "A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code."

[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."

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.

Rule 601B defines "Integrity" as follows:

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRA JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1

Extrajudicial Activities in General

"A judge may engage in extrajudicial activities, except as prohibited by *law* or this Code. However, when engaging in extra judicial activities, a judge shall not:

...

(C) participate in activities that would appear to a reasonable person to undermine the judge's *independence, integrity, or impartiality*; or demean the judicial office;"

On December 10, 2020, the parties came before Hearing Panel B of the Commission for a prehearing conference conducted by video conferencing using the Zoom meeting platform. Respondent appeared in person and through counsel, Christopher Joseph. Todd Thompson appeared in person as Examiner for the Commission. The Panel members appearing were: Chair Diane Sorensen, Vice-Chair Judge Larry Hendricks, Allen Glendenning, and Rosie Kolich, S.C.L. Chair Sorensen entered pretrial orders and scheduled a status conference for January 12, 2021.

On January 12, 2021, the parties came before Hearing Panel B of the Commission for a status conference conducted by video conferencing using the Zoom meeting platform. Respondent appeared in person and through counsel, Christopher Joseph. Todd Thompson appeared in person as Examiner for the Commission. The Panel members appearing were: Chair Diane Sorensen, Vice-Chair Judge Larry Hendricks, Allen Glendenning, and Rosie Kolich, S.C.L. Chair Sorensen entered final pretrial orders and scheduled a formal hearing for Thursday, April 8, 2021, at 9 AM.

STIPULATIONS

On January 12, 2021, the parties filed a joint Stipulations of Fact setting forth the following agreed stipulations:

1. Respondent Marty K. Clark is a magistrate judge for the Twentieth Judicial District in Kansas.
2. Respondent was appointed to the court by Governor Bill Graves in 1998 and has served as a magistrate judge for the Twentieth Judicial District since that time.
3. Respondent lives and works in Russell, Kansas.
4. Respondent has not previously been disciplined by the Commission.
5. C4P.com is a website that is self-described as “an online community for swingers.”
6. Before gaining access to the site, a subscriber must register by creating a user account. A username must be selected. The instructions say to not use your real name:

Choose a username for use in C4P. This would NOT be your real name, but rather, a screen name. Your username can be a few as 1 character, or as many as 20. Only a through z, 0 through 9, and the _ are allowed.

Username:

7. The registrant must create a password, provide an email address, and enter a zip code:

hmmm... not much to say about the zip code field... It lets others know where you are? 🤔

Zip Code:

8. Registrants may provide additional information about themselves, including physical descriptions, what they are looking for and not looking for, hobbies and interests.
9. The C4P website is used by some subscribers for the purpose of connecting with other couples, which Respondent describes as “a dating website for couples.”
10. Some subscribers make connections that lead to sexual encounters.
11. Neither Respondent nor Respondent’s wife currently subscribe to or use the C4P website.
12. Respondent maintained an account on the C4P website on and off for a couple of years.
13. During the years of the subscription, Respondent paid the fees required by the website for giving access to others of photos and information about Respondent and his wife, and for gaining access to, photos and information about other subscribers.
14. Respondent did use the website to give access to others to view nude and partially nude photos of Respondent.
15. Neither Respondent nor his wife used their real names for the C4P user account name.
16. The C4P account maintained by Respondent and his wife listed the zip code for Osage Beach, Missouri.
17. Respondent first met complainant Timothy Chancellor and complainant’s wife, Lisa, at the Lake of the Ozarks in the late spring of 2019. The Chancellors and the Clarks had mutual friends, and the couples, along with their friends, conversed at a bar.
18. Other than the brief meeting at a bar in late spring of 2019, Respondent had no in-person contact with Timothy Chancellor or Lisa Chancellor.
19. After meeting at the Lake of the Ozarks, Respondent and Lisa Chancellor communicated by text message and email.
20. Respondent and Lisa Chancellor discussed their attraction to each other, and the prospect of sexual activities with each other.
21. Attached as Exhibit A is a conversation Respondent and Lisa Chancellor had via text message.

