

FEB 27 2020

COMMISSION ON JUDICIAL CONDUCT

STATE OF KANSAS

BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS

Inquiry Concerning a Judge)	
)	Docket No. 1346
)	Docket No. 1349
)	Docket No. 1350
<u>F. William Cullins</u>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED DISPOSITION

On April 4, 2019, Panel B of the Commission on Judicial Qualifications issued Notice of Formal Proceedings, pursuant to Rule 611(b) (2019 Kan. S. Ct. R. 484), in Docket Nos. 1346, 1349, and 1350, against F. Williams Cullins, a District Judge in the 14th Judicial District. The information in the three Notices alleged that Respondent engaged in certain conduct which violated Rules 1.1 and 1.2 of Canon 1 (2019 Kan. S. Ct. R. 441-442); Rules 2.2, 2.3, 2.6, 2.8, 2.9 of Canon 2 (2019 Kan. S. Ct. R. 443-449); and Rule 4.2 of Canon 4 (2019 Kan. S. Ct. R. 473-475).

FINAL PREHEARING ORDER

On September 16, 2019, Chair Hon. Brenda Cameron approved the parties agreed-upon Final Prehearing Order. The violations alleged in Docket Nos. 1346, 1349, and 1350 were combined for a single formal hearing. In the Final Prehearing Order, the Examiner alleges that Respondent, who at all times relevant hereto was a district judge, engaged in certain conduct which violated the provisions of Canons 1, 2, and 4 of the Rules of the Supreme Court of the State of Kansas Relating to Judicial Conduct.

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 1.1

Compliance with the *Law*

"A judge shall comply with the *law* and the Kansas Code of Judicial Conduct."

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 2

**A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE *IMPARTIALLY*,
COMPETENTLY, AND DILIGENTLY.**

RULE 2.2
Impartiality and Fairness

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

RULE 2.3
Bias, Prejudice, and *Harassment*

- (A) "A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."
- (B) "A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in *harassment*, including but not limited to bias, prejudice, or *harassment* based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or other subject to the judge's direction and control to do so."

Comments [2] and [3] of Rule 2.3 provide:

[2] "Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased."

[3] "Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or politic affiliation."

RULE 2.6
Ensuring the Right to be Heard

- (A) "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*."

Comment [1] of Rule 2.6 provides:

[1] "The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed."

RULE 2.8
Decorum, Demeanor, and Communication with Jurors

- (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...."

Comment [1] of Rule 2.8 provides:

[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."

RULE 2.9
Ex Parte Communications

- (A) "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 or their lawyers, concerning a *pending or impending matter*. . . ."
- (C) "A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed."

Comment [1] of Rule 2.9 provides:

[1] "To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge."

CANON 4
**A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN
POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE
INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.**

RULE 4.2
Political and Campaign Activities of *Judicial Candidates in Public Elections*

- (A) "A *judicial candidate* in a retention, nonpartisan, or partisan *public election* shall:
 - (1) Act at all times in a manner consistent with the *independence, integrity, and impartiality* of the judiciary."

STIPULATIONS IN FINAL PREHEARING ORDER

The parties stipulated to the following findings of fact in the September 16, 2019, Final Prehearing Order:

1. Respondent cursed frequently, including use of the word "fuck" and its derivatives when speaking with or near employees and others at the courthouse.
2. Respondent told the Examiner that he "bitches at people to try and get them to correct their ways."

