

NOV 22 2024

STATE OF KANSAS

COMMISSION ON JUDICIAL CONDUCT

BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS

Inquiry Concerning Judge )  
 )  
Robert A. (Tony) Martinez )

No. 2767

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

On March 13, 2024, Panel A of the Commission on Judicial Conduct issued a Formal Complaint, pursuant to Rule 614(b)(2)(C) (2023 Kan. S. Ct. R. 536), in Complaint No. 2767, against Robert A. (Tony) Martinez, a district judge in the 29<sup>th</sup> Judicial District. The information in the Formal Complaint alleged that Respondent engaged in certain conduct which violated the provisions of Canon 1 and Canon 2 of the Rules of the Supreme Court of the State of Kansas Relating to Judicial Conduct.

The violations alleged in the Formal Complaint and relevant to this order relate to Kansas Judicial Conduct Rules 1.2 (Promoting Confidence in the Judiciary), 2.1 (Giving Precedence to the Duties of Judicial Office); 2.2 (Impartiality and Fairness); and 2.4 (External Influences on Judicial Conduct). The Formal Complaint also lists a violation of Rule 112 of the 29<sup>th</sup> Judicial District.

**PREHEARING CONFERENCES**

On May 6, 2024, 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, Aldo P. Caller. Todd N. Thompson appeared in person as Examiner for the Commission. The Panel members appearing were Chair Allen G. Glendenning and Susan Lynn. Chair Glendenning entered pretrial orders and scheduled a formal hearing for September 6, 2024.

On August 16, 2024, the parties came before Hearing Panel B of the Commission for a second prehearing conference conducted by video conferencing using the Zoom meeting platform. Respondent appeared through counsel, Aldo P. Caller. Kelly J. Rundell appeared in person as Examiner for the Commission. The Panel members appearing were Chair Allen G. Glendenning; Vice Chair Judge Bradley Ambrosier; and Judge Thomas Kelly Ryan. Chair Glendenning entered pretrial orders and scheduled a formal hearing for November 1, 2024.

## HEARING CONTINUANCE ORDER

On August 16, 2024, an Order to continue the hearing in Complaint #2767 was filed continuing the hearing scheduled for September 6, 2024. The hearing in #2767 was scheduled for formal hearing on November 1, 2024, at 9 AM. All stipulations and orders previously filed regarding the hearing on these matters still applied.

## STIPULATIONS AND FINAL PREHEARING ORDER

The following exhibits and facts were stipulated by the parties in either the “Stipulations by the Parties” entered on September 16, 2024, or the “Final Prehearing Order” on October 21, 2024:

### EXHIBITS

1. Trial Docket from *State v. Esteban-Garcia*, WYCO 2021-CR-989.
2. Transcript of hearing on July 20, 2022, in *State v. Esteban-Garcia*, WYCO 2021-CR-989.
3. District Court Rules of Wyandotte County, Kanas 29<sup>th</sup> Judicial District.
4. Photographs of Judge Martinez’s courtroom.

### FACTS

1. Robert A. (Tony) Martinez, Respondent, is a district judge in the 29th Judicial District.
2. In *State v. Victor Esteban-Garcia*, WYCO 2021-CR-989, the State had charged the defendant with rape.
3. On 07/20/2022, during a hearing in *State v. Esteban-Garcia*, Respondent allowed two young women to be with him behind the bench.
4. The prosecutor, Tonda Hill, objected to the young women being behind the bench.
5. Respondent overruled the objection.
6. Respondent was mentoring the two young women.
7. Respondent has stated that he felt the students would benefit from observing the proceeding from the perspective of being behind the bench.

## FORMAL HEARING

Panel B of the Commission held a public hearing in the above-captioned matter commencing at 9 AM on Friday, November 1, 2024, in the Court of Appeals Courtroom, Kansas Judicial Center, 301 SW Tenth Avenue, Topeka, Kansas. The hearing occurred on the record. Members of the Commission's Hearing Panel present at the hearing were:

Allen G. Glendenning, Chair  
Judge Bradley E. Ambrosier, Vice Chair  
Rosemary Kolich, S.C.L.  
Susan Lynn  
Judge Thomas E. Malone  
Judge Thomas Kelly Ryan

Tonda Jones Hill recused.