22. Respondent did not have any sexual contact with Lisa Chancellor in his judicial chambers.
23. Respondent never saw Lisa Chancellor in person other than the one meeting at the bar at the Lake of the Ozarks in late spring of 2019.
24. Attached as Exhibit B are photographs of Respondent, most of which were stored on the C4P website profile of Respondent. Respondent stipulates to the foundation for the admissibility of the photographs, except as to relevance. Respondent will present arguments solely on the issue of relevance in the manner directed by the Panel, either by way of briefing in advance of any hearing, or at the hearing.
25. The photographs included in Exhibit B were not available to be viewed by all C4P subscribers, and were not available to the general public.
26. Respondent had to designate who had permission to access and view the photos.
27. Complainant Timothy Chancellor also operated a C4P account.
28. Respondent gave permission for the Chancellors to access photographs stored on Respondent's C4P account.
29. Complainant and Lisa Chancellor sent sexually revealing photographs of Lisa Chancellor to Respondent.
30. Respondent requested that Lisa Chancellor send sexually revealing photographs to him.
31. Respondent sent sexually revealing photographs of himself to Lisa Chancellor.

RELEVANCE OF PHOTOGRAPHS

On March 5, 2021, Panel B of the Commission met by Zoom video conference to resolve issues prior to the Formal Hearing concerning the relevance of photographs submitted with the initial complaint. Panel B members appearing were: Chair Diane Sorensen, Vice-Chair Judge Larry Hendricks, Allen Glendenning, Rosemary Kolich, S.C.L., Judge Nicholas St. Peter, and Judge Bradley Ambrosier.

At the status conference on January 12, 2021, the Respondent had requested the Panel consider argument on two issues: (1) whether the photographs included in the Stipulation are relevant; and (2) if the photos are found to be relevant, then whether the Panel will allow them to be admitted under seal. Panel B requested the parties submit written arguments on the issues raised by the Respondent concerning admission of the photographs in Exhibit B of the stipulations.

At the meeting on March 5, 2021, Panel B considered all materials and ordered: (1) the photographs discussed in Stipulation No. 24 and in Exhibit B of the stipulations entered on January 12, 2021, are relevant to the Panel's resolution of whether Respondent's actions violated the Kansas Code of Judicial Conduct and will be admitted for the Formal Hearing; (2) Panel B will have access to the photographs discussed in Stipulation No. 24 and in Exhibit B of the stipulations entered on January 12, 2021; and (3) the photographs discussed in Stipulation No. 24 and in Exhibit B of the stipulations entered on January 12, 2021, will be sealed and not subject to disclosure. Panel B found there was good cause to seal the requested photographs because the privacy interest and prejudice to the nonparty depicted in some of the photographs, the Respondent and the judiciary predominates the proceeding and such interest outweighs the strong public interest in access to these photographs.

FORMAL HEARING

Panel B of the Commission held a public hearing in the above-captioned matter commencing at 9 AM on Thursday, April 8, 2021, in Judicial Center Conference Meeting Room 1, Kansas Judicial Center, 301 SW Tenth Avenue, Topeka, Kansas. The hearing occurred on the record. Members of the Commission's Hearing Panel were:

Diane H. Sorensen, Chair
Judge Larry D. Hendricks, Vice-Chair
Judge Bradley E. Ambrosier
Allen G. Glendenning
Rosemary Kolich, S.C.L.
Susan Lynn
Judge Nicholas M. St. Peter

On April 8, 2021, the parties rested; the panel took the matter under advisement; and deliberations commenced at 9:55 AM.

FINDINGS OF FACT

Pursuant to Supreme Court Rule 619(b), the Panel finds the stipulated facts as jointly agreed to by the parties are proven by clear and convincing evidence. We emphasize several facts as critical to the disposition of this case.

