

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF

HON. MARTIN F. McDONALD
FORMER SENIOR STATUS SPECIAL JUDGE

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I

STATEMENT OF CHARGES

The Judicial Conduct Commission of the Commonwealth of Kentucky was created for the purpose of, and is vested with the jurisdiction to, initiate, hear and decide charges of official misconduct by any judge of the Court of Justice or lawyer while a candidate for judicial office, and upon a finding of such official misconduct, to impose sanctions pursuant to SCR 4.020. In furtherance of this authority and purpose, the Commission filed charges of judicial misconduct against Judge Martin F. McDonald, Senior Status Special Judge, (now a Former Senior Status Special Judge), on May 10, 2013. (Notice of Formal Proceedings and Charges dated May 10, 2013 is attached hereto and incorporated herein by reference).

II

PROCEEDINGS

1. The Respondent, Martin F. McDonald is now a Former Senior Status Special Judge, and was, on May 10, 2013, a Senior Status Special Judge.
2. The Commission authorized an investigation into the allegations contained in Count I of the Charges after receipt of a complaint from Edward J. Flint, and into the allegations contained in Count II of the Charges after receipt of newspaper articles pertaining thereto.

3. Judge McDonald was informed of the investigation and his counsel, Hon. Timothy Denison, appeared before the Commission on March 29, 2013. Judge McDonald was then provided the factual information in the custody of the Commission for examination, pursuant to SCR 4.170(4) and was afforded an opportunity to present any other information bearing on the investigation. Judge McDonald requested to again appear before the Commission on May 10, 2013, but then informed the Commission that he would not attend the conference. Judge McDonald provided no additional information bearing on the Commission's investigation.

4. Notice of Formal Proceedings and Charges were filed against Judge Martin F. McDonald on May 10, 2013 under Supreme Court Rule 4.180.

5. A Notice of Hearing on Temporary Suspension was served on Judge McDonald on May 13, 2013, pursuant to SCR 4.020(1)(a)(ii), informing Judge McDonald that a hearing on his temporary suspension was scheduled for June 4, 2013.

6. The Commission's counsel submitted a Memo in Support of the Temporary Suspension on May 20, 2013, and Judge McDonald, by counsel, filed a Memo Regarding Hearing on Temporary Suspension on June 3, 2013.

7. Judge Martin F. McDonald filed his Answer to the Formal Charges by counsel on June 3, 2013. On June 4, 2013, Judge McDonald, by counsel, filed an Amended Answer and an Amended Memo on Temporary Suspension Hearing.

8. On June 4, 2013, following a hearing at which Judge McDonald and his counsel did not appear, the Commission voted to temporarily suspend Judge McDonald from acting in his official capacity as a Judge and from the performance of his duties, without affecting his pay status, until final adjudication of the pending proceedings.

9. Judge McDonald was provided a Notice of Hearing on June 18, 2013 setting the matter for formal hearing on August 7, 2013, at which time neither Judge McDonald nor his counsel appeared.

10. The six (6) voting members of the Commission in this case are as follows:
Hon. Stephen D. Wolnitzek, Judge Janet Stumbo, Judge Eddy Coleman, Judge Susan Johnson, Diane E. Logsdon and Joyce King Jennings. Pursuant to SCR 4.220, the Commission proceeded with the hearing as required by said Rule, even though neither Judge McDonald nor his counsel appeared.

III

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Judicial Conduct Commission unanimously concludes that the following Findings of Fact and Conclusions of Law have been established by clear and convincing evidence.

CHARGE

COUNT I

In the case of *Coach House, Inc. vs. Edward H. Flint*, Jefferson Circuit Court Case No. 12-CI-03106, during a hearing on August 3, 2012, Judge Martin F. McDonald refused to allow a *pro se* defendant to present any argument because he was not a lawyer, and summarily entered an injunction against Mr. Flint, and awarded attorneys' fees; and on August 8, 2012, pursuant to Judge McDonald's ruling on August 3, 2012, Judgment was entered for attorneys' fees and costs in the amount of \$11, 579.20.

By a vote of 6-0, the Commission finds with respect to Count I of the Charges that Judge McDonald violated SCR 4.020(1)(b)(i) and (v) in that his actions constituted misconduct in office, and violated SCR 4.300, the Code of Judicial Conduct. In particular, by the above

conduct, Judge McDonald engaged in misconduct in office, failed to observe high standards of conduct in violation of Canon 1, failed to respect and comply with the law and to act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary in violation of Canon 2A; was not faithful to the law in violation of Canon 3A and B2; was not patient and courteous to a litigant in violation of Canon 3B(4); manifested bias and prejudice against a *pro se* litigant in violation of Canon 3B(5); failed to accord a person who had a legal interest in the proceeding the right to be heard according to law in violation of Canon 3B(7), and failed to dispose of judicial matters fairly, in violation of Canon 3B(8).

