

APR 10 2024

COMMISSION ON
JUDICIAL CONDUCT

STATE OF KANSAS

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Inquiry Concerning a Judge
KENNETH N. SCHMIDT

Complaint No. 2994

ORDER

Members of the Commission present include James S. Cooper, Chair; Terrence J. Campbell, Vice Chair; Judge Robert W. Fairchild; Norman R. Kelly; and Judge Mary B. Thrower.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. Kenneth N. Schmidt, respondent, is a District Magistrate Judge in the 24th Judicial District.
2. On July 21, 2023, Jeff Jones filed a complaint alleging the following:
 - A. Respondent issued a Temporary Protection from Stalking (PFS) Order when he allegedly had a romantic relationship with the "Party" requesting the Order.
 - B. Respondent recused from the June 20, 2023, hearing on the Order, and failed to disclose on the record the conflict of interest or provide a reason for recusal.
3. On August 11, 2023, 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.
4. On September 6, 2023, the Commission asked the respondent to respond to the complaint.
5. On September 12, 2023, the respondent submitted a response to the Commission.
6. Respondent denied being in a romantic relationship with the person requesting the order at the time he signed the PFS Order.
7. On October 5, 2023, the Commission decided to refer this matter to the Commission Examiner for investigation.

8. After investigation the following facts were confirmed:
- A. "Party" filed the petition for a PFS on June 7, 2023, in Edwards County, 24th Judicial District, and said petition was assigned to respondent.
 - B. Respondent then recused from hearing the matter, failed to disclose on the record the conflict of interest, or provide a reason for the recusal.
 - C. Respondent recused from the June 20, 2023, hearing without providing a reason.
 - D. On June 24, 2023, respondent performed a wedding for a good friend of the "Party" and in which "Party" was a member of the wedding party. Respondent admitted to speaking to Party at the reception.
 - E. Respondent told the examiner the reason for recusal from the June 20, 2023, hearing was due to being seen in public conversing with "Party" even though no romantic conversations or actions had taken place prior to the wedding.
 - F. Respondent's recusal predates the wedding by several days.

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."

Comment 3 indicates "Conduct that compromises or appears to compromise the ... impartiality ... of a judge undermines public confidence in the judiciary." The rule is not limited to specific offenses, with Comment 3 noting that "the Rule is necessarily cast in general terms."

The Commission concludes that if respondent had a relationship with "Party" at the time he granted the Temporary PFS Order on June 7, 2023, his conduct would be contrary to promoting public confidence that the court was impartial. However, even if respondent only had an *interest* in pursuing a relationship with "Party" at the time he signed the PFS Order, respondent's impartiality might reasonably be questioned as well. If respondent did have a relationship with "Party", he may have personal knowledge of some of the facts regarding the dispute that caused the Temporary orders.

2. 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.”

The comment to Rule 2.4 adds that an “Independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular with the public, ... or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.”

The Commission reiterates that if respondent was pursuing an interest in “Party”, or was in an actual relationship with her, when he signed the PFS Order, his independence would be called into question based on based external influences of his relationship with “Party”.

3. RULE 2.11 of the Code of Judicial Conduct, Rule 601B, provides:

“(A) A judge shall disqualify himself or herself in any proceeding in which the judge’s *impartiality* might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias . . . concerning a party . . . or personal *knowledge* of facts that are in dispute in the proceeding.”

Respondent came to the conclusion that his impartiality might reasonably be questioned and so he recused from the case. But the timing of his recusal suggests that he should have recused prior to issuing the initial Temporary PFS Order – or at least he should have disclosed, as required by Comment [5], "on the record, information that the judge believes the parties or their lawyers might reasonably consider relevant to a motion for disqualification, even if the judge believes there is no basis for disqualification." He did neither.

4. Rule 2.16 of the Code of Judicial Conduct, Rule 601B, provides:

“(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.”

In respondent’s September 12, 2023, written response to the Commission, respondent informed the Commission that he recused because he had been seen visiting with “Party” at a wedding. The recusal occurred on or before June 20, 2023. The wedding did not occur until June 24, 2023. At best, respondent’s September 12, 2023, written response reflects a lack of candor with this Commission.

5. The Commission concludes that the respondent violated the above-cited rules by allowing a personal relationship (or the desire for a personal relationship) to undermine public confidence in the judiciary, and by communicating with the Commission in a manner that misrepresented the facts of the situation.

The investigation of the examiner and the discrepancy in the timeline of respondent's testimony leave unanswered the question of when the relationship with "Party" actually began. That is a significant unanswered question.

IT IS THEREFORE ORDERED that Kenneth N. Schmidt:

1. cease and desist from future activity in violation of the above-cited canons; and
2. 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 2023 Kan. S. Ct. R. 533, 536.

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). The respondent must, in accordance with Rule 614(c), 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 13th day of March, 2024.

COMMISSION ON JUDICIAL CONDUCT

By: 
JAMES S. COOPER, Chair

APPROVED & ACCEPTED

3-19-24
Date


KENNETH N. SCHMIDT, Respondent