1. Respondent used the social media website known as Club Foreplay ("C4P") which he described as "a dating website for couples." [Stipulated Facts Nos. 5, 6, 7, 8, 9]
2. Respondent maintained an account on the C4P website on and off for a couple of years. [Stipulated Facts No. 12]
3. Respondent used the website to give access to other users to view nude and partially nude photos of himself, including a picture of Respondent standing in water with his penis visible. [Stipulated Facts Nos. 14, 24, 28]

4. Respondent sent sexually revealing photographs of himself to the complainant's wife. [Stipulated Facts Nos. 24, 28, 31]
5. Respondent requested that complainant's wife send sexually explicit photos to him. [Stipulated Facts Nos. 29, 30]
6. The parties stipulated that the sexually revealing photographs were not available to be viewed by any C4P subscriber without permission from the Respondent. He also claims the photographs were not available to the general public. However, as with any social media posting, the photographs could be disseminated to the general public once they are released. [Stipulated Fact No. 25]

CONCLUSIONS OF LAW

The Kansas Code of Judicial Conduct establishes standards of ethical conduct for judges in their professional and personal lives. The Preamble and Scope of the Code pinpoint the guiding principles we will utilize in resolving this disciplinary action:

Judges should maintain the dignity of judicial office at all times, and **avoid both impropriety and the appearance of impropriety in their professional and personal lives.** They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, **integrity**, and competence. [emphasis added]" PREAMBLE [2].

To implement fully the principles of this Code as articulated in the Canons, **judges should strive to exceed the standards of conduct established by the Rules**, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office. [emphasis added] SCOPE [4].

Each disciplinary case, whether it be discipline of an attorney or a judge, is considered individually under the facts established in that case. "Each case is evaluated individually in light of its particular facts and circumstances and in light of protecting the public." *In Re Jones*, 252 Kan. 236, 239, 843 P.2d 709 (1992); See *In Re Robertson*, 280 Kan. 266, 270, 120 P.3d 790 (2005) (analogizing judicial discipline cases to those of attorney discipline). Additionally, we note the Supreme Court recently reaffirmed the Code's application to a judge's personal conduct. In an opinion released on Friday, February 26, 2021, the Kansas Supreme Court noted unambiguously that "Canon 1, Rule 1.2 demands a judge to act at all times—meaning 24 hours a day, 7 days a week, 365 days a year—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." (2020 Kan. S. Ct. R. 447.)" *In re Cullins*, 312 Kan. 798, 481 P.3d 774 (2021).

Actions that bring into question a judge's integrity and would appear to a reasonable person to undermine that integrity, along with demeaning the judicial office, are at the heart of our decision today.

1. **RULE 1.2**

Promoting Confidence in the Judiciary

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.

....

[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.

2. **RULE 3.1**

Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by *law* or this Code. However, when engaging in extra judicial activities, a judge shall not:

...

(C) participate in activities that would appear to a reasonable person to undermine the judge's *independence, integrity, or impartiality*; or demean the judicial office;

The Kansas Judicial Code provides specific definitions for terms used in Rules 1.2 and 3.1. We highlight two of those definitions.

“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 1.2

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2

The Kansas Judicial Code contemplates many kinds of conduct that reflect adversely on a judge's independence, integrity, or impartiality. See *In re Groneman*, 272 Kan. 1345, 38 P.3d 735 (2002) (public censure was appropriate for a judge who knowingly allowed his administrative assistant to be paid for work she had not performed); *In re Handy*, 254 Kan. 581, 867 P.2d 341 (1994) (public censure was appropriate sanction for a judge who bought a condominium that was the subject of a case over which he presided, purchased property that was the subject of litigation before him and then dismissed the foreclosure action against the property, and threatened a person pursuing litigation against him by sending the person information regarding the assessment of costs in lawsuits); *In re Alvord*, 252 Kan. 705, 706-07, 847 P.2d 1310 (1993) (public censure was the appropriate sanction for a judge who made inappropriate sexual advances toward a young female clerk and had also attempted to use his status as a judge to obtain dismissal of a traffic ticket the clerk had received); *In Re Yandell*, 244 Kan. 709, 772 P.2d 807 (1989) (removal from office was appropriate sanction for misconduct including leaving the scene of a noninjury accident, financial misconduct, and refusal to recuse from hearing cases involving financial institutions that held notes on which judge defaulted); *In re Woodworth*, 237 Kan. 884, 703 P.2d 844 (1985) (public censure was appropriate sanction for judge who was criminally convicted of violating K.S.A. 41-407, possession of liquor without the Kansas tax stamps); *In re Miller*, 223 Kan. 130, 572 P.2d 896 (1977) (public censure was appropriate for a judge who attempted to use his position to dismiss or reduce the fine of a friend's traffic ticket).