3. Respondent used expletives when Joni Pratt asked him questions regarding installing carpet in the elevator.
4. Respondent said the quoted phrases: "Sit down. I want you to listen and don't say a word," and, "No, don't talk," or something comparable during a meeting when Joni Pratt requested Respondent's assistance with court employees she supervised.
5. Respondent acknowledges that he needs a more effective management style.
6. Respondent stated: "Pratt, you should have married a rich man." Respondent insists that the comment was made in jest.
7. When Joni Pratt resigned, Respondent said "yahoo" or "yippee" (or some similar expression) loud enough for others in the courthouse to hear.
8. Joni Pratt, Lance Carter, and Lynette Phillips have stated that Respondent's demeanor contributed to their decisions to leave their employment with the court.
9. Respondent wrote "Larry said so doesn't fucking cut it" on a document.
10. Respondent has been critical of Larry Markle and his office, including on the record, when dealing with cases where individuals arrested on probable cause have been held in jail without charges being filed. Transcripts and other documents accurately capture the words spoken and written.
11. A transcript reflects that Respondent used the phrase "Kansas boy" to describe two young black men charged with crimes.
12. On June 28, 2018, in *State v. Shamblin*, 18 CR 47, Respondent appointed a new attorney to represent the defendant when her appointed attorney, Jill Gillett, did not appear and the defendant stated that she had not had any contact with Ms. Gillett. Respondent said, "Okay. Do you care if I strike that appointment and appoint somebody else? Because Ms. Gillett has a habit of not appearing the first time I set cases for her. Okay. So I'm going to appoint Mr. House to represent you. So just send a letter to Ms. Gillett indicating the Court struck that appointment; odds are she wasn't going to show up anyway."
13. On June 26, 2018, in *State v. Simmons*, 18 CR 48, Respondent said to Jill Gillett: "Well, if you make your first setting with a judge, normally the judge is a lot more accommodating for second, third, and fourth settings. And I've had some severe problems with the Gilletts not making their first settings, stringing from criminal cases all the way to domestic cases."
14. Respondent placed a represented defendant under oath, with her attorney appearing by phone, and asked her about whether she was being harassed by a bondsman for payment.

15. Respondent either asked or directed both Larry Markle and Heath Lampson to look into the conduct of bondsmen as well as relevant statutes, regulations, and judicial authority.
16. Respondent exchanged text messages with Attorney Melissa Dugan regarding scheduling of a hearing. Ms. Dugan promptly informed opposing counsel about the options for scheduling.

DEFENSES RAISED IN FINAL PREHEARING ORDER

Respondent listed the following defenses in the September 16, 2019, Final Prehearing Order:

1. Respondent denies all Examiner's allegations except to the extent agreed in the Stipulations.
2. Respondent's speech is protected by the First Amendment to the United States Constitution.
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 Code of Judicial Conduct. *See* Rule 2.2, Cmt. 3.
4. Respondent's cursing does not reflect on his integrity, meaning his probity, fairness, honesty, uprightness, and soundness of character.
5. Respondent's cursing does not impair him from performing duties of his judicial office impartially, competently, and diligently.
6. Respondent's frustrations about delays in charging individuals arrested on probable cause did not affect his independence or impartiality.
7. Respondent did not act with prejudice against the Montgomery County Attorney's Office or individual prosecutors in that office.
8. Respondent did not harass the Montgomery County Attorney's Office or individual prosecutors in that office.
9. Respondent's frustrations with individual attorneys did not affect his independence or impartiality.
10. Respondent did not act with prejudice against individual attorneys.

FORMAL HEARING

Panel A of the Commission held a four-day public hearing in the above-captioned matter commencing at 9 AM on Monday, December 9, 2019, in Judicial Conference Center 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:

Judge Brenda M. Cameron, Chair
Diane Azorsky
Terrence J. Campbell
Judge Robert W. Fairchild
Judge Mary B. Thrower

Member Norman R. Kelly recused. Vice-Chair James S. Cooper was unable to participate.

On December 12, 2019, the parties rested, and the Panel took the matter under advisement. Deliberations commenced on December 12, 2019, at 2:45 PM. The Panel adjourned at 5:00 PM. On December 13, 2019, the Panel continued its deliberation at 9 AM and adjourned at 11:30 AM.

FINDINGS OF FACT

Pursuant to Supreme Court Rule 619(b), the Panel finds that the Examiner has proved the following facts by clear and convincing evidence.

1. Respondent frequently used the word "fuck" and its derivatives when speaking to or near employees and/or others at the courthouse.
2. Lance Carter served as a district court clerk in Independence for nearly 12 years. Mr. Carter regularly overheard Respondent's use of obscenities. He created a swear journal documenting multiple instances of Respondent's profanity. Mr. Carter did not intend the swear journal to document all of Respondent's profanity.
3. Mr. Carter received an unsatisfactory performance evaluation from a supervisor in August 2015. When Mr. Carter asked Respondent to discuss the evaluation, Respondent called Mr. Carter into Respondent's office and said, "Carter, go sit down in that fucking chair and don't you say a fucking word." Respondent proceeded to yell and scream at Mr. Carter, using profanity.
4. Respondent did not give Mr. Carter an opportunity to address Mr. Carter's concerns about the evaluation. When Mr. Carter tried to speak, Respondent told him, "Keep your fucking mouth shut. You don't have the right to defend yourself here. Don't say another fucking word. Go see Joni Pratt. Get the fuck out of my sight and shut the fucking door on your way out." Mr. Carter left the room.

