STATE OF KANSAS

BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS

Inquiry Concerning Judge	)	
	)	No. 2805
Linda D. Kirby	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISPOSITION

On April 6, 2023, Panel B of the Commission on Judicial Conduct issued a Notice of Formal Proceedings, pursuant to Rule 614(b)(2)(C) (2023 Kan. S. Ct. R. 536), in Complaint No. 2805, against Linda D. Kirby, a district judge in the 18th Judicial District. The information in the Formal Complaint alleged that Respondent engaged in certain conduct which violated Rule 2.5 of Canon 2 (2023 Kan. S. Ct. R. 494-495).

The violations alleged in the Notice of Formal Proceedings relate to the following Rules and Canons of the Kansas Code of Judicial Code:

CANON 2
A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE *IMPARTIALLY*, COMPETENTLY, AND DILIGENTLY.

RULE 2.5
Competence, Diligence, and Cooperation

(A) A Judge shall perform judicial and administrative duties, competently and diligently.

Comments [2], [3], and [4] provide further insight.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

PREHEARING CONFERENCE

On June 30, 2023, the parties came before Hearing Panel A of the Commission for a prehearing conference conducted by video conferencing using the Zoom meeting platform. Respondent appeared in person and through counsel, Stanton A. Hazlett. Todd Thompson appeared in person as Examiner for the Commission. The Panel members appearing were: James S. Cooper, Chair; and Terrence J. Campbell, Vice Chair. Chair Cooper entered pretrial orders and scheduled a formal hearing for November 30, 2023.

STIPULATIONS

On August 10, 2023, the parties filed a document entitled "Stipulations by the Parties" setting forth the following agreed stipulations:

Exhibits

1. Docket from *In the Matter of the Marriage of Russell L. Gann, Jr. and Katrina L. Gann.* Case No. 2015-DM-004068 in Sedgwick County District Court.

2. August 9, 2021 Motion of Petitioner.

3. November 15, 2021 Order.

4. Respondent's response to the Commission on Judicial Conduct submitted on February 20, 2023.

Facts

1. Respondent is a district court judge in the 18th Judicial District.

2. At the time of the alleged violation, Respondent was a district judge for the 18th Judicial District.

3. Respondent was assigned *In the Matter of the Marriage of Russell L. Gann, Jr. and Katrina L. Gann.* Case No. 2015-DM-004068 ("the Gann case").

4. On August 9, 2021, a motion was filed by Petitioner in the *Gann* case requesting Petitioner be credited/reimbursed for unpaid minor children expenses.

5. On November 1, 2021, Respondent conducted a hearing on the motion.

6. Respondent continued the case to November 8, 2021, for her Disposition/Ruling.

7. On November 8, 2021, Respondent made a verbal ruling granting reimbursement to Petitioner.

8. On November 15, 2021, Respondent filed an Order stating: "Disposition: See mmo of same date."

9. There was no Motion Minute Order ("MMO") on file.

10. Over the next 12 months, Respondent's office was contacted multiple times with inquiries on behalf of Petitioner regarding the status of the MMO.

11. A complaint was submitted to the Commission on November 4, 2022.

12. The Commission requested Respondent respond to the Complaint.

13. On February 20, 2023, Respondent submitted a Response to the Commission stating that on November 1, 2021, she created a memo indicating that the Gann case was "open for evidence."

14. According to Respondent, her aide communicated with Petitioner's attorney based on that memo, and Respondent "acted under the mistaken impression that [Respondent] did not have the necessary evidence."

15. Respondent admits that not timely filing the MMO was improper.

16. Respondent's explanation is that there was a "... lapse of protocol and memory."

CONSOLIDATION & FINAL PREHEARING ORDER

On September 1, 2023, an Order to consolidate Complaint #2805 and #2864 was filed for the purpose of the matters being presented at a single hearing. Upon conclusion of a hearing, separate dispositions will be filed.

On November 27, 2023, the parties filed a joint Final Prehearing Order setting forth the following agreed stipulations:

Exhibits:

1. Complaint by Gann in 2805, including attachments.

2. Complaint by Newby in 2864, including attachments.

3. Answer by Judge Kirby in 2805.

4. Answer by Judge Kirby in 2864.

5. Judge Kirby's response to the Gann complaint.

6. November 22, 2019, Order.

7. November 30, 2021, Order.

8. May 15, 2023, Order.

9. Order Denying Petitioner's Motion to Reconsider and for Recusal dated September 1, 2023.

10. Cease and Desist Order dated August 3, 2022.

Facts:

1. Respondent is a district court judge in the 18th Judicial District.

2. Respondent was assigned *In the Matter of the Marriage of Russell L. Gann, Jr. and Katrina L. Gann.* Case No. 2015-DM-004068 ("the *Gann* case").