The Respondent cautions the Commission to steer clear of stepping on the slippery slope of regulating a judge's moral conduct. Respondent has articulated that when the Canons are interpreted to prohibit conduct in a judge's private sex life that has no effect upon his conduct in judicial office and is not prohibited by law, then the enforcement authority—be it an inquiry review board, a hearing panel for formal judicial complaints, or a court—enters “the realm in which private moral beliefs are enforced and private notions of acceptable social conduct are treated as law.” *In the Matter of Dalessandro*, 483 Pa. 431, 457, 397 A.2d 743 (1979) (a married judge maintaining an intimate relationship with a married woman does not warrant censure, even if such is open and notorious, since such conduct is not prohibited by law.); But see *In Re Matter of Discipline of Turco*, 137 Wash.2d 227, 970 P.2d 731 (1999) (“We reject the implication in the *Matter of Dalessandro*, 483 Pa. 431, 397 A.2D 743 (1979), that matters in one's personal life which legitimately reflect upon the jurist's professional integrity are immune from censure”).

Respondent maintains that matters of personal morality that do not affect a judge's integrity or ability to judge impartially are best left to the ballot box. See *Dalessandro*, 483 Pa 431, 460 (“Standards in these private areas are constantly evolving and escape, at any given moment, precise definition. Conduct of a judge or any public official which may be offensive to the personal sensitivities of a segment of the society is properly judged in the privacy of the ballot box.”) The respondent judge in *In Re Robertson*, 280 Kan. 266, 120 P.3d 790 (2005). raised a similar “ballot box argument”, but it was rejected by the Supreme Court under the constitutional duty to discipline a judge:

In arguing that his conduct does not justify the sanction of removal which was recommended by the Commission, the Respondent argues that courts should be cautious in removing judges because doing so disrupts the public's choice of who should serve in the judiciary. He argues that public choice is expressed in retention elections which follow a judge's appointment to office (which is Respondent's situation), just as it is expressed in contested judicial elections. We agree. However, the public has also expressed its choice to have a system of discipline which can result in a judge's removal from office. This choice is expressed in Article 3, § 15 of the Kansas Constitution which provides that a judge 'shall be subject to retirement for incapacity, and to discipline, suspension and removal for cause by the supreme court after appropriate hearing.' See *In re Yandell*, 244 Kan. 709, 717, 772 P.2d 807 (1989) (retention vote after misconduct occurred may be a mitigating factor, but 'such retention certainly does not preclude this court from imposing discipline for respondent's conduct during his prior term').

280 Kan. at 270-271.

The Kansas Judicial Code's repeated use of the term "integrity" accentuates the Commission's duty to enforce moral conduct that does not promote public confidence in the judiciary. A judge must act at all times in his or her professional and personal life in a way that promotes public confidence in the integrity of the judiciary. Similarly, a judge must veer away from conduct that suggests the appearance of impropriety as undermining a judge's integrity. The Commission discussed at great length the term integrity and its expressed definition in the Kansas Judicial Code as including the quality of uprightness. Nearly all of the definitions of "uprightness" describe a person who is "honorable." We are unanimously convinced the Respondent's actions in this case cannot be described as "honorable." Other cases have come to this conclusion as well.