On November 1, 2024, the parties rested; the panel took the matter under advisement; and the Commission began deliberations at 1:39 PM.

## FINDINGS OF FACT

In addition to the stipulated facts previously agreed upon by the parties, the following findings of fact were established at the formal hearing:

1. On June 1, 2022, the court had previously set a preliminary hearing in *State v. Victor Esteban-Garcia*, WYCO 2021-CR-989, for July 20, 2022.
2. David Hunt Matthews -- a Wyandotte County attorney was in the respondent's courtroom on July 20, 2022, although he did not have a hearing that day. He testified that he had no problem with the students sitting at the bench because it was a motion to continue and not an actual hearing.
3. Angela Maria Garcia was director of diversity, equity and inclusion for the Kansas City Metropolitan Bar Foundation and worked with the Student Law Academy. Garcia explained respondent's role in the program and the glowing feedback he received from students shadowing Respondent in his court.
4. As a result of his participation in the Student Law Academy, Respondent was selected to receive the Sly James Diversity and Inclusion Award from the Kansas City Metropolitan Bar Association. Garcia testified that Respondent did not receive the Sly James Diversity and Inclusion Award because of the filing of this complaint.
5. Respondent's administrative assistant, Stephanie Rene Kays, testified that Respondent and counsel in the Esteban-Garcia case met in respondent's chambers before the hearing at issue in this case and all parties knew the case would be continued when they went on the record in the courtroom.

6. The young women participating in the Student Law Academy and sitting with Judge Martinez at the bench were high school students.
7. One of the students testified that she spent multiple days shadowing Respondent and that she and the other students had sat next to Respondent on multiple occasions. She testified that she did not remember any of the attorneys objecting to the students being at the bench with Respondent.
8. The other student testified that one of the attorneys had concerns with them sitting at the bench. She also testified that the defendant in that case looked at the students a lot and stared at them.
9. Daniel Martinez, the defense attorney for Esteban Garcia, testified that, after the prosecutor objected to the students being at the bench, the students left and went back into chambers.
10. Respondent testified that he had students at the bench with him in other cases. He stated that he allowed students when the hearings were short or small, but not on an evidentiary hearing.
11. Respondent testified that he believed that he did not violate Wyandotte County Rule 112 because the students were on the "bench" with him and not in the area in front of the bench, which he considered to be the "bar."
12. The parties entered a "Stipulation of Testimony of Tonda Hill", Assistant Wyandotte District Attorney, wherein it was agreed that Hill would testify that in overruling her objection Respondent "told Ms. Hill that as a person of color she should understand that they need to see the proceedings from his perspective" and that Hill is African American.
13. The judge's bench is a part of the bar of the courtroom proper.

### CONCLUSIONS OF LAW

Most of the evidence presented at the hearing pertained to the KCMBA's Student Law Academy program, in which students are paired with judges to shadow them and learn about the judicial system and the work done by the various participants in that system. That program appears to be an excellent program that generates benefits for the students, the judicial system and the community at large. The evidence presented was uncontradicted that Judge Martinez has been a significant participant in that program and has been a positive influence on the students assigned to shadow and be mentored by him, and he should be commended for his contributions to that program. This type of community involvement activity embodies comments 1 and 2 to Rule 3.1 that "Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice..."

However, the importance or benefits of that program are not the issue in this case. A judge's participation in any program must always be conducted within the boundaries of the Kansas Code of Judicial Conduct. The fact that certain conduct may be of benefit to someone does not determine whether it is appropriate for a judge. There are many beneficial actions taken by non-judges that are not appropriate for a judge.

The question presented by this case is narrow – Does a judge violate The Kansas Code of Judicial Conduct by allowing two high school students to sit with him at the bench during a hearing, over the objection of one of the parties, and in violation of a local rule restricting those permitted within the bar of the courtroom proper to attorneys, court personnel, litigants and witnesses called to the stand? The panel finds that it does violate the requirement of Rule 1.2, comment [5] that a judge comply with court rules.

