

STATE OF KANSAS

**COMMISSION ON
JUDICIAL QUALIFICATIONS**

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING)
DAVID R. PLATT,)
DISTRICT JUDGE)

Docket No. 612

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISPOSITION

On April 22, 1997, 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 violations of those rules against the Honorable David R. Platt, Judge of the District Court of Geary County, Kansas, the 8th Judicial District. See Rule 601A (1996 Kan. Ct. R. Annot. 406-433).

On October 3, 1997, the Commission held a hearing in Topeka, Kansas, at which hearing the Examiner for the Commission and Respondent called witnesses and presented evidence. 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 Theodore B. Ice; Judge James W. Paddock; Carol Sader; and Mikel L. Stout. Edward G. Collister, Jr., Examiner, appeared in support of the Notice of Formal Proceedings. Respondent appeared personally and through counsel, Thomas D. Haney.

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

FINDINGS OF FACT

The Commission concludes the following facts are established by clear and convincing evidence.

1. In the summer of 1994, Javette Campbell received a jury questionnaire

from the office of the clerk of the District Court summoning her for jury duty. Ms. Campbell requested that she be excused from jury duty because she did not have transportation and she was the caretaker of several very small children. Her request was considered but was denied. She was called for jury duty for the case of *State v. Taylor*, No. 94 CR 188, and did not appear. Respondent issued an Order to Show Cause to Ms. Campbell on October 24, 1994. The order alleged that she failed to comply with a summons to appear for jury service and was ordered to appear on November 8, 1994. Court records indicate she was served with a copy of the order to appear.

Ms. Campbell did not appear on November 8, 1994. On November 10, 1994, Respondent issued a bench warrant for failure to appear. A bond of \$500.00 was endorsed on the warrant. Ms. Campbell was arrested on the warrant June 24, 1995. On June 26, 1995, Ms. Campbell applied for appointed counsel by filing an affidavit indicating she was indigent. Because Judge Platt did not know the application had been filed, he did not consider her application for counsel.

2. On July 18, 1995, Respondent issued an order by a notation on the bench warrant which stated: "Ms. Campbell appeared, claimed problems with kids and transportation, and was instructed to follow all orders and summonses and would be placed on a new panel."

3. Later, Ms. Campbell received another jury summons to appear for jury duty on October 25, 1995. She did not appear, and a bench warrant was issued for her arrest. She was arrested on October 26, 1995.

4. On October 26, 1995, in Case No. 95 C 240 called a "juror competency hearing," Ms. Campbell appeared unrepresented by counsel. Respondent stated that he had found her in contempt; however, there is no record to indicate a hearing was held to determine if a contempt had occurred. Ms. Campbell attempted to inform

the Court that she had been present in court on October 25, 1995, but was not allowed to complete her explanation. Respondent stated that Ms. Campbell had failed to purge herself of contempt, but that he would allow her to purge herself of contempt by attending a trial and being in court at all times during the trial.

5. On February 12, 1996, Ms. Campbell was noticed to report for jury duty on February 20, 1996. Ms. Campbell claims she did not receive the notice. She did not appear on February 20, 1996, for jury duty.

6. Respondent, mistakenly believing that he had previously imposed sentence on contempt, issued a bench warrant for Ms. Campbell. She was arrested February 24, 1996. The bench warrant ordered: "No bond is set on this warrant, as the juror will be serving her sentence." On March 1, 1996, Mr. Rodney C. Olsen requested a hearing on behalf of Ms. Campbell. Judge Platt conducted a hearing and offered Ms. Campbell an opportunity to purge herself of contempt by attending the trial of Case No. 94 C 216, and she accepted the offer.

7. Ms. Campbell failed to appear at the trial in Case No. 94 C 216 on March 11 and 12, 1996, as she had agreed to do and on March 13, 1996, Respondent issued a bench warrant for her arrest without bond specifying ". . . juror will be serving her sentence of six months." Ms. Campbell was arrested on April 5, 1996, and confined in the Geary County jail until her sentence was vacated.

8. There was no court hearing where Ms. Campbell had been confronted with an accusation in contempt, where she was determined to be in contempt, or where a sentence of six months incarceration had been imposed.

Ms. Campbell was confined for approximately 40 days, and, in addition, a Child in Need of Care (CINC) action was commenced against her in the District Court of Geary County, Kansas, because she was unable to care for her children while incarcerated.

CONCLUSIONS OF LAW

1. Canon 2A 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, *inter alia*:

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 and impartiality of the judiciary.

2. Canon 3 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, *inter alia*:

A judge shall perform the duties of judicial office impartially and diligently.

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.

3. The Commission finds from clear and convincing evidence that Respondent's conduct violated Canon 2A and Canon 3B(7) in that Ms. Campbell was incarcerated without receiving the constitutional protection of due process. The Commission is not determining that a six-month sentence for contempt of court under the facts as found by the Commission is a violation of the Canons, only that to incarcerate Ms. Campbell without a hearing at which she could be heard on that issue is a violation.

DISPOSITION

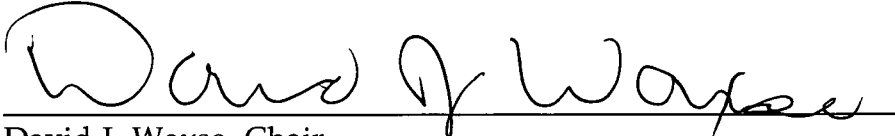
Pursuant to Supreme Court Rule 620, based upon the foregoing Findings of Fact and Conclusions of Law, and based upon an affirmative vote of nine members, the Commission on Judicial Qualifications admonishes the Respondent for the reason that his conduct violated Canon 2A and Canon 3B(7) of the Code of Judicial Conduct.