In the Pennsylvania case of *In re Singletary*, the Pennsylvania Court of Judicial Discipline found that a judge brought the "judicial office into disrepute" when he showed a traffic court cashier two photographs of his erect penis on his cell phone. The judge contended he only displayed the photos for a few seconds and that he "did not realize that he would be showing them" to the cashier—that the photos were an unplanned part of the otherwise proper presentation. 61 A.3d 402, 405–06 (Pa. Ct. Jud. Disc. 2012). The court acknowledged the judge's claim of inadvertence, but found that under even the "lowest scores on the sensitivity index" the public would not expect a judge to be photographing his penis and then setting forth a chain of events that resulted in the display of the pictures to the cashier. In ultimately removing the judge from office, the court stated:

We will not permit a claimed capricious memory to rescue Respondent from responsibility for the distressful culmination of a chain of events which he intentionally set in motion. We hold that a judge who intentionally grooms his penis for photography, and then intentionally photographs his penis for the purpose of display to others, had better remember that the photographs are in his phone lest they "slip out" at some inopportune (albeit unplanned) time under circumstances which are likely to offend another person or persons, for, if they do, we will hold such conduct satisfies the "*mens rea* requirement" so as to support a finding that the conduct is such that brings the judicial office into disrepute.

61 A.3d at 412.

Similar to the chain of events scenario in *Singletary*, we do not agree with the parties' stipulation that the photographs Respondent posted on the C4P website were not available to the general public. The Respondent cannot hide behind a claim that these were not public because he was the only person who could give permission for a C4P user to view them. Respondent gave the complainant and his wife access to the photos. When Respondent opened the door by releasing the photos to even one person on this social media website, those photos could be generally disseminated to the social media world and even finding their way to the Commission on Judicial Conduct.

In Alabama, a judge consented to a recommended suspension for 180 days without pay for beginning a racy Facebook relationship with a woman. See *In the Matter of Archer*, 2016 WL 7106106 at *1, (Al. Jud. Inq. Comm. 2016). The judge in *Archer* communicated during working hours with a former litigant in his court in an explicitly sexual manner via social media by exchanging sexually explicit material, including photographs of genitalia, breasts and buttocks and by propositioning the woman for sexual encounters. Under the Alabama Canons of Judicial Ethics, the complaint alleged the judge's conduct demonstrated:

[A] failure to uphold the high standards of conduct required of judges so that the integrity and independence of the judiciary may be preserved, a failure to avoid impropriety and the appearance of impropriety in all his activities, a failure to at all times maintain the decorum and temperance befitting his office, and a failure to avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

2016 WL 7106106 at *1.

The Kansas Supreme Court in *In Re Robertson*, 280 Kan. 266, 120 P.3d 790 (2005), removed a judge from office where he violated a judicial district administrative order by frequently using his county-owned computer located at work over a 9-month period to access and display sexually explicit images, messages, and materials. The Court held:

Finally, and under the circumstances of this case, the most serious aggravating factor is the effect the misconduct had upon the integrity of and respect for the judiciary. The Preamble to the Kansas Code of Judicial Conduct reminds judges they "must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system." Rule 601A (2004 Kan. Ct. R. Annot. 535). Because public trust is essential to an effective judicial system and one judge's conduct may have a significant impact upon the public's perception of the entire judicial system, "[a] judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." Canon 2, Commentary (2004 Kan. Ct. R. Annot. 540).

280 Kan. at 272-73.

Despite Respondent's warning about drawing a bright line on a judge's moral conduct, the Kansas Judicial Code imposes a duty that encompasses a judge's moral conduct when those actions question the very nature of integrity and demean the judicial office. The Respondent's decision to take a picture of his penis and post that picture on a social media website crossed that bright line and violated the Judicial Canons requiring a judge to act with integrity and would appear to a reasonable person to undermine the judge's integrity and demean the judicial office. The Respondent has violated Rules 1.2 and 3.1(c).

