



STATE OF KANSAS

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning
A Judge

Docket No. 882

ORDER

Members of the Commission present include: Hon. Jennifer L. Jones, Chair; Nancy Anstaett, Vice-Chair; Hon. J. Patrick Brazil; Hon. Theodore B. Ice; Christina Pannbacker; and Carolyn Tillotson. William Swearer recused.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. The Honorable Eric Yost, Respondent, is a District Judge in the 18th Judicial District, serving as presiding judge of the Family Law Department.
2. The Commission received a complaint alleging that the Respondent met with one party to litigation without the other party's knowledge or the presence of counsel.
3. The legal proceeding out of which this complaint arises is one involving visitation rights of the natural father after paternity was either established or acknowledged.
4. In response to an inquiry by the Commission, Judge Yost stated that a hearing officer had ordered visitation which had not yet occurred at the time of the incident in question.
5. Judge Yost further indicated in his response that the natural father had come to Judge Yost's chambers to inform the judge's administrative assistant, Becky Gragg, that he wanted visitation orders enforced.
6. On September 2, 2004, Judge Yost decided, *sua sponte*, to treat the natural father's request for assistance as a K.S.A. 2004 Supp. 60-1628(b) motion and set it for hearing later that day.

7. On September 2, 2004, at 1:38 p.m. Judge Yost sent an e-mail to the natural mother's attorney, stating that the natural father "is coming up to see me this afternoon about having been denied visitation, notwithstanding Judge Hollis' explicit order of Aug 3. Will you be available by phone to talk about this matter?" No time was set.
8. At some point later on the afternoon of September 2, 2004, Judge Yost convened a hearing on the record with the natural father present as well as Hearing Officer Hollis of Family Law Court, 18th Judicial District. There was no appearance by or for the natural mother.
9. Judge Yost began the hearing with a statement. "It really isn't proper for us to have one side and not the other side, but my concern is you getting visitation."
10. Following the September 2 hearing at 5:17 p.m., Judge Yost again e-mailed the natural mother's attorney directing her to "comply with any order that Judge Hollis may have entered in regard to visitation."

CONCLUSIONS OF LAW

1. Canon 3B(7) of the Code of Judicial Conduct, Rule 601A, provides in relevant part:

"B. Adjudicative Responsibilities.

....

- (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.^o A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding"

2. K.S.A. 2004 Supp. 60-1628 provides in relevant part:
 - (b) In the event the court is asked to issue an *ex parte* order modifying a final child custody or residential placement order based on alleged emergency circumstances, the court shall:
 - (1) Attempt to have the nonmoving party's counsel, if any, present before taking up the matter.
 - (2) Set the matter for review hearing at the earliest possible court setting after issuance of the *ex parte* order, but in no case later than 15 days after issuance.
 - (3) Require personal service of the order and notice of review hearing on the nonmoving party.

No *ex parte* order modifying a final custody or residential placement order shall be entered without sworn testimony to support a showing of the alleged emergency.”
3. The Commission has determined that Respondent violated Canon 3B(7) in conducting an *ex parte* hearing regarding visitation.
4. To the extent that Respondent considered the hearing to be one pursuant to K.S.A. 2004 Supp. 60-1628(b), the attempt to meet the requirement of subsection (1) was wholly inadequate in that the natural mother's counsel was given short notice and no time certain in which to respond. No attempt was made to comply with subsections (2) and (3).

IT IS THEREFORE ORDERED that the Honorable Eric Yost cease and desist from conducting *ex parte* hearings, in violation of the above-cited Kansas Statute and Canon.

This Order, if accepted, shall be made public pursuant to Rule 611(a). See 2004 Kan. Ct. R. Annot. 571.

Cease and Desist Order
Docket No. 882
Page Four

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 8th day of August, 2005.

COMMISSION ON JUDICIAL QUALIFICATIONS

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

APPROVED & ACCEPTED

8-10-05
Date

[Signature]
Eric Yost, Respondent