

MAY 01 2024

COMMISSION ON JUDICIAL CONDUCT

STATE OF KANSAS

BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS

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

No. 2631

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

On March 3, 2023, 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. 2631, against Robert A. (Tony) Martinez, a district judge in the 29th Judicial District. The information in the Formal Complaint alleged that Respondent engaged in certain conduct which violated the provisions of Canon 1, Canon 2, and Canon 4 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 the following Rules and Canons of the Kansas Code of Judicial Code:

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 1.2

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.

[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.

[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 601B defines "Integrity" as follows:

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

RULE 1.3

Avoiding Inappropriate Use of the Prestige of Judicial Office

A judge shall not lend the prestige of judicial office to advance the personal or *economic interests* of ... others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead in conducting his or her personal business. ...

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 4.1

Political and Campaign Activities of Judges and *Judicial Candidates* in General

(A) A judge or a *judicial candidate* shall not:

...

(3) use court staff, facilities, or other court resources in a campaign for judicial office.

....

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;
 - (2) comply with all applicable election, election campaign, and election campaign fund-raising *laws* and regulations of this jurisdiction;
 - (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and
 - (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.

CONSOLIDATION ORDER

On May 5, 2023, the Panel entered an Order consolidating Complaints #2631 and #2678 for the purpose of the matters being presented at a single hearing. Upon conclusion of a hearing, the Panel will issue separate dispositions.

PREHEARING CONFERENCE

On June 14, 2023, 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 Thompson appeared in person as Examiner for the Commission. The Panel members appearing were: Allen G. Glendenning, Chair; and Judge Bradley Ambrosier, Vice Chair; Judge Thomas E. Malone; Susan Lynn; and Diane H. Sorensen. Chair Glendenning entered pretrial orders and scheduled a formal hearing for November 2-3, 2023.

STIPULATIONS

On August 14, 2023, the parties filed a document entitled "Stipulations by the Parties" setting forth the following agreed stipulations:

1. Facebook posts attached to the Formal Complaints.
2. Transcript of Judge's Decision in *State of Kansas v. Christopher Derritt*, Case No. 18CR656.
3. Brief of Appellant in *State v. Christopher Derritt*, Appellate Docket 20-123,232.
4. Brief of Appellee in *State v. Christopher Derritt*, Appellate Docket 20-123,232.

5. Opinion of the Kansas Court of Appeals in *State v. Christopher Derritt*, Appellate Docket 20-123,232.
6. Audio of hearing in *State v. Christopher Derritt*, Case No. 18CR656.

HEARING CONTINUANCE ORDER

On September 8, 2023, an Order to continue the hearing in Complaint #2631 and #2678 was filed continuing the hearing scheduled for November 2-3, 2023. The hearing in #2631 and #2678 was scheduled for formal hearing on February 26, 2024 – March 1, 2024, at 9 AM. All stipulations and orders previously filed regarding the hearing on these matters still applied.

FINAL PREHEARING ORDER

On January 25, 2024, the parties filed a joint Final Prehearing Order setting forth the following agreed stipulations:

Exhibits:

1. Facebook posts attached to the Formal Complaints.
2. Transcript of Judge's Decision in *State of Kansas v. Christopher Derritt*, Case No. 18CR656. Brief of Appellant in *State v. Christopher Derritt*, Appellate Docket 20-123,232.
3. Brief of Appellee in *State v. Christopher Derritt*, Appellate Docket 20-123,232.
4. Opinion of the Kansas Court of Appeals in *State v. Christopher Derritt*, Appellate Docket 20-123,232.
5. Audio of hearing in *State v. Christopher Derritt*, Case No. 18CR656.

Facts: None

FORMAL HEARING

Panel B of the Commission held a public hearing in the above-captioned matter commencing at 9 AM on Monday, February 26, 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
Judge Nicholas St. Peter
Rosemary Kolich, S.C.L.
Susan Lynn
Judge Thomas E. Malone

Diane H. Sorensen was unable to attend.

On February 28, 2024, the parties rested; the panel took the matter under advisement; and the Commission began deliberations at 3:45 PM.

