

JUN 12 2023

COMMISSION ON JUDICIAL CONDUCT

STATE OF KANSAS

BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS

Inquiry Concerning Judicial Candidate)
)
Lisa D. Montgomery)

No. 2711

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

On January 19, 2023, Panel A 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. 2711, against Lisa D. Montgomery, a judicial candidate for a position in the 14th Judicial District. The information in the Notice alleged that Respondent engaged in certain conduct which violated Rule 4.1 of Canon 4 (2023 Kan. S. Ct. R. 517).

The Rules and Canons provide in pertinent part:

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:

(4) *knowingly*, or with reckless disregard for the truth, make any false or misleading statement;

Comment [7] of Rule 4.1 provides:

[7] "Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(4) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading."

PREHEARING CONFERENCE

On March 3, 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, Amy E. Elliott. Todd Thompson appeared in person as Examiner for the Commission. The Panel members appearing were: Diane H. Sorensen, Chair; Allen G. Glendenning, Vice-Chair; Rosemary Kolich, Hon. Thomas E. Malone, and Hon. Nicholas M. St. Peter. Chair Sorensen entered pretrial orders and scheduled a formal hearing for May 12, 2023.

STIPULATIONS

On April 13, 2023, the parties filed a joint Stipulations by Parties setting forth the following agreed stipulations:

Exhibits:

1. News article from the Montgomery County Chronicle dated June 29th, 2022, and entitled: "Disorder in the Court?"
2. Judge Gettler email to Respondent dated June 22, 2022.
3. Audio/video recording of the meeting of the Montgomery County Commission on June 27, 2022.
4. Transcript of the meeting of the Montgomery County Commission on June 27, 2022.
5. Correspondence sent by counsel on behalf of Respondent to Kansas Commission on Judicial Conduct, dated September 27, 2022 (including all attachments).
6. Correspondence sent by counsel on behalf of Respondent to Kansas Commission on Judicial Conduct, dated November 22, 2022.
7. Facebook comments regarding the news article, Exhibit 1.
8. Affidavit of Andy Taylor dated August 19, 2022.

Facts:

1. In 2022, Respondent was a judicial candidate for district court judge in the 14th Judicial District.
2. Respondent was, at the time of the candidacy, the Montgomery County Attorney.

3. On June 22, 2022, Chief Judge Gettler notified Respondent by email that a new local rule would be implemented on August 1, 2022, regarding the filing deadlines for Journal Entries of Sentencing and Amended Informations.
4. In the same email, Chief Judge Gettler reminded Respondent of an existing local rule that Respondent's office had not been following. The rule required the designations of North or South on a complaint where the Montgomery County Sheriff's Office is the arresting agency.
5. In response to the notification, Respondent sent an email to the 14th Judicial District defense bar advising the attorneys of a change in Respondent's office policy as a result of "Judge Gettler's New Local Rule."
6. Respondent attended the June 27, 2022 meeting of the Montgomery County Commissioners, and addressed the Commission. A true and complete copy of the relevant portion of that meeting has been transcribed, and parties stipulate to the accuracy of the transcript of that proceeding.
7. As a result of the commission meeting, Andy Taylor of the Montgomery County Chronicle published an article entitled, "Disorder in the Court?"
8. The article reflects that Respondent told the Montgomery County Commission that members of the Montgomery County Attorney's Office "complained of a 'hostile' working environment being imposed by Gettler."

FORMAL HEARING

Panel B of the Commission held a public hearing in the above-captioned matter commencing at 9 AM on Friday, May 12, 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:

Diane H. Sorensen, Chair
Allen G. Glendenning, Vice-Chair
Judge Bradley E. Ambrosier
Sister Rosemary Kolich
Judge Thomas E. Malone
Judge Nicholas M. St. Peter

Member Susan Lynn was unable to attend.

On May 12, 2023, the parties rested; the panel took the matter under advisement; and the Commission began deliberations at 10:15 AM.

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.

