



STATE OF KANSAS

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning
A Judge

Docket No. 860

ORDER

Members of the Commission present include: Hon. Jennifer L. Jones, Chair; Nancy Anstaett, Vice-Chair; Hon. J. Patrick Brazil; Hon. Theodore B. Ice; Christina Pannbacker; and Carolyn Tillotson. William Swearer recused.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. The Honorable Eric Yost, Respondent, is a District Judge in the 18th Judicial District.
2. The Commission received a complaint that, on April 1, 2004, Judge Yost, as presiding judge of the Family Law Department, entered an *ex parte* post-divorce order in Case No. 00 D 1663, allowing the respondent wife to remove two minor children from the State of Kansas without notice to the petitioner husband or his counsel.
3. In response to inquiry by the Commission, Judge Yost stated that the respondent wife had visited the office of Judge Yost's administrative assistant, Becky Gragg, on April 1, 2004.
4. Judge Yost further stated in his response to the Commission: "[Respondent wife] tearfully begged Ms. Gragg to allow her to take the children to Alabama for the six weeks until the new EH [evidentiary hearing] date, on the promise that she would return with the children for the hearing. Mrs. [sic] Gragg filled out a 'minute sheet' which would accomplish that, and came to see me. Mrs. Gragg relayed the urgency of the situation, and what she had gleaned from the court file."
5. Judge Yost entered an order allowing removal of the children from the State until the scheduled June 2, 2004, hearing date.

6. Judge Yost stated that he did not even think about calling counsel; however, on the morning of April 2, 2004, he did send an e-mail, informing counsel of his decision.
7. The Commission's investigator subsequently confirmed that the petitioner husband learned of his children's departure from the State when officials from their elementary school contacted him on April 2, 2004, to inform him that respondent wife had withdrawn them from school.
8. The petitioner husband filed a report regarding his children with the West Wichita Police Substation on April 2, 2004.
9. Judge Yost, in his response to the Commission, stated: "In retrospect, I freely acknowledge that there was a better way to handle [respondent wife's] request, emergency or not. Counsel should have been contacted."

CONCLUSIONS OF LAW

1. Canon 3B(7) of the Code of Judicial Conduct, Rule 601A, provides in relevant part:

"B. Adjudicative Responsibilities.

. . . .

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.^o A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding"
2. K.S.A. 2004 Supp. 60-1628 provides in relevant part:
 - (b) In the event the court is asked to issue an *ex parte* order modifying a final child custody or residential placement order based on alleged emergency circumstances, the court shall:

- (1) Attempt to have the nonmoving party's counsel, if any, present before taking up the matter.
- (2) Set the matter for review hearing at the earliest possible court setting after issuance of the *ex parte* order, but in no case later than 15 days after issuance.
- (3) Require personal service of the order and notice of review hearing on the nonmoving party.

No *ex parte* order modifying a final custody or residential placement order shall be entered without sworn testimony to support a showing of the alleged emergency.”

3. The Commission has determined that Respondent violated Canon 3B(7) by issuing an *ex parte* order based on his reliance on second-hand information from his administrative assistant, *ex parte* contact with the respondent wife, and in derogation of the provisions of K.S.A. 2004 Supp. 60-1628.

IT IS THEREFORE ORDERED that the Honorable Eric Yost cease and desist from issuing *ex parte* orders, in violation of the above-cited Kansas Statute and Canon.

This Order, if accepted, shall be made public pursuant to Rule 611(a). See 2004 Kan. Ct. R. Annot. 571.

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.

Cease and Desist Order
Docket No. 860
Page Four

BY ORDER OF THE COMMISSION dated this 8th day of August, 2005.

COMMISSION ON JUDICIAL QUALIFICATIONS

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

APPROVED & ACCEPTED

8-10-05
Date

[Signature]
Eric Yost, Respondent