The *Robertson* court discussed helpful factors to use in evaluating the appropriate judicial discipline to impose, to-wit: "the extent of the misconduct, the nature of the misconduct, the judge's conduct in response to the Commission's inquiry and disciplinary proceedings, the judge's discipline record and reputation, and the effect the misconduct had upon the integrity and respect for the judiciary." *Robertson*, 280 Kan. at 270, 120 P.3d 790 (citing Gray, Handbook for Members of Judicial Conduct Commissions 15 [American Judicature Society 1999]). These factors are now codified in Rule 619(e):

Factors Considered for Disposition. In making a disposition, a Hearing Panel may consider the following:

- (1) the extent of the misconduct;
- (2) the nature of the misconduct;
- (3) the respondent's conduct in response to the Commission's proceedings;
- (4) the respondent's discipline record and reputation;
- (5) the effect the misconduct had on the integrity of and respect for the judiciary; and
- (6) any other relevant factors.

We find the aggravated factors of the nature of the Respondent's conduct and the effect that it had on the integrity and respect for the judiciary to overwhelm every other factor in this case. Paragraph #4 of the January 12, 2021, joint stipulation of facts states that Respondent had not previously been disciplined by the Commission. This stipulation is not an accurate depiction of Respondent's judicial discipline history. Respondent has not received any discipline which would be published under Supreme Court Rule 622. All other complaints, investigations, reports, correspondence, proceedings, and Commission records are private and confidential under Supreme Court Rule 611.

A judge's discipline is not the ultimate purpose of regulating the Kansas judiciary. However, discipline is the collateral consequence of enforcement of the Kansas Code of Judicial Conduct. The aim of judicial discipline "is the maintenance of the honor and dignity of the judiciary and the proper administration of justice rather than the punishment of the individual." *State ex rel. Comm'n on Judicial Qualifications v. Rome*, 229 Kan. 195, 206, 623 P.2d 1307 (1981).

Judges should be the role models of our society. A judge's integrity, while never spotless, should exhibit behavior that is or should be emulated by others. The Kansas Judicial Code requires this Commission to judge the impropriety, or the appearance of impropriety, of a judge's actions in his or her professional and personal lives. Although this task is not simple, we know when a judge's actions have crossed over the line of what the Respondent has described as the moral compass of our society and when a judge should be disciplined.

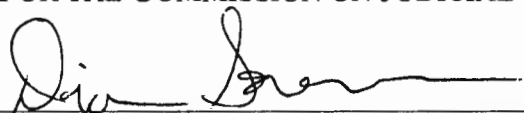
We reiterate how the Scope of the Kansas Judicial Code sets forth how the rules establish a minimum level of ethical conduct and that judges should "strive to exceed the standards of conduct established by the Rules." Elevation to the bench carries the burden of "striving to exceed" the standards of conduct established by the rules. SCOPE [4]. Judges are human. But the unique role of judges in our society forces a judge to understand that donning the black robe places a higher standard upon them than the average person. That higher standard imposes a duty to maintain the dignity of the judicial office and to aspire to ensure the greatest public confidence in their integrity as they uphold the laws and make sure justice is meted out fairly. This is where Respondent has failed.

RECOMMENDED DISPOSITION

Pursuant to Supreme Court Rule 619(b)(3), (d) (2021 Kan. S. Ct. R. 535), based on the foregoing Findings of Fact and Conclusions of Law, and based on a unanimous vote of all seven members participating in the Formal Hearing, the Panel recommends to the Supreme Court of the State of Kansas that Respondent be disciplined for the violations by public censure.

DATED this 4th day of May, 2021.

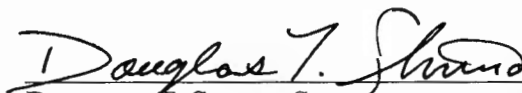
FOR THE COMMISSION ON JUDICIAL CONDUCT



DIANE H. SORENSEN, Chair
Commission on Judicial Conduct

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Disposition was mailed certified receipt (#9414 7266 9904 2174 2886 16) to the Honorable Marty K. Clark, 1562 E. Wichita Ave., Russell, KS 67665 and a copy was served by email to Christopher M. Joseph – cjoseph@josephhollander.com; Carrie E. Parker – cparker@josephhollander.com; and Todd N. Thompson – todd.thompson@333legal.com on the 4th day of May, 2021.



DOUGLAS T. SHIMA, Secretary
Commission on Judicial Conduct