The panel further finds that the alleged violations of Rules 2.1, 2.2 and 2.4 have not been proven.

## **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.

[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.

[6] A judge may initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

#### **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 1.2.

#### **Rule 112 of the 29<sup>th</sup> Judicial District**

"During the trial of any case, or the presentation of any matter to the Court, no person, including members of litigant's families, shall be permitted within the bar of the courtroom proper, other than attorneys, court personnel, litigants and witnesses called to the stand. Persons without the bar shall not disturb the order of the Court."

The panel finds the stipulated evidence, confirmed at the formal hearing, establishes that Respondent allowed two non-attorney, high school students to sit with him at the bench during the continuance of a preliminary hearing on July 20, 2022, in *State v. Victor Esteban-Garcia*, WYCO 2021-CR-989.

The panel further finds that the evidence is clear and convincing that allowing the high school students to sit with him at the bench violated Rule 112 of the 29<sup>th</sup> Judicial District, because the high school students are not within the list of persons permitted within the bar of the courtroom proper.

The panel further finds that violating Rule 112 constitutes “impropriety” as that term is defined in comment [5] of Rule 1.2 and Rule 601B and, therefore, constitutes a violation of Rule 1.2.

**RULE 2.1**  
**Giving Precedence to the Duties of Judicial Office**

The duties of judicial office, as prescribed by *law*, shall take precedence over all of a judge’s personal and extrajudicial activities.

The panel finds there is no evidence of extrajudicial activities taking precedence over the respondent’s judicial duties. The panel also finds there is no evidence to support a finding that Respondent was distracted in his courtroom by the events occurring in the courtroom at the hearing at issue. The Panel concludes that a violation of Rule 2.1 has not been proven and this alleged violation is dismissed.

**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*.

**COMMENT**

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

The panel finds there is no evidence of unfairness or partiality in the respondent’s performance of his judicial duties. The Panel concludes that a violation of Rule 2.2 has not been proven and this alleged violation is dismissed.

**RULE 2.4**  
**External Influences on Judicial Conduct**

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.

**COMMENT**

Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

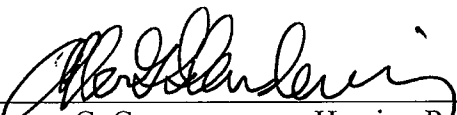
The panel finds there is no evidence of undue influence under Rule 2.4. The Panel concludes a violation of Rule 2.4 has not been proven and this alleged violation is dismissed.

**DISPOSITION**

Pursuant to Supreme Court Rule 619(b)(2) (2023 Kan. S. Ct. R. 541), based on the foregoing Findings of Fact and Conclusions of Law, and based on a unanimous vote of the members participating in the Formal Hearing, the Panel admonished the Respondent to comply with local court rules in the future.

DATED this 22<sup>nd</sup> day of November, 2024.

FOR THE COMMISSION ON JUDICIAL CONDUCT

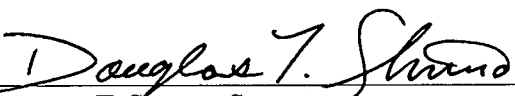


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ALLEN G. GLENDENNING, Hearing Panel Chair  
Commission on Judicial Conduct

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the Findings of Fact, Conclusions of Law and Disposition was mailed certified receipt (9414 7266 9904 2207 2645 49) to Robert A. (Tony) Martinez, c/o Aldo P. Caller, Santa Fe Law Building, 8000 Foster Street, Overland Park, Kansas 66204 and a copy was served by email to Aldo P. Caller, [aldocaller@msn.com](mailto:aldocaller@msn.com) and Kelly J. Rundell, [rundell@hitefanning.com](mailto:rundell@hitefanning.com), on the 22<sup>nd</sup> day of November, 2024.



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DOUGLAS T. SHIMA, Secretary  
Commission on Judicial Conduct