3. On August 9, 2021, a motion was filed by Petitioner in the *Gann* case requesting Petitioner be credited/reimbursed for unpaid minor children expenses.

4. On November 1, 2021, Respondent conducted a hearing on the motion.

5. Respondent continued the case to November 8, 2021, for her Disposition/Ruling.

6. On November 8, 2021, Respondent made a verbal ruling granting reimbursement to Petitioner.

7. On November 15, 2021, Respondent filed an Order stating: "Disposition: See mmo of same date."

8. There was no Motion Minute Order ("MMO") on file.

9. Over the next 12 months, Respondent's office was contacted multiple times with inquiries on behalf of Petitioner regarding the status of the MMO.

10. Respondent did not personally respond to the inquiries, but her judicial aide did so.

11. A complaint was submitted to the Commission on November 4, 2022.

12. The Commission requested Respondent respond to the Complaint.

13. On February 20, 2023, Respondent submitted a Response to the Commission stating that on November 1, 2021, she created a memo indicating that the *Gann* case was "open for evidence."

14. According to Respondent, her aide communicated with Petitioner's attorney based on that memo, and Respondent "acted under the mistaken impression that [Respondent] did not have the necessary evidence."

15. Respondent admits that not timely filing the MMO was improper.

16. Respondent's explanation is that there was a " ... lapse of protocol and memory."

17. Respondent was assigned the paternity case of *Manuel M Vazquez v. Hannah Chaney,* Case No. 2014-DM-007857 ("the *Vazquez* case") in Sedgwick County.

18. On February 12, 2019, Hannah Loewen (f/k/a Hannah Chaney) filed a Verified Motion for *Ex Parte* Temporary Orders and to Modify Custody, Parenting Time, and Child Support, and a Motion for A Protective Order through her attorney in the *Vazquez* case. Respondent issued a Temporary *Ex Parte* Order Suspending Parenting Time against Mr. Vazquez.

19. Following a series of continuances, Respondent held a Pre-Trial Hearing on the Motion on July 22, 2019, and a Mandatory Settlement Conference on August 5, 2019.

20. On August 14-15, 2019, Respondent held an evidentiary hearing and trial. The parties were directed to file proposed findings of facts and conclusions of law by September 6, 2019, and both parties did so through their attorneys.

21. On November 22, 2019, Respondent issued her judgment and Order on the hearing held August 14-15, 2019. Respondent ordered supervised parenting time only for Mr. Vazquez. The time between the evidentiary hearing and the Order was 99 days.

22. On September 15, 2021, Manuel Vazquez filed a Verified Motion to Modify Custody, Parenting Time, and for Other Relief through his attorney.

23. On November 29, 2021, Respondent held a hearing on that Motion and issued a decision against Mr. Vazquez on November 30, 2021.

24. On August 29, 2022, Manuel Vazquez filed a Motion for Relief from Judgment, to Modify Parenting Time, and to Modify Child Support through his attorney. Hannah Loewen filed a response on October 7, 2022, through her attorney.

25. On November 8, 2022, Vazquez's Motion was heard. The Order following that hearing was filed on May 15, 2023. The time between the evidentiary hearing and the Order was 188 days. Throughout this time, Vazquez has been restricted to supervised parenting time and has had to pay for those supervision costs.

26. A complaint was submitted to the Commission on February 7, 2023 (#2864). Complainant submitted additional information on February 28, 2023.

27. The Commission met on March 3, 2023, and sent a letter to Respondent with directions to respond by April 28, 2023.

28. On April 20, 2023, Respondent requested a 30-day extension of time from April 28, 2023, to reply to the complaint. The request was granted and the Commission sent a letter to Respondent requesting Respondent respond to the Complaint by June 23, 2023, so that the response could be circulated to the Panel before their meeting scheduled for July 7, 2023.

29. On June 29, 2023, the Commission had not received a response and called Respondent and advised her that any response is requested no later than July 5, 2023.

30. On July 5, 2023, Respondent submitted a Response to the Commission stating that the complainant in the matter is not a party to the action and that parties to the action were represented by competent counsel during most of the proceedings.