FINDINGS OF FACT

Respondent stipulated to the admission, accuracy and his authorship of the Facebook posts that were attached to the Formal Complaint and that were later presented at the Formal Hearing as exhibits 1-47. The Panel finds by clear and convincing evidence that Respondent is responsible for the Facebook posts at issue. Following is a list of the stipulated exhibits:

1. **Facebook Posts.**

a. Live video in which Respondent stated:

"Hey everybody. Judge Martinez down here at Divina Fashion, Beauty, and Events with the Cervantes clan.... We're all Mexicans. We're all related We're down here right off 7th and Central in Kansas City, Kansas, so come on down and see us. We're going in there to investigate to see what kind of clothes ... shopping ... Come on down and see the clothes. . . my wife, she has a shirt on that tells you what's going on right now [Shirt states: 'RE-ELECT JUDGE TONY MARTINEZ']. I'm running for re-election, and I'm asking people to vote and support. ... I have sat on the bench and represented, uh proudly.... I'm in the community, of the community, for the community, and I bring that diversity to the bench that nobody else does. So please, come on down first and check out all the good clothes and then remember on August 2nd get out and vote for Judge Martinez.... Check out the shop and come down here and get a tee shirt, and remember, August 2nd is my re-election. Vote Tony Martinez. Your judge. Community judge." The posted text accompanying the video states: "Shopping with my wife!! ... DIVINA AT 7TH and Central!! Tell Connie Cervantes I said Hi!!" Exhibits 1A, 1B, and video 1C.

b. "I encourage everyone that I know to come on down to the last weekend of La Placita at 12th and Central in KCKS!! Great food and music and you can say hi and have a chat with the only Mexican American Judge in WYCO! Come support today!!" Exhibit 2.

c. "Come on down and say hi to your Judge!! Then grab some grub if you are in need at the ARMOURDALE RENEWAL ASSOCIATION feed the need food giveaway!" Exhibit 3.

d. "I keep telling you all to come down to La Placita every other Saturday for some great Mexican and South American food. Where you guys at??? You could talk to Angela and Chico and Edgar Galicia Kc and maybe even a Judge!!" Exhibit 4.

- e. "I encourage everyone to visit [La Placita] in two weeks!!! Come see Edgar and the Judge and chow down on some REAL hispanic [sic] food." Exhibit 5.
- f. A Re-elect Judge Tony Martinez post shows Respondent's wife wearing a "Re-elect Judge Martinez" tee shirt in several photos and states: "Try the fantastic bakery at Benito Michoacan at 13th and Minnesota." Exhibit 6.
- g. A Re-elect Judge Tony Martinez post shows the business logo and website address of the Keep on Truckin' company and states: "Shout out to my buddies Will Hankins and Allison Shirley and their business, KEEP ON TRUCKING!!" [sic] Exhibit 7.
- h. A Re-elect Judge Martinez post shows Respondent at FN Coffee, which he describes as "A Great Coffee Shop in Argentine!!" Exhibit 8.
- i. Don Antonio's Mexican Restaurant. Exhibit 9.
- j. Anita's Cuisine, where Respondent notes that he rarely goes out of Wyandotte County for food, "but Anita's in Meriam is fantastic!!" Exhibit 10.
- k. GG's Birria Barbacoa. Exhibits 11A and 11B.
- l. The Windmill in Turner for coffee with "Judge Martinez" on Respondent's birthday. Exhibit 12.
- m. The Mason Jar Brews and Burgers. Exhibit 13.
- n. Kinship Cafe, where Respondent notes that when he needs "that break, and a great cup of coffee, I go, get me some kinship in strawberry hill!" Respondent urges readers to "tell TJ, Judge said, hey!!" Exhibit 14.
- o. Food Love Cafe where Respondent posted that "the food was great, and the coffee spectacular!! Please go support our hard-working Dotte people!!" Exhibit 15.
- p. Wilson's Pizza. Exhibit 16.
- q. The Farmhouse, which Respondent calls "a great restaurant! One of the best in KC Mo!! Go visit soon!!" Exhibit 17.
- r. Chips and Coins. Exhibit 18.
- s. French Quarter Cafe food truck about which Respondent states the owner "sure can cook!! You all know I only eat the best!! Check him out if you want some great New Orleans style food!!!" Exhibit 19.