5. Joni Pratt started as Chief Clerk of the District Court of Montgomery County in 2015. Ms. Pratt oversaw a remodeling project in the Coffeyville Clerk's Office in October 2016. Part of the remodeling project included new carpeting. One day, Travis Brock and Andre Ysusi were laying carpet in the law library. Ms. Pratt asked the Respondent whether these carpet layers could install some of the extra carpet in the elevators.
6. In response to Ms. Pratt's question, Respondent became "very angry" and told Ms. Pratt that "he didn't give a fuck about the carpeting and that that wasn't our fucking building" and that she should call the city manager. Ms. Pratt described Respondent's tone as frightening, loud, aggressive and scary.
7. After her lunch break, Ms. Pratt approached Respondent and told him she was embarrassed about the incident. Respondent told her, "If you think I'm going to fucking apologize to you, I'm not." Three days later Respondent called Ms. Pratt into his office and told her "I got to thinking about what you said to me, and there's no fucking way that those fucking inmates heard me." Ms. Pratt told Respondent it was the carpet layers who heard him, not inmates.
8. Travis Brock heard Respondent yell at Joni Pratt about laying carpet in the elevator. Mr. Brock heard Respondent say something along the lines of "'F' that, we're not doing that." Respondent's reaction was "extreme" under the circumstances. Mr. Brock was so uncomfortable that he put his head down and "literally crawled back into the room I was working in."
9. In June 2018, Joni Pratt resigned from the clerk's office. She asked Judge Gettler to accompany her to Respondent's office as she tendered her resignation. After she told Respondent that she was giving two weeks notice of her resignation, she left the office and started walking down the hall. Ms. Pratt heard Respondent yell "Yahoo." Judge Gettler heard the outburst. The Panel finds that Respondent knew or should have known that his comment would be overheard by Ms. Pratt and others.
10. Former Attorney General Curt Schneider, now a lawyer practicing in Coffeyville, heard Respondent use the terms "'bitch', 'cunt', et cetera" in referring to females.
11. Mr. Schneider's legal assistant, Ann Rooks, overheard Respondent use profanity. Mr. Schneider had asked Ms. Rooks to call Respondent to enter Mr. Schneider's appearance and request a hearing in a court matter pending before Respondent. Mr. Schneider's testimony about Ms. Rooks' statements was admitted without objection.
12. Ms. Rooks memorialized her conversation with Respondent as follows: "When I called Judge Cullins to set the hearing and told him the names of the parties, he said, 'Oh fuck. Them again?' Then he asked if Mr. Schneider represents 'the dude or the chick.' When I told him Mr. Schneider represents [client], he said, 'Oh, fuck. . .really? She's fucking crazy.' He then went on to say, 'I used to think the guy was ok, but the longer this goes on, I'm starting to think he may be fucking crazy too.'" Ms. Rooks' memorandum was admitted without objection.

13. Tim Emert, a lawyer from Independence, heard Respondent's use of obscenities so regularly that it was "just routine." Mr. Emert heard Respondent use the words "bitch" and "cunt" in describing females. Mr. Emert also heard respondent use both of these words in the same sentence in talking about the same women.
14. The Panel is cognizant of a potential discrepancy between the testimony of Mr. Emert and the testimony of attorney Dan Reynolds, of the same firm, on the subject of Respondent's use of the words "bitch" and "cunt" in reference to specific women. On the one hand, Mr. Emert testified that Respondent used those terms in a conversation directly with Mr. Emert. On the other hand, Mr. Reynolds testified that Mr. Emert told Mr. Reynolds that Mr. Emert "heard from another person" that Respondent had used those terms. The panel finds the testimony of both Mr. Emert and Mr. Reynolds highly credible. Based on the evidence presented, including witness demeanor, the panel believes that Respondent in fact used these derogatory terms in a conversation with Mr. Emert, and that either (a) Mr. Reynolds misunderstood what Mr. Emert had told him, or (b) Mr. Emert elected for whatever reason not to reveal to Mr. Reynolds that Mr. Emert was the person who heard Respondent use the words. Mr. Emert's testimony before the Panel was under oath, and accordingly, Mr. Emert was obligated to tell the Panel the whole truth. The Panel is convinced that he did.
15. Respondent stipulated that he wrote "Larry said so doesn't fucking cut it" on a document. The document was an arrest warrant packet prepared by the Office of Montgomery County Attorney Larry Markle. Assistant County Attorney Lisa Montgomery prepared the warrant packet. Montgomery County has two dockets, one in Independence and the other in Coffeyville. Certain traffic cases were assigned to the magistrate judge in Coffeyville.
16. Ms. Montgomery sent the arrest warrant packet to the district court clerk's office. Respondent sent the packet back to the Montgomery District Attorney's Office with the following language printed in large print on the front page of the arrest warrant: "This is a traffic case that needs to be filed in c-ville or I need a better explanation. [signed] Cullins. Larry said so doesn't fucking cut it. [signed] Cullins." The document has an arrow pointing to Larry with language that says, "It used too [sic]".