COUNT II

In the case of *Commonwealth vs. Roger Dale Epperson*, Warren Circuit Court Case No. 97-CR-00016, on September 28, 2012 in a hearing regarding Epperson's request for relief from a death sentence conviction, Judge Martin F. McDonald engaged in the following conduct:

Judge McDonald addressed the attorney for the Defendant in an intemperate voice and, among other comments, stated "If you ever call me on my cell phone again, I'll strangle you", and that Judge McDonald would try to get the attorney's law license "yanked" if he did it again. When the attorney attempted to explain that he had consent of opposing counsel to make the call, Judge McDonald stated, "negative", "be quiet". In directing the bailiff to bring the Defendant from the holding cell into court, Judge McDonald stated, "Bring his carcass out here." After hearing from only one witness, Judge McDonald stated, "This has been a huge waste of time", and that the Department of Public Advocacy (DPA) attorney's allegations "Have bordered on the ridiculous". Judge McDonald also stated that the DPA was "making a mountain out of a mole hill". Judge McDonald also stated that the nature of ineffective counsel motions in general, "is distasteful to the court. The lawyers who do the work at trial now get criticized by backseat

drivers who weren't there, and who didn't try the case". Judge McDonald also stated to the DPA attorney, "You've never been in the heat of battle in one of these cases, and now you're criticizing lawyers that actually are real lawyers that do the work, the dirty work, the down in the trenches work." Judge McDonald's conduct at the hearing in question generated negative coverage in the *Courier-Journal*, and other media outlets, and brought the Kentucky Judiciary into disrepute.

By a vote of 6-0, the Commission finds with respect to this Charge that Judge McDonald violated SCR 4.020(1)(b)(i) and (v), and that the actions of Judge McDonald constituted misconduct in office, and violated SCR 4.300, the Code of Judicial Conduct, in that Judge McDonald failed to observe high standards of conduct in violation of Canon 1; failed to respect and comply with the law and to act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary in violation of Canon 2A; was not faithful to the law in violation of Canon 3A and B(2); was not patient, dignified and courteous to a litigant and the litigant's lawyer in violation of Canon 3B(4), and manifested bias and prejudice against attorneys of the DPA in claims of ineffective assistance of counsel in violation of Canon 3B(5).

ORDER

Judge Martin F. McDonald has been found guilty of violating the Code of Judicial Conduct and engaging in misconduct in this matter. Judge McDonald is a Former Senior Status Special Judge, who served on the Bench for many years. Judge McDonald's actions in entering an injunction and awarding attorney fees against a *pro se* litigant without the taking of any proof, merely hearing argument of opposing counsel, is something the Commission would not expect from a seasoned veteran Judge. Judge McDonald completely disregarded his responsibility to

provide access to the Court for all litigants in the Commonwealth of Kentucky, and his actions in this matter were so improper as to be reprehensible.

Judge McDonald's actions in regard to Count II, which was a hearing relating to a request by the Defendant for relief from a death sentence conviction are likewise something the Commission would not expect from a veteran jurist. The seriousness of this type proceeding and the stakes involved, require the Court to consider the matter appropriately, and not act as Judge McDonald did in this instance.

It is important to note that during the pendency of this matter, the majority of the Commission voted to order a temporary suspension of Judge McDonald from acting in his official capacity as a Judge, and from the performance of his duties pending final resolution of this matter. A temporary suspension is only pursued in egregious cases. Suffice it to say that the actions of Judge McDonald in both of these cases were egregious.

Judge McDonald is no longer serving in the Kentucky Court of Justice. However, his conduct described in this Order violated the Code of Judicial Conduct and brought the Kentucky Judiciary into disrepute and should be sanctioned. Since Judge McDonald has completed his service, a public reprimand is the most severe sanction available. Were Judge McDonald still a member of the Kentucky Judiciary, a much more severe sanction, perhaps including removal from the Bench, would have been warranted, and would have been ordered.

Therefore, for the foregoing conduct, Former Senior Status Judge Martin F. McDonald is hereby publicly reprimanded.

Judge David Bowles recused from any consideration of this matter.

DATED: 8/12/13


STEPHEN D. WOLNITZEK
CHAIR OF THE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Final Order were mailed to Hon. Timothy Denison, Suite 320, Republic Plaza, 200 South Seventh Street, Louisville, Kentucky 40202, and counsel for the Commission Hon. George F. Rabe, 157 Kentucky Avenue, Lexington, Kentucky 40507, this 12th day of August, 2013.


MS. JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

MARTIN F. McDONALD
SENIOR STATUS SPECIAL JUDGE

NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of the Rules of the Supreme Court. At the times set out in this Notice, you were Senior Status Special Judge in Kentucky's Court of Justice. The charges are as follows.

COUNT I

In the case of *Coachhouse Inc. v. Edward H. Flint*, Jefferson Circuit Court Case Number 12-CI-03106, during a hearing on August 3, 2012, you refused to allow a pro se defendant to present any argument because he was not a lawyer and summarily entered an injunction against him and awarded attorney fees; and on August 8, 2012, pursuant to your ruling on August 3, 2012, judgment was entered for attorney fees and costs in the amount of \$11,579.20.