- t. Big Daddy's Barbecue. Exhibit 20.
 - u. Tapatio Mexican Grill with "the best dang flan in the city" and "best dang Carnitas taco ever!!" Exhibit 21.
 - v. Garozzo's Ristorante, which Respondent describes as "mighty fine." Exhibit 22.
 - w. Wing Busters, USA, where Respondent urges citizens to "go get some wings at Wing Busters people!!!" Exhibit 23.
 - x. Urban Station coffeehouse. Exhibit 24.
 - y. The Masonic Lodge # 17, where Respondent encourages people to attend "one of their many fish and chili, dog fundraisers" and says "thanks for feeding the judge!" Exhibit 25.
 - z. The Barnyard Babies Festival in Bonner Springs, where Respondent notifies readers that he and his wife will "be there tomorrow." Exhibit 26.
 - aa. The Car and Low Rider Show, where Respondent invites people to "see the Judge's Mighty Mustang and the OUTLAW CORVETTE!!" Exhibit 27.
 - bb. The Armourdale Renewal Association, where Respondent invites readers to "come on down and say hi to your Judge." Exhibit 28. (Emphasis added).
 - cc. The Armourdale Parade and Fiesta. Exhibit 29.
 - dd. Stranded in the City, where Respondent asserts that they have "the best live band in KC." and "you must all come out and listen..." Exhibit 30.
2. *Courtroom usage.* Respondent posted on Facebook photographs taken in the courtroom of his Division and used them for campaigning.
- a. Several photographs show the courtroom interior and flag. Exhibits 31 A-D and 32.
 - b. One photograph has the words "Re-elect Judge Tony Martinez" superimposed over the courtroom photo. Exhibit 32.
 - c. Another photograph using the courtroom interior has Respondent shown holding his nameplate reading "Judge Tony Martinez" and inviting readers to meet with him at the First Ministries in Bonner Springs. Exhibits 33A & 33B.

3. **Court cases.** Respondent posted on Facebook public comments about cases he was handling in his Division. Respondent sometimes used the heading: "TRUE STORIES FROM THE BENCH."
- a. Respondent described an incident when a lady contested her fine for speeding on 1-70. The text of Respondent's post indicates that the subject case was not yet fully resolved. It indicates she was not going to pay the fine that day, and that Respondent offered her the opportunity to pay during the following four months. The post also reflects that Respondent had a negative opinion of the speeding defendant, and that he was "done" listening to her after she provided several explanations for why she could not pay the fine. Exhibit 34.
 - b. Respondent states that an unidentified defendant in the courthouse hallway stopped Respondent (who was in his "street clothes" and had a mask on) and asked for directions to the traffic clerk. Respondent states the individual said he did not "want to mess around because THAT TRAFFIC JUDGE is an A_H_LE!!!" Exhibit 35A. This was later changed to read: "THAT TRAFFIC JUDGE don't play!!!" Exhibit 35B.
 - c. Respondent refers to a defendant in his courtroom the prior day as wearing "daisy dukes and cowboy boots," and that the defendant "got a GOOD SCARE about jail possibilities and a dressing down from the JUDGE." Respondent goes on to say the defendant decided to pay fines to "OUR court" and then "get on back to JOCO." Exhibits 36A and 36B.

4. **Awards and Dignitaries.**

Respondent published or allowed on Facebook photographs of himself in his capacity as judge, and sometimes in his courtroom, with scholarship winners, with legislators, and at business grand openings. Exhibits 5, 6, 12, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47.

- a. FN Coffee Shop in Argentine – posted by business – “KC’s local Judge Tony Martinez & our local entrepreneurs stopped in and have some FN Coffee with US!” Exhibit 37.
- b. GG’s – restaurant started 4 years ago, “The food is fantastic! The BBQ is perfect! The dessert is magnifico!! Now there is room to sit and converse! Hard work and perseverance always pays off! GG’s now at 1032 Minnesota in downtown KCKS. I Salute the little guy who does big things!!” Exhibit 38.
- c. Mendez award – “In 2018 before I became a Judge Ms. Mendez encouraged me. The award she received is promoting Mexican American and Hispanic Culture and the DIVERSITY that comes with it! I am honored that she supports my campaign for re-election!! THANK YOU !!” Exhibit 39