31. According to the Response, the delay in filing an Order following the August 14-15, 2019 hearing was actually only 77 days and part of the delay can be attributed to the fact that the audio recording malfunctioned during the hearing and each attorney participated in the reconstruction of the testimony.

32. According to the Response, the delay in filing an Order following the November 8, 2022 hearing was because "it was necessary to revisit the. facts from the 2019 trial and from the August 2022 motion to modify, to clarify the interaction between the statutes and case law for counsel and parties, explain the factual basis of the trial opinion from which the Petitioner must show a change of circumstances, explain the specific reasons why the actions taken by the Petitioner do not show that a material change of circumstances had occurred, and give a clear explanation to both counsel and parties that the statutory standards for material change of circumstances means a change from the circumstances that existed at the time of trial." *(See* Respondent's paragraph 13.)

33. Respondent asks the panel to find that the delay of 99 days after August 15, 2021, was excusable.

34. Respondent acknowledges that she failed to comply with the statutory and administrative deadlines for filing the order on May 15, 2023 following the hearing in November 2022. Respondent requests that the commission take into consideration that the order required far more technical explanations, that the delay was unavoidable due to the complexity of the order, her caseload, her obligations to comply with the law in her duties as a judge, her physical difficulties with spinal injuries, and complications from COVID in 2020 and 2021, long COVID diagnosis in 2020, and her emotional stress.

FORMAL HEARING

Panel A of the Commission held a public hearing in the above-captioned matter commencing at 9 AM on Thursday, November 30, 2023, 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:

James S. Cooper, Chair
Judge Brenda M. Cameron
Judge Robert W. Fairchild
Norman R. Kelly
Judge Mary B. Thrower

Terrence J. Campbell, Vice Chair and Member Angela Sublett Knight were unable to attend.

On November 30, 2023, the parties rested; the panel took the matter under advisement; and the Commission began deliberations at 1:30 PM.

FINDINGS OF FACT

Pursuant to Supreme Court Rule 619(b), the Panel finds the stipulated facts as jointly agreed to by the parties are proven by clear and convincing evidence. Examiner Thompson did not present any additional facts at the Formal Hearing.

CONCLUSIONS OF LAW

The Panel concludes Respondents actions violated the express provisions of Supreme Court Rule 2.5 of the Judicial Code.

CANON 2
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RULE 2.5
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(B) A Judge shall perform judicial and administrative duties, competently and diligently.

Comments [2], [3], and [4] provide further insight.

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[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

The Commission concludes the Respondent's failure to timely file the Motion Minute Order crediting or reimbursing for unpaid minor children expenses to the Petitioner in *In the Matter of the Marriage of Russell L. Gann, Jr. and Katrina L. Gann.* Case No. 2015-DM-004068 constituted inexcusable delay in violation of Rule 2.5 of the Judicial Code.

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 orders the Respondent to cease and desist from failing to perform judicial duties competently and diligently in violation of Rule 2.5 the Kansas Code of Judicial Conduct.

ADDITIONAL CONDITIONS

The Panel further decides the following additional conditions are part of the cease-and-desist order:

1. Since the Respondent authored and transmitted letters of apology to the complainants, it is the Panel's position that the Respondent should withdraw as judge in *In the Matter of the Marriage of Russell L. Gann, Jr. and Katrina L. Gann.* Case No. 2015-DM-004068 ("the *Gann* case") and *Manuel M Vazquez v. Hannah Chaney,* Case No. 2014-DM-007857 ("the *Vazquez* case").

2. Once Respondent completes and files the Motion Minute Order in *In the Matter of the Marriage of Russell L. Gann, Jr. and Katrina L. Gann.* Case No. 2015-DM-004068, Respondent will provide notification of completion to the Commission.

DATED this 12th day of January, 2024.

FOR THE COMMISSION ON JUDICIAL CONDUCT

JAMES S. COOPER, 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 2629 27) to Linda D. Kirby, c/o Stanton A. Hazlett, Stevens & Brand, L.L.P., 900 Massachusetts Street, Suite 500, Lawrence, Kansas 66044-0189 and a copy was served by email to Stanton A. Hazlett, shazlett@stevensbrand.com, and Todd N. Thompson, todd.thompson@333legal.com, on the 12th day of January, 2024.

DOUGLAS T. SHIMA, Secretary
Commission on Judicial Conduct