

STATE OF KANSAS
BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

FILED
DEC 7 - 1998

INQUIRY CONCERNING)
ERIC YOST)
DISTRICT JUDGE)

Docket No. 638

COMMISSION ON
JUDICIAL QUALIFICATIONS

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISPOSITION

On June 16, 1998, a Notice of Formal Proceedings was filed with the Commission on Judicial Qualifications, pursuant to Rule 611(b) of the Rules of the Supreme Court of the State of Kansas Relating to Judicial Conduct, alleging violation of those rules against the Honorable Eric Yost, Judge of the District Court of Sedgwick County, Kansas, the 18th Judicial District. See Rule 601A (1997 Kan. Ct. R. Annot. 423-468).

A prehearing conference call was conducted on September 22, 1998, and a briefing schedule was set. Respondent and the Commission Examiner filed written briefs and approved a prehearing conference order which contains stipulations resolving all factual issues and listing the legal issues for determination.

On November 6, 1998, the Commission heard oral argument on the briefs in Topeka, Kansas. Members of the Commission present for this hearing were: David J. Waxse, Chair; Judge Kathryn Carter, Vice-Chair; Chief Judge J. Patrick Brazil; Ray Call; Robert A. Creighton; Judge James W. Paddock; and Carol Sader. Judge Theodore Ice was not present; however, by agreement of the parties and having read the briefs, Judge Ice participated in the decision. Mikel L. Stout recused in this matter. Edward G. Collister, Jr., Examiner, appeared in support of the Notice

of Formal Proceedings. Respondent appeared personally and through counsel, David N. Johnson.

The Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Commission Examiner and Respondent stipulated that the following facts are true and are adopted by this Commission:

1. The 18th Judicial District is a judicial district in which judges are chosen by the voters in partisan elections.
2. Respondent won the Republican primary for Judge of Division 12 of the 18th Judicial District on August 6, 1996. He was unopposed in the general election and was elected to the office of District Judge on November 5, 1996.
3. A receipts-and-expenditures report filed on July 29, 1996, reflected a \$15,000 loan personally guaranteed by Respondent from Intrust Bank.
4. A receipts-and-expenditures report filed on October 29, 1996, reflected additional \$20,000 in loans personally guaranteed by Respondent for a total indebtedness of \$35,000 attributable to campaign finance.

5. A post-election fund-raiser was held on January 31, 1997, to retire the campaign debt. The event included a general reception at 5:30 p.m. followed by a private reception at 7:00 p.m.

The bottom portion of the invitation was to be mailed back to the judge's campaign committee and stated in part: "[Y]ou can count on me to support Eric!" There was space for the recipient's name, address, and phone number, followed by choices to be marked by recipient: 1) that recipient would attend the general reception "for the suggested donation of \$15.00 per person;" 2) that recipient would attend the private reception "for the suggested donation of \$250.00 per person;" 3) that recipient would be willing to make calls on the judge's behalf; and 4) that recipient was unable to attend but had enclosed a donation.

Solicitations for contributions to retire the debt were made to attorneys who might appear before Respondent in the exercise of his judicial duties in the 18th Judicial District.

6. Judge Yost attended both the general reception and the private reception.

CONCLUSIONS OF LAW

1. Canon 5 of the Rules of the Supreme Court Relating to Judicial Conduct as set out in Rule 601A of the Rules of the Supreme Court provides in relevant part:

A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

...

C. Judges and Candidates Subject to Public Election

...

(2) A candidate shall not personally solicit or accept campaign contributions or solicit publicly stated support. A candidate subject to public election may, however, establish committees of responsible persons to solicit and accept reasonable campaign contributions, to manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy. Such committees may solicit and accept reasonable campaign contributions and public support from lawyers....

2. Based upon an affirmative vote of five or more members of the Commission, the Commission finds that, by attending a fundraising function on his behalf where his supporters were expected to make contributions, Respondent violated Canon 5C(2) in that his attendance constituted a personal solicitation of campaign contributions.

DISPOSITION

1. The Commission has not previously interpreted Canon 5C(2) to prohibit judicial candidates from attending fundraising events on their own behalf where supporters were expected to make contributions; therefore, in

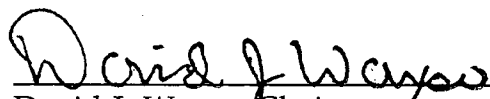
fundamental fairness, Respondent should not be sanctioned under these circumstances.

2. The Commission advises Kansas judges and judicial candidates that this conduct will be subject to sanction in the future.

3. The Commission has considered all motions ruled on by the Chair and reaffirms the Chair's rulings. All other issues raised by the Respondent are moot or found to be without merit. The pending motion for attorney fees and expenses is overruled. No costs are assessed in this matter.

DATED this 7th day of December 1998.

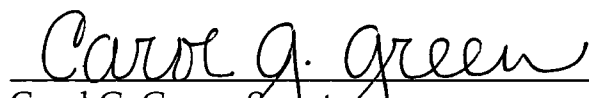
FOR THE COMMISSION ON JUDICIAL QUALIFICATIONS



David J. Waxse, Chair

Certificate of Mailing

I hereby certify that a true copy of the Findings of Fact, Conclusions of Law, and Disposition was mailed to the Hon. Eric Yost, Div. 12, District Court, Sedgwick County Courthouse, 525 N. Main Street, Room 5-1, Wichita, KS 67203-3773; David N. Johnson, Attorney at Law, P.O. Box 797, Wichita, KS 67201-0797; and Edward G. Collister, Jr., Attorney at Law, 3311 Clinton Parkway Court, Lawrence, KS 66047, by depositing same in the United States mail, postage prepaid on the 7th day of December 1998.



Carol G. Green, Secretary