- d. Scholarship Ceremony in Courtroom for scholarship recipients on behalf of Kiwanis Club of KCKS West. Exhibit 40.
- e. Third-Party Post for neighborhood garage sale and meet and greet for Respondent – “our most expanded diverse Judge running for Re-election this year” Exhibit 41.
- f. Picture in Courtroom of Respondent with Kansas Representative Luis Ruiz. Exhibit 42.
- g. Attorney Swearing-in in Courtroom – “It was my honor to swear in a new attorney this past week. Introducing Alexis Person, Attorney at Law!!” Exhibit 43.
- h. Picture in Courtroom of Respondent with participants in ALVIN program. Exhibit 44.
- i. Picture of Respondent with participants in the THRIVE program sitting in the Respondent’s chair on the bench. Exhibit 45.
- j. Picture of Respondent with mother and daughters in the Courtroom. Exhibit 46.
- k. Picture of volunteers for fundraiser – “Much love and respect to Mr. and Mrs. Madrigal and other volunteers from the Eagles Nest, American Legion Hall #213, who made the First Hispanic Scholarship Fundraiser Dance a huge success!! MY PEOPLE!!” Exhibit 47.

5. **Improper Judicial Temperament.**

The Panel heard testimony concerning the allegations in the complaint that Respondent treated attorney Suzanne Valdez and attorney Raymond Probst without judicial temperament and in a manner that does not promote public confidence in the impartiality of the judiciary. Specifically it was alleged that Respondent was impatient, rude, condescending and scolding to Valdez when she was in Respondent’s court. It was alleged that Respondent was rude to Probst in an off the record discussion just prior to a hearing. It is further alleged that on one occasion, Respondent, unaware that his microphone was not muted during a Zoom session, told his assistant: “I hate that guy. Lets move him to the end of the docket,” referring to Probst. The evidence regarding these allegations is limited to the testimony of Suzanne Valdez, Deborah Erikson, Raymond Probst, Thomas “T.C.” Pendland, and Respondent.

Ms. Valdez had only one case in Respondent's court, when she was appointed as a special prosecutor in an aggravated battery/attempted first degree murder trial.¹ She testified that Respondent was polite when she first became involved in the case, but from that initial contact going forward his demeanor was impatient, rude, condescending, and scolding. (Vol II, 291, 295, 296.) At the time of the preliminary hearing, attorney Valdez requested that the court adjourn at 4:30 or 5:00 PM on Friday so she could catch a flight to Phoenix for a family gathering after her brother had passed away. (Vol II, 292) Valdez testified she had a meeting with opposing counsel in Respondent's chambers where he was insensitive to her request. (II, 293.) After a later hearing in the case, Valdez complained to Chief Judge Burns about the treatment she received from Respondent as rude and condescending. (II, 297,298.)

Respondent testified that he did not mistreat Valdez and treated her in the same appropriate manner that he treats all lawyers in his court. (I, 49).

Deborah Erikson was the defense attorney on the case on which Valdez was appointed special prosecutor. Erikson remembered the relevant events quite differently and contradicted Valdez's testimony on several points concerning timing, location, and the substance and tone of exchanges between the attorneys and Respondent. Erikson testified that Respondent was never condescending, rude, scolding or impolite to Valdez at either hearing.

Ms. Valdez's testimony was at times confusing and contradictory, and she testified that her memory of the relevant events was "foggy" due to the fact that she was dealing with a personal family tragedy at the time. Ms. Erikson's testimony was clear and credible. An audio recording of one of the hearings was introduced. (Ex. 259). That audio recording does not support the allegations against Respondent but supports a finding that Respondent acted with proper judicial temperament.

Mr. Probst testified concerning a DUI probation revocation hearing where the client appeared, but Mr. Probst did not. Mr. Probst testified that his absence was due to a calendaring error, that he had not been hired by the client for the revocation hearing, and that he was vacationing out of the country at the time of the revocation hearing. Mr. Probst testified that at the subsequent show cause hearing, he had an off the record discussion with Respondent in the courtroom immediately prior to going on the record for the hearing. (Hearing Vol I, 155). Respondent testified in the Examiner's case in chief that he did not recall an off the record discussion with Mr. Probst before the hearing. However, Mr. Probst produced a tape recording of the meeting and a transcript of the recording. (Ex. 48). Neither the transcript nor the audio supports the allegation of improper judicial temperament. In, fact they support a finding that Respondent acted with proper judicial temperament.