CONCLUSIONS OF LAW

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."

Under Rule 1.2 of the Code of Judicial Conduct a judge shall act at all times in a manner that promotes public confidence in the integrity of the judiciary. Public confidence is eroded by a judge's improper conduct. This principle applies to both the professional and personal conduct of a judge. Rule 1.2, Cmt 1 (2019 Kan. S. Ct. R. 441.) "Integrity" under the Judicial Code includes the qualities of fairness and soundness of character. Conduct that compromises or appears to compromise the integrity of a judge undermines public confidence in the judiciary. Rule 1.2, Cmt 3 (2019 Kan. S. Ct. R. 441.)

Of great concern to the Panel, Respondent used derogatory words to describe women, such as "bitch" and "cunt."

In a conversation with Ann Rooks, secretary to attorney Curt Schneider, Respondent stated: "Oh fuck. Them again." When advised that Schneider represented the female in the situation, Respondent stated: "Oh, fuck, really? She's fucking crazy. I used to think the guy was ok, but the longer this goes on, I'm starting to think he may be fucking crazy too."

Respondent used expletives and derided Joni Pratt when she asked him questions regarding installing carpet in the elevator. Respondent's conduct was so out of line with appropriate decorum that carpet installer Travis Brock put his head down and attempted to avoid the situation. Respondent yelled "Yippee" after Ms. Pratt resigned from the county clerk's office.

Respondent used expletives with anger when speaking with Lance Carter about his employment review. Respondent frequently used the word "fuck" and its derivatives when speaking to or near employees and others at the courthouse. Respondent's unkind and abusive language to courthouse staff has resulted in unnecessary staff turnover.

Respondent's violations of Rule 1.2 as described above are established by clear and convincing evidence. The above-described conduct harms public confidence in the integrity of the judiciary. The conduct exhibits unfairness and unsound character. Public confidence has been undermined because of the above-described incidents of Respondent's conduct.

The Panel has not found, and makes no determination, that a judge's use of ubiquitous profanity will always constitute a violation of Rule 1.2. That is a question for another day. The Panel has simply found that Respondent's conduct described in this section violates Rule 1.2 based on the evidence presented in this proceeding.

2. RULE 2.3

Bias, Prejudice, and *Harassment*

(B) "A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in *harassment*, including but not limited to bias, prejudice, or *harassment* based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or other subject to the judge's direction and control to do so."

A. Gender Bias.

The Panel concludes that Respondent's use of derogatory words directed at women, in particular the words "bitch" and "cunt," manifested a bias and/or prejudice and was hostile toward the individuals about whom he was speaking.

Respondent's violation of Rule 2.3 is established by clear and convincing evidence. His conduct manifested clear bias based upon sex. Intentionally gender-based derogatory references toward women have no place in the administration of justice, and have no place in a judge's vernacular.

B. Race Bias.

At a hearing involving an African American athlete attending Independence Community College, the Respondent stated, "Can I assume you're not even a Kansas boy?" At another hearing that same day involving a different African American athlete, Respondent again inquired where the defendant came from before attending College. When the defendant replied Topeka, Respondent stated, "At least you're a Kansas fellow, anyway." Later in the second hearing, Respondent referred to the second defendant as a "Kansas boy."

