

STATE OF KANSAS
BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning
A Judge

Docket No. 512

ORDER

Members of the Commission present include: Mr. Mikel L. Stout, Chair; Hon. Theodore B. Ice, Mr. Ray Call, Mr. Robert A. Creighton, and Hon. James W. Paddock.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. The Honorable Robert D. Watson is a retired district judge from the 18th Judicial District at Wichita, Kansas, who is eligible to accept judicial assignments.
2. While on the bench, the Honorable Robert D. Watson presided over *State of Kansas vs. Bennie L. Plunkett, Jr.*, 92 CR 2012, 92 CR 2274, and 91 CR 2122. Bennie L. Plunkett appealed his convictions to the Kansas Supreme Court, No. 70,573, and filed a judicial ethical complaint against Judge Watson with the Commission on Judicial Qualifications. The Supreme Court reversed the convictions, concluding that Judge Robert D. Watson's remarks during trial prejudiced defendant Plunkett's substantial rights to a fair trial. See *State v. Plunkett*, 257 Kan. 135, 891 P.2d 370 (1995).
3. To this Commission, Mr. Plunkett complained specifically that Judge Watson had asked inappropriate questions of witnesses, treated his lawyers in an inappropriate manner, and injected personal opinion into the trial.
4. A review of the published opinion in *State v. Plunkett*, 257 Kan. 135, 891 P.2d 370 (1995), reveals the following facts:

a. In jury orientation, Judge Watson "stated suspicion of defense counsel's motive for sitting away from the bench," made favorable comments about the prosecution but made no favorable comments about the defense, and suggested "that he knew something he could not reveal about one of the defense attorneys." See 257 Kan. at 139.

b. Judge Watson asked a question of police chemist Mary Ayers which was "slanted in favor of the State" and "called for a legal determination." See 257 Kan. at 140.

c. In responding to the defense counsel's objection to Judge Watson's question to Ayers, Judge Watson suggested, in the presence of the jury, "that defense counsel's objection was being made for personal reasons rather than legal reasons" and "implied that he thought defense counsel had made an error in not asking it [the question]." See 257 Kan. at 140-141.

d. "After closing arguments, Judge Watson told the jury, '[Y]ou've heard all of the talk you're going to hear about this case right now, except what you all generate in carrying out your burden that -- the final result of which you have to do that you don't like, *no more than the Court is going to enjoy his final obligation in regards to this case.*' (Emphasis added.)" 257 Kan. at 141.

e. During defense counsel's cross-examination of victim S.B., "Judge Watson interjected with a statement of his own belief of what the grandmother had done, based on S.B.'s prior testimony." 257 Kan. at 142.

CONCLUSIONS OF LAW

1. Canon 3 of Rule 601 of the Rules Relating to Judicial Conduct provides, *inter alia*:

A Judge Should Perform the Duties of His Office Impartially and Diligently

A.(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity...

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law...

2. The Commission has determined that Respondent violated Canon 3A(3) and (4) in his conduct during the criminal trial of Bennie L. Plunkett, Jr.

IT IS THEREFORE ORDERED that the Honorable Robert D. Watson cease and desist from any activity in violation of the above-cited Canon.

This Order, if accepted, shall be made public pursuant to Rule 611(a).

The Secretary of the Commission on Judicial Qualifications is hereby instructed to mail a copy of this Order with a copy of Rule 611, as adopted by the Supreme Court of Kansas, to Respondent. Respondent is requested, in accordance with Rule 611, to either (a) comply by accepting the Order by written acknowledgment directed to the Secretary of the Commission; or (b) refuse to accept the Order. Any agreement to comply or refusal to accept shall be served upon the Commission within twenty days from this date. In the event the Respondent shall not agree to comply by accepting this Order by written acknowledgment within said period, Respondent shall be deemed to have refused to accept this Order.

BY ORDER OF THE COMMISSION dated this 18th day of September, 1995.

COMMISSION ON JUDICIAL QUALIFICATIONS

By: Carol G. Green
Carol G. Green, Secretary

APPROVED & ACCEPTED

10/6/95
(date)
Robert D. Watson
Robert D. Watson, Respondent

FILED

OCT 10 1995

COMMISSION ON
JUDICIAL QUALIFICATIONS