¹ The Complaint also alleged that Valdez complained that she and opposing counsel each provided Suggested Findings of Fact and Conclusions of Law at Respondent's request on a motion for immunity, but Respondent delayed and kept putting off a ruling. Respondent ultimately issued a dismissal without stating the basis for the ruling and without using any of either attorney's suggested Findings or Conclusions. However, at the hearing, Ms. Valdez denied having made that statement (Hearing Vol II, 335, 358-360) and the transcript entered into evidence showed that Respondent timely ruled and stated the reasons for his ruling on the record, from the bench. No evidence was offered in support of this allegation.

Mr. Probst also testified concerning a DUI docket that the Respondent held by Zoom hearing. Mr. Probst testified that another attorney, Penland, sent him a text that while they were waiting for the docket he heard Respondent say that he hated Mr. Probst and was going to put him at the end of the docket. T.C. Pendland testified that he heard Respondent say regarding Mr. Probst, "I hate that guy, so let's put him last". (hearing vol 1, 251) On cross examination, Mr. Pendland stated that he heard Respondent say, "I hate that guy or I can't stand that guy" and that it was one or the other. (I, 255.) Respondent testified that he did not say that he hated Mr. Probst, but that he hated having to deal with a situation that he expected to be completed and that he did in fact put the case at the end of the docket, as he normally does in that situation. (hearing vol 2, 427.) Respondent's administrative assistant also testified she has never heard Respondent state that he hated Mr. Probst or any other person. (Hearing Vol III, 572-573).

Respondent testified that he did not mistreat Probst and treated him the same as he treats all lawyers in his court. (I, 49). The weight of the credible testimony and evidence supports Respondent's testimony.

CONCLUSIONS OF LAW

1. *Facebook Posts.*

The Panel concludes Respondent's admitted actions in making Facebook posts violated Supreme Court Rules 1.2, 1.3, 4.1(A)(3) and 4.2(A)(1) of the Judicial Code. Respondent submitted numerous posts to Facebook in which he promoted certain businesses or organizations, and noted his position as a judge, sometimes combining the promotion with his re-election campaign effort. The Panel highlights several Facebook posts as clear and convincing evidence of violations of the Judicial Code.

A. *Use of Courtroom and Courthouse facilities.*

Rule 4.1(A)(3) provides that a judge or judicial candidate shall not use court staff, facilities or other court resources in a campaign for judicial office.

Respondent admitted at the formal hearing that the pictures of him wearing his robe in the courtroom posted on his personal and re-election Facebook page and his re-election page were violations and he took them down. (Hearing I, 101, 138.) The Panel concludes the following Facebook posts violate Rule 4.1(A)(3) of the Judicial Code:

- i. Photographs show the courtroom interior and flag on personal and election pages. Exhibits 31 A-D.
- ii. Photographs with the words "Re-elect Judge Tony Martinez" superimposed over the courtroom photo. Exhibits 32 A-C.
- iii. Photographs using the courtroom interior with Respondent shown holding his nameplate reading "Judge Tony Martinez" and inviting readers to meet with him at the First Ministries in Bonner Springs. Exhibits 33A-B.

The Commission has previously reprimanded a judge for using the courtroom and courthouse facilities in promotion of re-election. See *In Re Sean Hatfield* (2021). In that case, Judge Hatfield was an incumbent judge running for re-election. He sent mailers out with pictures of himself in his robe standing or seated behind the bench in the courtroom. The photographs were taken on a weekend and not by a member of judicial staff. The Commission entered a cease and desist order after finding violations of improper campaign activity under Rule 4.1(A).

In this case, Judge Martinez acknowledges engaging in similar conduct. Judge Martinez did voluntarily remove the photographs and Facebook postings. The panel finds that Respondent's violations of Rule 4.1(A)(3) are proven by clear and convincing evidence.

B. ***Inappropriate use of Prestige of Judicial Office; Integrity of the Judiciary in an election***

Rule 1.3 provides that a judge shall not lend the prestige of judicial office to advance the personal *or economic interests* of the judge or others, or allow others to do so.

Rule 4.2(A)(1) provides that a *judicial candidate* in a retention, nonpartisan, or partisan *public election* shall act at all times in a manner consistent with the *independence, integrity, and impartiality* of the judiciary

The Panel concludes that the following Facebook posts violate Rules 1.3 and 4.2(A)(1).