The Examiner alleged that Respondent's use of the term "Kansas boy" violated Rule 2.3. Respondent testified that he did not intend the term "boy" to have any racial connotation. Respondent explained that he considers himself as a "Chautauqua County boy" and that his reference to the young man as "a Kansas boy" was in the same vein. This is consistent with the Examiner's allegations, because the Examiner expressly disclaimed any attempt to prove that Respondent's "boy" reference was driven by race-based animus. Even though the Panel has implicitly found the Respondent's testimony on several other issues to be less worthy of credence than the testimony of other witnesses, the Panel finds Respondent's testimony that he did not intend the term "boy" to have any racial connotation credible. Based on all of the evidence, the Panel concludes that Respondent intended to use the term "boy" as term of geographic origin, and not as a term of racial derision. Geographic origin was relevant for proper administration of the bond hearing, and the men were teenagers.

Despite the Panel's finding that Respondent did not intend any racial derision in his use of the term "boy," however, there is clear and convincing evidence that the prosecutor in these criminal cases was concerned that Respondent's use of the term could be interpreted as a term of bias. (I, 158.) The prosecutor felt it appropriate to (and did) apologize for Respondent's conduct to the father of one of the defendants.

The Panel believes that the Supreme Court's *sua sponte* analysis of Rule 2.3 in *State v. Smith*, 308 Kan. 778, 423 P.3d 530 (2018), compels a finding that Respondent violated Rule 2.3 in his use of the term "boy" on these facts. The *Smith* case explains that the focus of the Rule 2.3 inquiry must be on the "appearance of bias . . . to an informed, objective observer," even if that bias does not exist. *Id.* at 788 (quoting *Meija v. United States*, 916 A.2d 900 (D.C. Ct. App. 2007); *see also id.* (quoting *Wang v. Attorney General of the United States*, 423 F.3d 260, 269 (3d Cir. 2005) ("the assurance that the arbiter is not predisposed to find against a person 'is absent – and judicial conduct improper – whenever a judge appears biased, even if she is not actually biased.'")); Rule 2.3 Comment [1] ("A judge must avoid conduct that may reasonably be perceived as biased.")). The Panel concludes that Respondent's use of the term "boy" on these facts may

reasonably have been perceived as biased – especially to these defendants and their family member(s) in attendance. Indeed, the prosecutor on these matters contemporaneously believed that Respondent's comments may have been perceived as biased and apologized for them. Accordingly, the Panel finds that Respondent's use of the term boy in these hearings violated Rule 2.3.

3. RULE 2.8

Decorum, Demeanor, and Communication with Jurors

(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...."

Under Rule 2.8, a judge shall be dignified and courteous to lawyers, court staff, court officials, and others with whom the judge deals in an official capacity. Respondent uses obscenities, criticizes staff, and tells staff "don't talk."

In sending back the packet of information to the district attorney's office, Respondent used the language, "This is a traffic case that needs to be filed in c-ville or I need a better explanation. [signed] Cullins. Larry said so doesn't fucking cut it. [signed] Cullins." Respondent's demeanor contributed to the decisions of Joni Pratt, Lance Carter, and Lynette Phillips to leave their employment with the court.

Respondent used expletives and derided Joni Pratt when she asked him questions regarding installing carpet in the elevator. Respondent was undignified when he yelled "Yippee" after Ms. Pratt resigned from the county clerk's office. Respondent used undignified language in discussing the litigants with Ann Rooks on the phone when she was attempting to enter an appearance for Curt Schneider.

Respondent stipulated to the fact that he used the quoted phrases: "Sit down. I want you to listen and don't say a word," and, "No, don't talk," or something comparable during a meeting when Joni Pratt requested Respondent's assistance with court employees she supervised.

Respondent acknowledged that he needed a more effective management style.

Respondent's violations of Rule 2.8 as described above are established by clear and convincing evidence. His conduct was not patient, dignified, or courteous.

4. OTHER ALLEGATIONS. All other violations of the Judicial Canons alleged by the Examiner in the Notice of Formal Proceedings and the Final Prehearing Order were not established by clear and convincing evidence or did not rise to the level of a violation of the Judicial Code.

Notwithstanding this, two of the allegations included in the Final Pretrial Order were areas of great concern for the Panel, and the Panel will now discuss these two areas.