In arriving at this disposition of the complaint, the Commission considered mitigating factors. In mitigation, the Commission recognizes Judge Platt's repeated efforts to have Ms. Campbell comply with the obligations imposed upon citizens to perform jury duty. Judge Platt is to be commended for his patience and effort in that regard. The Commission also recognizes that there have been no prior formal complaints filed against him. Furthermore, the judge admits that he had mistakenly acted in the belief that he had found Ms. Campbell in contempt.

The Commission is mindful that judges make mistakes and that, as a general rule, judges should not be subject to discipline for legal errors. On occasion, however, a legal error can rise to the level of judicial misconduct, and the Commission believes this to be such an occasion. Ms. Campbell was deprived of her liberty without due process. The judge's admission of error is not sufficient to excuse the misconduct.

DATED this 27th day of October, 1997.

FOR THE COMMISSION ON JUDICIAL QUALIFICATIONS



David J. Waxse, Chair

Concurring:

It is a thorny issue to determine if and when judicial error rises to the level of judicial misconduct, and the determination may have unforeseen or unintended consequences. This is the primary issue in the case at hand.

In its 1996 Annual Report, the Kansas Commission on Judicial Qualifications explains:

Appealable matters constitute the majority of the undocketed complaints and arise from a public misconception of the Commission's function. The Commission does not function as an appellate court.

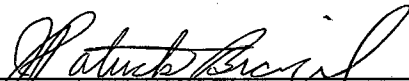
However, Canon 2A requires that a judge comply with the law, and Canon 3A(2) requires that a judge be faithful to the law and maintain professional competence in it. These canons permit the Commission to review judicial error. Not all states provide for such review. Some states (Arizona, California) state that judicial error, in and of itself, does not constitute an ethical violation. Other states (Rhode Island, Wisconsin) have a blanket prohibition, explicitly removing from the conduct commission the power to review the decisions of a judge. Many, like Kansas, are somewhere between, wrestling with the issue.

The threat to judicial independence posed by reviewing judicial decisions from an ethics perspective is the principal disincentive to do so. Such review could also serve to undermine the appellate process. Furthermore, the conduct commission has no power to correct the error, as only the appellate process does. Having assessed each of these weighty considerations, what distinguishes this case from simple judicial error, and what might raise any improper ruling to the level of judicial misconduct, are grave consequences suffered by the victim of the judicial error.

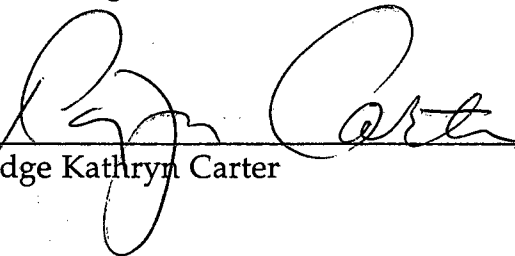
Given that a judge makes an incorrect decision, in an area of the law of which the judge is expected to be knowledgeable, should the decision result in loss of liberty, then the appellate process may be insufficient to address the situation. Contempt proceedings are fertile ground for these circumstances, in view of the fact that the defendant may not be represented by counsel, and the judgment of contempt is often immediate, with immediate sanctions, frequently a stay in the

county jail. Because of what a defendant has at stake, judges may be held to the highest standard in knowledge of proper contempt procedure.

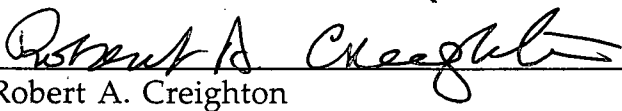
In the present case an incorrect decision was made, and Javette Campbell's request for court-appointed counsel was unanswered. As a result, she spent an extended time in jail, effectively denied the right to appeal due to lack of representation. The Respondent's failure to comply with the contempt statutes and his order to have Javette Campbell jailed on a non-existent 6 month sentence might have been avoided had he taken the time to verify the record of a hearing and the existence of such an order. Javette Campbell's loss of liberty, and the loss to her family, constitute grave consequences suffered by this judge's act. These grave consequences compel the Commission to intervene in the judicial process, contrary to common practice. We concur with the majority's admonishment of the Respondent.



Chief Judge J. Patrick Brazil



Judge Kathryn Carter



Robert A. Creighton

Certificate of Mailing

I hereby certify that a true copy of the Findings of Fact, Conclusions of Law, and Disposition was mailed to Hon. David R. Platt, Div. 5, District Court, Geary County Courthouse, P.O. Box 1147, Junction City, KS 66441, and Edward G. Collister, Jr., Collister & Kampschroeder, 3311 Clinton Parkway Court, Lawrence, KS 66047, by depositing same in the United States mail, postage prepaid, on the 27th day of October, 1997. A copy of the Findings of Fact, Conclusions of Law, and Disposition was hand delivered to Thomas D. Haney, Porter, Fairchild, Wachter & Haney, 1000 Nations Bank Tower, 534 S. Kansas Avenue, Topeka, KS 66603, on October 27, 1997.



Carol G. Green, Secretary