- i. ***Personal Facebook Page – Respondent expressly referring to himself as a judge endorsing businesses.***
 - a. Kinship Café – “tell you a little something that should be no surprise. My job as [sic] requires a lot of written decision making and critical thinking. Well when I need that break and a great cup of coffee I go get me some Kinship in Strawberry Hill! Tell TJ. Judge said Hey” Exhibit 14A.
 - b. La Placita - "I encourage everyone that I know to come on down to the last weekend of La Placita at 12th and Central in KCKS!! Great food and music and you can say hi and have a chat with the only Mexican American Judge in WYCO! Come support today!!" Exhibit 2.
 - c. Live video in which Respondent stated: "Hey everybody. Judge Martinez down here at Divina Fashion, Beauty, and Events with the Cervantes clan.... We're all Mexicans. We're all related We're down here right off 7th and Central in Kansas City, Kansas, so come on down and see us. We're going in there to investigate to

see what kind of clothes ... shopping ... Come on down and see the clothes. . . my wife, she has a shirt on that tells you what's going on right now [Shirt states: 'RE-ELECT JUDGE TONY MARTINEZ']. I'm running for re-election, and I'm asking people to vote and support. ... I have sat on the bench and represented, uh proudly.... I'm in the community, of the community, for the community, and I bring that diversity to the bench that nobody else does. So please, come on down first and check out all the good clothes and then remember on August 2nd get out and vote for Judge Martinez.... Check out the shop and come down here and get a tee shirt, and remember, August 2nd is my re-election. Vote Tony Martinez. Your judge. Community judge." The posted text accompanying the video states: "Shopping with my wife!! ... DIVINA AT 7TH and Central!! Tell Connie Cervantes I said Hi!!" Exhibits 1A, 1B, and video 1C.

ii. *Personal Facebook Page - Endorsements of businesses with no mention of Respondent's position as a judge in the post, but posted on a page in which the profile pic of a judge's gavel with "Wyandotte" on the handle identified him as a judge:*

- a. The Farmhouse – "An American-Mexican chef owns and operates this restaurant! His name is Vincent Parades and he is MY GODSON!! It is a great restaurant! One of the best in KC Mo!! Go visit soon!!" Exhibit 17.
- b. French Quarter Cafe food truck about which Respondent states the owner "sure can cook!! You all know I only eat the best!! Check him out if you want some great New Orleans style food!!!" Exhibit 19.
- c. Tapatio Mexican Grill with "the best dang flan in the city" and "best dang Carnitas taco EVER!!" Exhibit 21A-B.

iii. *Endorsements Posted on Campaign Page "Re-elect Judge Tony Martinez"*

- a. A Re-elect Judge Tony Martinez post shows Respondent's wife wearing a "Re-elect Judge Martinez" tee shirt in several photos and states: "Try the fantastic bakery at Benito Michoacan at 13th and Minnesota." Exhibit 6.

- b. A Re-elect Judge Tony Martinez post shows the business logo and website address of the Keep on Truckin' company and states: "We must continue to support our small businesses located here in WYCO. Shout out to my buddies Will Hankins and Allison Shirley and their business, KEEP ON TRUCKING!! Will and Allison started small and have grown on their hard work and business smarts!!" Exhibit 7.
- c. Respondent shared a post from FN Coffee on his Re-elect Judge Martinez page – "SUPPORT LOCAL!! A Great Coffee Shop in Argentine!!" Exhibit 8.

The Judicial Code expressly prohibits a judge from lending the prestige of judicial office in order to advance the personal or economic interests of the judge or others. Rule 1.3. This caution applies equally to a judge during an election cycle. See Rule 4.1, Comment 11 ("The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices.) The Respondent's actions of endorsing businesses in the above Facebook posts clearly violate Rules 1.3 and 4.2 of the Judicial Code. The Respondent would have us apply a "knowing" standard requiring a showing of a specific intent to advance his own interests or the interests of the businesses and organizations he was promoting. The Panel finds that the test under Rule 1.3 is whether a reasonable person would perceive the Respondent's actions as using the prestige of his judicial position to advance the personal or economic interests of the judge or others, which standard has been shown by clear and convincing evidence.

