

STATE OF KANSAS
BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning
A Judge

Docket No. 599

ORDER

Members of the Commission present include: Mr. Mikel L. Stout, Chair; Mr. David J. Waxse, Vice-Chair; Hon. J. Patrick Brazil; Hon. Kathryn Carter; Mr. Robert A. Creighton; Hon. Theodore B. Ice; and Hon. James W. Paddock.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. The Honorable Michael A. Barbara is a retired district judge from the Third Judicial District at Topeka, Kansas, who is eligible to accept judicial assignments.
2. On November 7, 1995, Respondent was charged with driving a motor vehicle while under the influence of alcohol, in violation of K.S.A. 8-1567, or a comparable municipal ordinance.
3. Respondent entered into a diversion agreement in Topeka Municipal Court on April 29, 1996, in which he agreed to the facts in the police report.

This Commission's investigation did not reveal a pattern of substance abuse, and the case against Respondent was handled by law enforcement and the courts as any other similar case involving a private citizen would have been handled. Respondent made a mistake and has accepted his responsibilities. For any private citizen, the matter would be at an end. Respondent, however occupies a position of public trust as a retired judge of the district court who accepts judicial assignments, and, as such, is subject to a higher standard.

The Commission recognizes that Respondent has had a long and distinguished career as a jurist and professor of law, contributing significantly to the jurisprudence of this State both from the bench and from the classroom.

CONCLUSIONS OF LAW

1. Canon 2 of the Canons of Judicial Conduct, Rule 601A, provides in relevant part:

"A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's activities.

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity...of the judiciary." 1995 Kan. Ct. R. Annot. 401.

2. The Commission has determined that Respondent violated Canon 2A when he drove a motor vehicle while under the influence of alcohol in violation of the law.

IT IS THEREFORE ORDERED that the Honorable Michael A. Barbara cease and desist from any act or acts that could be found to violate the laws of the State of Kansas, including those laws relating to the consumption and use of alcoholic beverages.

This Order, if accepted, shall be made public pursuant to Rule 611(a). See 1995 Kan. Ct. R. Annot. 427-28.

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 2nd day of July, 1996.

COMMISSION ON JUDICIAL QUALIFICATIONS

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

APPROVED & ACCEPTED

(date)

7/16/96
Michael A. Barbara
Michael A. Barbara, Respondent

FILED

JUL 22 1996

COMMISSION ON
JUDICIAL QUALIFICATIONS