

STATE OF KANSAS

FEB 25 2021

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

COMMISSION ON
JUDICIAL CONDUCTInquiry Concerning A Judge
RICHARD M. SMITH

Complaint No. 2303

ORDER

Members of the Commission present include Diane H. Sorensen, Chair; Judge Bradley E. Ambrosier; Sister Rosemary Kolich; and Hon. Nicholas M. St. Peter.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. Richard M. Smith, respondent, was on Senior Judge contract with the Office of Judicial Administration at the time of the events in this complaint.
2. In July 2020, James Brun, Linn County Attorney, filed a complaint alleging that respondent attempted to hold service of a summons/petition in a divorce case which respondent was not involved.
3. The hold-service allegation is premised upon respondent's conduct of calling a Linn County Sheriff's dispatcher and asking or directing her to put divorce papers involving Mike Wheeler's divorce in a drawer so that the papers would not be served.
4. Respondent repeatedly tells the dispatcher that he is Judge Smith and asks if the dispatcher knows who he is. Respondent tells the dispatcher to "do me a big favor" and throw the paperwork in a drawer. Respondent said, "And we'll clear this all up tomorrow, trust me. (Laughs) and you've never had Judge Smith call you and say something like that." Answer: "Nope." Respondent: "But you do know who I am don't ya?"
5. The complaint also alleged that respondent had a recorded conversation at respondent's residence with Undersheriff Bobby Johnson discussing the hold-service incident.
6. In the complaint, Brun alleges respondent indicated the following:
 - a. he threatened multiple times to "fuck up" Sheriff Kevin Friend;
 - b. he would lie in wait and then go after Sheriff Friend;
 - c. he would make up lies so that Sheriff Friend would be charged with crimes; and
 - d. he was untouchable from Chief Judge Amy Harth and the Kansas Supreme Court.

7. On July 10, 2020, the Inquiry Panel for the Commission met at its general monthly meeting to discuss the complaint against the respondent and determine whether the complaint contained facts that cause a reasonable person to believe that a violation of the Code of Judicial Conduct had occurred.
8. On July 10, 2020, the Inquiry Panel referred the complaint against the respondent to its Examiner, Todd Thompson, for investigation under Supreme Court Rule 613(b)(2)(C). 2020 Kan. S. Ct. R. 490.
9. The Commission received information in mid-August that respondent was admitted for in-patient treatment for substance abuse and mental illness at the Hazleden Betty Ford Clinic in Center City, Minnesota.
10. Respondent informed Thompson that the clinic counselors indicated it would be preferable for him to defer dealing with the pending complaint in order that he could focus on his therapy. Respondent indicated he would make himself available for an interview with Thompson as soon as his counselors found it would appropriate or upon his release from the Clinic.
11. On September 4, 2020, the Inquiry Panel decided to hold this matter in abeyance until Thompson was able to interview the respondent.
12. On November 4, 2020, the Inquiry Panel received a report from Thompson that he interviewed the respondent regarding the complaint.
13. Respondent told Thompson that he had no recollection of the conversation with Undersheriff Johnson. Respondent described that he had engaged in continuous and excessive drinking during the two weeks prior to the conversation.
14. Respondent told Thompson that his mental and physical health had deteriorated significantly from excessive drinking in July 2020. He attributed his addiction problems to his divorce and resulting financial difficulties. He was found unconscious during a welfare check on July 15 approximately two weeks after the meeting with Undersheriff Johnson. Respondent was diagnosis with acute alcohol poisoning and hospitalized for five days before heading to the Hazleden Clinic at the end of July.
15. The transcripts of the recorded conversation between respondent and Undersheriff Johnson state as follows:
 - a. Complainant alleges respondent "threatened to 'fuck up' Sheriff Kevin Friend multiple times."
 - i. Transcript states: "He and I are gonna lock up before this is all over."
 - ii. Transcript states: "I'm gonna fuck him up before this is all over. Trust me. Just stay calm. Because he used to beat his wife like a broom. And it never got turned in. Oh no. He's a wife beater. I know all this shit. So I'm gonna fuck him up before this is over."

- b. Complainant alleges respondent "would lie in wait then go after the Sheriff."
 - i. Transcript states: "That smokey the bear hat I pretty sure I can shove that right up his ass but that's for later. I've got to lay and wait—for all this. That's gonna be a while."
 - c. Complainant alleges respondent "threatened to make up lies so Sheriff Kevin Friend would be charged with crimes."
 - i. Transcript states: "I could make all kinds of shit up. TV would love it. I'm not gonna do that. I'm not that kind of person."
 - d. Complainant alleges respondent believes he "was untouchable and referenced Chief Judge Amy Harth and the Kansas Supreme Court."
 - i. Transcript states that respondent mentioned Judge Harth and says that she was not his boss and that he worked "directly for the Supreme Court now."
16. Effective November 13, 2020, respondent resigned his position as a Senior Judge.

CONCLUSIONS OF LAW

1. RULE 1.2 of the Code of Judicial Conduct, Rule 601B, 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."
2. RULE 1.3 of the Code of Judicial Conduct, Rule 601B, provides:

"A judge shall not lend the prestige of judicial office to advance the personal or *economic interests* of the judge or others, or allow others to do so."
3. RULE 2.4(B) of the Code of Judicial Conduct, Rule 601B, provides:

"(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment."
4. The Commission determined that respondent violated the above-cited rules by inappropriately using the prestige of his judicial office to advance the personal interest of others by calling the Linn County Sheriff's Office and acting in a manner that does not promote confidence in the integrity of the judiciary in his meeting with Undersheriff Johnson.

IT IS THEREFORE ORDERED that Richard M. Smith:

1. cease and desist from inappropriately using the prestige of judicial office and acting in a manner that does not promote the confidence in the integrity of the judiciary;
2. agree to continue his retirement and not hold a judicial office in the future;
3. agree to not seek election or accept appointment to any judicial office in the future; and
4. agree that this Order will be made public.

This Order, if accepted, shall be made public pursuant to Rules 611(a) and 614(c). See 2020 Kan. S. Ct. R. 688, 691.

The Secretary of the Commission on Judicial Conduct is hereby instructed to serve a copy of this Order on the respondent under K.S.A. 60-303(c). Respondent must, in accordance with Rule 614, either (1) agree to comply with the order by accepting the order in writing where indicated and returning a signed copy of the order to the Secretary of the Commission; or (2) refuse to accept the by notifying the Secretary it is not accepted. The signed order or written refusal to accept must be served upon the Secretary of the Commission within twenty days after service of the order. This order is deemed to have been refused if the Secretary of the Commission receives no response from the respondent within twenty days after service of this Order.

BY ORDER OF THE COMMISSION dated this 29th day of January, 2021.

COMMISSION ON JUDICIAL CONDUCT

By: _____



DIANE H. SORENSEN, CHAIR

APPROVED & ACCEPTED

02/20/2021
Date



RICHARD M. SMITH, RESPONDENT