Clearly, the judge feels strongly in supporting his community and local businesses. His passion for the members of his community was evident at the hearing and is commendable. However, that support cannot cross the line of promoting the economic interest of others. Businesses and organizations use social media endorsements provided by others. While judges are not prohibited from using social media, judges do have special responsibilities in maintaining the integrity of the judiciary. See Online Social Networking to the Ethical Implications of Writing Online Reviews and Using the "like" function on social networking platforms, California Judicial Ethics Committee, Formal Ethics Opinion 78, January 2020. In accepting a position on the bench, a judge foregoes the ability to endorse a business. Judges are prohibited from entering the promotion arena and engaging in communications that can reasonably be seen as promoting their own or the economic interests of others. Respondent's conduct crossed that line.

Respondent's violations of Rules 1.3 and 4.2(A)(1) are proven by clear and convincing evidence.

C. Public Statements by Respondent as Judge

**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.

[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.

Respondent posted on Facebook public comments about cases he was handling in this Division. Respondent sometimes used the heading: "TRUE STORIES FROM THE BENCH." These include:

- i. Respondent states that an unidentified defendant in the courthouse hallway stopped Respondent (who was in his "street clothes" and had a mask on) and asked for directions to the traffic clerk. Respondent states the individual said he did not "want to mess around because THAT TRAFFIC JUDGE is an A H_LE!!!" Exhibit 35A. This was later changed to read: "THAT TRAFFIC JUDGE don't play!!!" Exhibit 35B.
- ii. Respondent refers to a defendant who appeared in his courtroom the prior day as wearing "daisy dukes and cowboy boots," and that the defendant "got a GOOD SCARE about jail possibilities and a dressing down from the JUDGE." Respondent goes on to say the defendant decided to pay fines to "OUR court" and then "get on back to JOCO." Exhibits 36A and 36B.

The Panel concludes that these posted comments do not promote public confidence in the integrity and impartiality of the judiciary. Respondent conceded that the first comment was inappropriate, and he took it down. (Hearing Vol. I p. 35).

2. *Improper Judicial Temperament.*

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.

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 1.2 requires that a judge act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary. The complaint alleges that Respondent violated Rule 1.2 by not treating lawyers and parties without judicial temperament based on the evidence of his treatment of Susanne Valdez and Raymond Probst.

The panel has considered the testimony of Susan Valdez, Debera Erikson, Respondent and the audio recording of portions of the relevant preliminary hearing. The panel concludes that the allegations that Respondent acted without judicial temperament towards Ms. Valdez were not proven by clear and convincing evidence. In fact, the provided audio supports a finding that Respondent acted with proper judicial temperament.

The Panel has considered the testimony of Raymond Probst, Respondent and the audio recording and transcript of the off-record conversation at the show cause hearing. The Panel concludes the allegations that Respondent acted without judicial temperament towards Probst are not proven by clear and convincing evidence. The transcript and audio of that conversation supports a finding that Respondent acted with proper judicial temperament.

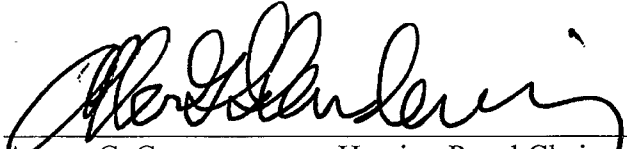
The Panel has considered the testimony of Raymond Probst, T.C. Pendland, Steffani Kays and Respondent concerning the alleged "I hate him" comment at the Zoom hearing. The panel concludes that this allegation has not been proven by clear and convincing evidence.

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 in violating Rules 1.2, 1.3, 4.1(A)(3) and 4.2(A)(1) of the Kansas Code of Judicial Conduct by: 1) using courtroom facilities in a campaign for judicial office; 2) inappropriately using the prestige of judicial office, and 3) taking actions that do not promote confidence in the judiciary.

DATED this 1st day of May, 2024.

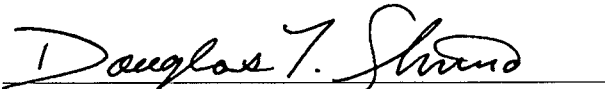
FOR THE COMMISSION ON JUDICIAL CONDUCT



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 2637 57) to Robert A. (Tony) Martinez, c/o Aldo P. Caller, Santa Fe Law Building, 8000 Foster Street, Overland Park, Kansas 66216 and a copy was served by email to Aldo P. Caller, aldocaller@msn.com and Todd N. Thompson, todd.thompson@333legal.com, on the 1st day of May, 2024.



DOUGLAS T. SHIMA, Secretary
Commission on Judicial Conduct