A. Letter to Law Enforcement.

First, the Panel criticizes Respondent for his actions in a letter he sent to the sheriff's office or police departments in Montgomery County and the cities of Independence, Coffeyville, Caney and Cherryvale. Respondent's letter indicated correctly that the Court was having difficulty in getting the County Attorney's Office to file charges on probable cause arrests in a timely manner. The Panel does not believe Respondent's action amounts to a violation of the Judicial Code, but believes it was not the best practice in this situation to take the Respondent's concerns, as justifiably frustrated as he may have been, to the public arena. Respondent should have known his letter would become public. His letter was ultimately read at a Cherryvale City Council meeting and caused media coverage of a situation that could have been handled without incident through the adoption of local court rules.

B. Bonding Practices and Research.

Second, the Panel criticizes Respondent for directing attorneys outside the judicial branch to perform work on behalf of the court. On different occasions, Respondent directed both Larry Markle and Heath Lampson to look into the conduct of bondsmen in the district, as well as relevant statutes, regulations, and judicial authority. As chief judge, Respondent was vested with authority over bondsmen under K.S.A. 22-2806 and 22-2809b. But the exercise of this authority is a judicial function. The Panel believes the authority does not include the power to direct attorneys appearing before the court to conduct research and investigations on behalf of the court.

RECOMMENDED DISPOSITION

The Panel concluded that an admonishment or cease and desist disposition was not a sufficient discipline for Respondent's actions in this case. However, the Panel also concluded that removal of Respondent from the Bench is not warranted on these facts. The Panel heard supporting recommendations from attorneys and judicial colleagues regarding Respondent's abilities as a district court judge. Christina Stapp, Court Services Officer in Montgomery County, testified that Respondent ran a "very efficient" docket and that he was firm and held attorneys appropriately accountable. Daniel Reynolds, an attorney in Independence, testified that Respondent is "a very good judge" and "makes a fair determination."

Pursuant to Supreme Court Rule 620 (2019 Kan. S. Ct. R. 487), based on the foregoing Findings of Fact and Conclusions of Law, and based on a unanimous vote of all five 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 and that the Supreme Court refrain from making any future appointment of Respondent as a chief judge.

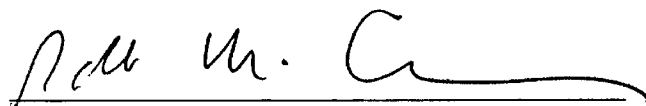
The Panel also agrees with the recommendations set forth by Acumen Assessments, LLC. After Respondent completed a Multidisciplinary Forensic Fitness to Practice Evaluation administered by Acumen, the assessment professionals set forth, in part, the following recommendations:

- “1. Judge Cullins would benefit from a process of professional coaching in order to build on the insights he came to over the course of the evaluation, and improve his ability to attune to others in interpersonal interactions. He would also benefit from a continued focus on applying the skills he internalized during his participation in a professionalism workshop.
- “2. The symptoms of anxiety noted during the present evaluation are likely to return to baseline following the resolution of the current administrative process. It does not appear necessary at this point, but Judge Cullins could seek out a process of individual counseling or psychotherapy in order to manage the acute symptoms that come to his awareness. . . .
- “4. We recommend that Judge Cullins focus his professional aspirations on continuing in his current position within the court, and that he not seek out any new leadership or management positions. If he is interested in pursuing such positions, he will need to learn to internalize new skills that would enable him to be a more effective team leader.”

The Panel recommends that Respondent complete professional coaching of a minimum of 1-2 years as recommended by Acumen and that if he fails to complete the recommended coaching then the Supreme Court should suspend Respondent from his judicial duties.

DATED this 27th day of February, 2020.

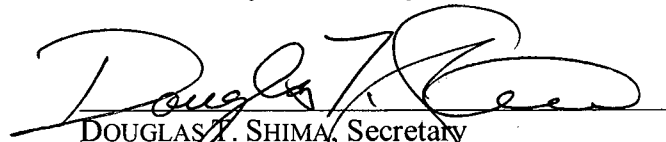
FOR THE COMMISSION ON JUDICIAL CONDUCT



HON. BRENDA M. CAMERON, Chair

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, to the Honorable F. William Cullins, Montgomery County Courthouse, 102 W. 7th, Suite A, Coffeyville, Kansas 67337 and a copy was served by email to Christopher M. Joseph – cjoseph@josephhollander.com; Diane L. Bellquist – dbellquist@josephhollander.com; Carrie E. Parker – cparker@josephhollander.com; and Todd N. Thompson – todd.thompson@333legal.com on the 27th day of February, 2020.



DOUGLAS T. SHIMA, Secretary
Commission on Judicial Conduct