In regard to the above matter, you violated SCR 4.020(1)(b)(i) and (v) in that your actions constituted misconduct in office and violated SCR 4.300, the Code of Judicial Conduct, Canons 1, 2A and 3A and B(2), (4), (5), (7) and (8) which read in pertinent part as follows:

**CANON 1: A JUDGE SHALL UPHOLD THE INTEGRITY AND
INDEPENDENCE OF THE JUDICIARY**

An independent and honorable judiciary is indispensable to justice in our society. A judge should actively participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

CANON 2: 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.

CANON 3: A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. *Judicial Duties in General.* The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. *Adjudicative Responsibilities.*

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and in proceedings before the judge, shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(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. With regard to a pending or impending proceeding, a judge shall not initiate, permit, or consider ex parte communications with attorneys and shall not initiate, encourage or consider ex parte communications with parties...

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

In particular, by the above conduct, you engaged in misconduct in office; failed to observe high standards of conduct in violation of Canon 1; failed to respect and comply with the law and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A; were not faithful to the law in violation of Canon 3A and B(2); were not patient and courteous to a litigant in violation of Canon 3B(4); manifested bias and prejudice against a pro se litigant in violation of Canon 3B(5); failed to accord to a person who had a legal interest in the proceeding the right to be heard according to law in violation of Canon 3B(7); and failed to dispose of judicial matters fairly in violation of Canon 3B(8).

COUNT II

In the case of *Commonwealth v. Roger Dale Epperson*, Warren Circuit Court Case Number 97-CR-00016, on September 28, 2012, in a hearing regarding Epperson's request for relief from a death-sentence conviction you engaged in the following conduct. You addressed the attorney for the defendant in an intemperate voice and, among other comments, you stated "if you ever call me on my cell phone again, I'll strangle you," and that you would try to get the attorney's law license "yanked" if he did it again. When the attorney attempted to explain that he had consent of opposing counsel to make the call, you stated "negative" and "be quiet". In directing the bailiff to bring the defendant from the holding cell into court, you stated "Bring his carcass out here." After hearing from only one witness, you stated "This has been a huge waste of time" and that the Department of Public Advocacy (DPA) attorney's allegations "have bordered on the ridiculous." You also stated that the DPA was "making a mountain out of a molehill." You also stated that the nature of ineffective counsel motions in general "is distasteful

to the court. The lawyers who do the work at trial now get criticized by backseat drivers who weren't there and who didn't try the case." You also stated to the DPA attorney "You've never been in the heat of battle in one of these cases, and now you're criticizing lawyers that actually are real lawyers that do the work, the dirty work, the down-in-the-trenches work." Your conduct at the hearing in question generated negative coverage in the *Courier-Journal* and other media outlets and brought the Kentucky judiciary into disrepute.

In regard to the above matter, you violated SCR 4.020(1)(b)(i) and (v) in that your actions constituted misconduct in office and violated SCR 4.300, the Code of Judicial Conduct, Canons 1, 2A and 3A and B(2), (4) and (5), which read in pertinent part as set out above.

In particular, by the above conduct, you engaged in misconduct in office; failed to observe high standards of conduct in violation of Canon 1; failed to respect and comply with the law and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A; were not faithful to the law in violation of Canon 3A and B(2); were not patient, dignified and courteous to a litigant and the litigant's lawyer in violation of Canon 3B(4); and manifested bias and prejudice against attorneys of the DPA and claims of ineffective assistance of counsel in violation of Canon 3B(5).

For your information, the Commission wishes to call your attention to the following Supreme Court Rule:

RULE 4.180 FORMAL PROCEEDINGS

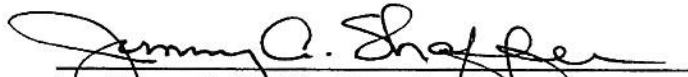
If the Commission concludes that formal proceedings should be initiated, it shall notify the judge. He may file an answer within 15 days after service of the notice. Upon the filing of his answer, or the expiration of time for so filing, the Commission shall set a time and place for the hearing and shall give reasonable notice thereof to the judge.

Please mail your answer to: Ms. Jimmy A. Shaffer, Executive Secretary, Judicial Conduct Commission, P.O. Box 22208, Louisville, Kentucky 40252-0208.

Date: May 10, 2013


STEPHEN D. WOLNITZEK, CHAIR

I hereby certify that copy hereof was served on Martin F. McDonald, Senior Status Special Judge, by mailing same to his attorney, Timothy Denison, Suite 320, Republic Plaza, 200 S. Seventh Street, Louisville, Kentucky 40202 on the 13th day of May, 2013.


Ms. Jimmy A. Shaffer, Executive Secretary

Judge David Bowles recused from any consideration of this matter.