CONCLUSIONS OF LAW

The panel has reviewed the transcript of the relevant section of the commission meeting where Montgomery made the comments at issue. Those statements, when put in context of the entire meeting, provide Montgomery's misleading intent in the making the statement in a public meeting that "One staff member said that she felt Judge Gettler had created a hostile work environment for our office, and my staff walked out about 30 minutes early in protest." From these statements at the commission meeting, Andy Taylor of the Montgomery County Chronicle reported that "Montgomery County's chief prosecuting attorney claimed Monday that a hostile working relationship had erupted between the county attorney's office and Judge Jeffrey Gettler" and "Because of the load that is being placed on her office to effect the sentencing journal entries, the county attorney's office staff members complained of a 'hostile' working environment being imposed by Gettler."

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When a judge or attorney is a judicial candidate, Canon 4 of the Judicial Code is applicable to the candidate's conduct. We start our discussion with the foundation that judges in Kansas are held to a higher standard than members of the general public. The Judicial Code emphasizes in Comment 7 to Rule 4.1 that a judicial candidate must not just be fair and accurate in any statements, but the statements "must be *scrupulously* fair and accurate." (emphasis added.) The Judicial Conduct Commission has previously discussed the nuances of words uttered by judicial candidates when the commission discussed at length the differences between a candidate calling an opponent a "Socialist" and its connotations when the opponent only admitting to being a "Democratic Socialist." See *In the Matter of Hatfield*, Complaint No. 2348 (Respondent's statement that Thompson was a "Socialist" exceeded the limits of fair comment and left his audience with a false impression of the political position of his campaign). See *In the Matter of Cullins*, 312 Kan. 798, 819, 481 P.3d 774 (2021)("Everyone agrees that words and phrases in this context are important.").

Judges, and candidates, are bound by the higher standards set by the Judicial Code. As explained earlier, among those standards for judges in elected judicial districts is the duty to be "scrupulously fair and accurate" in judicial campaigns. This duty is embedded in maintaining the public's confidence in the integrity of the judiciary. See *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 848, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978) (Stewart, J., concurring) ("There could hardly be a higher governmental interest than a State's interest in the quality of its judiciary."). We reiterate how the Scope of the Kansas Judicial Code establishes a minimum level of ethical conduct and that judges should "strive to exceed the standards of conduct established by the Rules." Elevation to the bench carries the burden of "striving to exceed" the standards of conduct established by the rules. SCOPE [4]. See *In re Johnson*, 240 Kan. 334, 337, 729 P.2d 1175 (1986) ("Disciplinary action can be exercised not only for the purpose of enforcing legal rights but for the additional purpose of enforcing honorable conduct on the part of the court's own officers.").

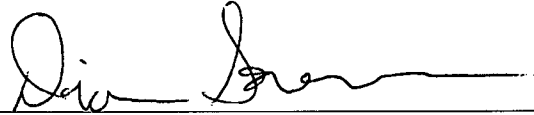
A majority of the panel concludes the charge in the formal complaint that Respondent made a misleading statement to the Montgomery County Commission regarding the phrase "hostile work environment," and used that term of art for her own benefit, is established by clear and convincing evidence. The majority concludes Montgomery's statement violated Rule 4.1 of Canon 4, particularly referencing Comment 7, requiring a judge and judicial candidate to be "scrupulously fair and accurate in all statements." (2023 Kan. S. Ct. R. 517). The dissenting panel member would find Montgomery's statements were simply an opinion and not a statement of fact.

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 future activity in violation of the above-cited Canons.

DATED this 12th day of June, 2023.

FOR THE COMMISSION ON JUDICIAL CONDUCT



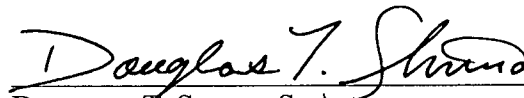
DIANE H. SORENSEN, Hearing Panel Chair
Commission on Judicial Conduct

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the AMENDED Findings of Fact, Conclusions of Law and Disposition was served by email on this 12th day of June, 2023, to:

Amy E. Elliott - amyelliottesq@gmail.com

Todd N. Thompson - todd.thompson@333legal.com



DOUGLAS T. SHIMA, Secretary
Commission on Judicial Conduct